LOVELAND CITY COUNCIL MEETING
TUESDAY, FEBRUARY 5, 2013
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

ROLL CALL

PRESENTATION:
Miss Loveland Valentine 2013 – Madison Polansky

PRESENTATION:
Commissioner Grayson Robinson from the Commission on Accreditation for Law Enforcement Agencies (CALEA) will present an accreditation plaque to the Loveland Police Department

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 CLERK** **(presenter: Terry Andrews)**
APPROVAL OF COUNCIL MINUTES
Motion to approve Council minutes from the January 15, 2013 regular meeting
This is an administrative action to approve the Council minutes.

2. CITY MANAGER (presenter: Bill Cahill)

BOARD & COMMISSION APPOINTMENTS

Motion to approve the following appointments:

- **Appoint Curtis Rowland to the Creative Sector Development Advisory Commission for a partial term effective until December 31, 2013.**
- **Reappoint Julie Nelson and appoint Tom O'Gorman and Jan Wall to the Golf Advisory Board, each for a term effective until December 31, 2015 and appoint Jerry Weitzel as an Alternate member for a term effective until December 31, 2013.**
- **Appointments to the Senior Advisory Board are as follows:**
  - **Reappoint Anne Brown, Betty Herder and Marigail Jury to the Senior Advisory Board, each for a term effective until December 31, 2015**
  - **Appoint Jacqueline Gresham to the Senior Advisory Board, for a partial term effective until December 31, 2014**
  - **Reappoint Richard Zlamany as an Alternate member on the Senior Advisory Board for a term effective until December 31, 2013**
  - **Reappoint Bobbi Sutton as the representative from McKee Medical Center to the Senior Advisory Board for a term effective until February 5, 2014**
  - **Reappoint Doug East as the representative from Chilson Senior Advisory Committee to the Senior Advisory Board for a term effective until February 5, 2014**

This is an administrative action.

3. ECONOMIC DEVELOPMENT (presenter: Cindy Mackin)

SUPPLEMENTAL APPROPRIATION – PRO CYCLE CHALLENGE

Motion to approve and order published on second reading an ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for costs associated with hosting the US Pro Cycling Challenge event

This is an administrative action. The ordinance appropriates funds of $100,000 associated with hosting the US Pro Cycling Challenge event. The funding is from reserves in the Lodging Tax Fund and reduces the flexibility for funding other future events or programs. City Council unanimously approved this ordinance on first reading January 15, 2013.

4. AIRPORT & FINANCE (presenter: Jason Licon)

SUPPLEMENTAL APPROPRIATIONS – FT COLLINS-LOVELAND MUNICIPAL AIRPORT

1. **Motion to approve and order published on second reading an ordinance enacting a supplemental budget and appropriation to the 2013 Ft. Collins-Loveland Municipal Airport budget to realign the budget due to the loss of commercial service**
2. **Motion to approve and order published on second reading an ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget to increase the City's contribution to the Ft. Collins-Loveland Municipal Airport due to the loss of commercial service**

This is an administrative action. The first ordinance appropriates funding ($92,500) to increase the City's contribution to the Airport to partially offset revenue reductions due to the loss of commercial service. The second ordinance reduces the 2013 revenue and expense budget for the Airport due to the loss of commercial service. City Council unanimously approved both ordinances on first reading January 15, 2013.

5. FINANCE (presenter: John Hartman)

SUPPLEMENTAL APPROPRIATION - LOVELAND FIRE RESCUE AUTHORITY 2013 BUDGET

Motion to approve and order published on second reading an ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for the City share of the costs for an additional position in the Loveland Fire Rescue Authority

This is an administrative action. The ordinance appropriates funds ($58,220) from unassigned fund balance in the General Fund for the costs of an additional position in the Loveland Fire and Rescue Authority. City Council unanimously approved the first reading ordinance on January 15, 2013.

6. FINANCE (presenter: Jim Wedding)

AMENDMENT TO CENTERRA COLLECTION AGREEMENT

Motion to approve Resolution #R, approving the Second Amended and Restated Collection Agreement for the City of Loveland to collect Public Improvement Fee revenues and Retail Sales Fee revenues in the Centerra Retail Development

This is an administrative action to approve amendments to the existing agreement with the Centerra Public Improvement Collection Corporation, the Centerra RSF Corporation and G&I VI Retail Prom, LLC.

7. LOVELAND FIRE RESCUE AUTHORITY (presenter: Randy Mirowski)

PURCHASE OF HEAVY RESCUE TRUCK

Motion to approve the purchase of a Heavy Rescue Truck for the new Fire Station 2 from SVI Trucks, Inc. for an amount not to exceed $635,000 and authorize the City Manager to sign the purchase order on behalf of the City

This is an administrative action approving an expenditure exceeding $500,000 for the purchase of the Heavy Rescue Truck. Pursuant to Chapter 3.12 of the City Code, purchases exceeding $500,000 must be approved by City Council. The truck purchase was included in the 2013 Fire Capital Expansion Fee budget with the construction of the new Fire Station 2 in the area of 29th Street and Wilson Avenue.

8. FINANCE (presenter: John Hartman)

SUPPLEMENTAL APPROPRIATION – LOVELAND FIRE RESCUE AUTHORITY, COMMAND VEHICLE

Motion to approve Resolution #R-, of the Loveland City Council approving a supplemental budget and appropriation by the Loveland Fire Rescue Authority to its 2013 budget

This is an administrative action. The resolution provides for Council approval of supplemental changes to the Loveland Fire Rescue Authority 2013 Budget for the purchase of a command vehicle. The Council approval of the budget is required for the Authority's budget to be in effect. The resolution provides approval of the budget changes for additional contributions from the Rural District to fund the vehicle. There is a $75,000 change to the budget from these contributions. No City funds are required.

9. HUMAN RESOURCES (presenter: Julia Holland)

REAPPOINTMENT AND COMPENSATION – MUNICIPAL JUDGE

Motion to approve Resolution #R-, of the Loveland City Council regarding the compensation of the Municipal Judge and reappointing William E. Starks as the Municipal Judge for a new two-year term beginning February 15, 2013

This is an administrative action regarding compensation and reappointment of the Municipal Judge. At the direction of City Council, the 2013 annual base salary for the Municipal Judge shall receive a three and one half percent (3.5%) merit increase beginning on the initial pay period in 2013. City Council also determined to reappoint Williams Starks as the Municipal Judge to a new two-year term beginning February 15, 2013.

10. PUBLIC WORKS (presenter: David Klockeman)
PUBLIC HEARING
TRAFFIC SIGNAL REPLACEMENT – U.S. 34 & BOYD LAKE AVENUE

1. **Motion to approve Resolution #R-, 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 replacement at the intersection of U.S. 34 and Boyd Lake Avenue in Loveland, Colorado**
2. **Motion to approve and order published on first reading an ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for signal replacement and other improvements at the intersection of US 34 and Boyd Lake Avenue**

This is an administrative action. The City has received a federal grant with state matching funds ($495,000) through the Federal Hazard Elimination program for the signal replacement and other improvements at the US 34 and Boyd Lake Avenue intersection. This item includes consideration of a Resolution approving an intergovernmental agreement between the City of Loveland and the Colorado Department of Transportation (CDOT) for the project and consideration of the first reading of an ordinance to appropriate the federal and state funds for the project included in the intergovernmental agreement.

11. PUBLIC WORKS (presenter: David Klockeman)
PUBLIC HEARING
RAILROAD CROSSING REPAIR - U.S. HWY 287

1. **Motion to approve Resolution #R-, 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 repair of the Burlington Northern Santa Fe Railroad crossing at U.S. 287 in Loveland, Colorado**
2. **Motion to approve and order published on first reading an ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for railroad crossing repairs on U.S. 287**

This is an administrative action. The east/west railway crossings on Lincoln and Cleveland Avenues are in need of repairs. To accomplish these repairs Public Works Engineering (PWE) has worked out agreements with the stake holders to these railway crossings. The stake holders are the Burlington Northern Santa Fe Railway (BNSF), the Colorado Department of Transportation (CDOT) and the Great Western Railway Company (GW). Lincoln and Cleveland Avenues are part of US Highway 287; the crossings are owned by the BNSF; and these tracks also are the main connection for the transfer of rolling stock between the BNSF and GW. CDOT will provide federal and state funds to the City of Loveland to reimburse it for the costs, up to $84,457, for the installation of railway crossing material at locations on US 287 (Lincoln & Cleveland Avenues).

12. WATER & POWER (presenter: Lindsey Bashline)

IGA WITH LARIMER COUNTY – WATER AND ENERGY PROGRAMS

Motion to approve Resolution #R-, approving an Intergovernmental Agreement between the City of Loveland, Colorado and Larimer County, Colorado for efficiency audits and training provided through the Larimer Conservation Corps Water and Energy Program

This is an administrative action to approve a resolution for an Intergovernmental Agreement (IGA) between the City of Loveland and Larimer County in the amount of $35,500 for the Larimer County Conservation Corps, Water and Energy Program Efficiency Audits and Training. The funds are available in the approved 2013 City of Loveland budget for Water and Power.

13. WATER & POWER (presenter: Greg Dewey)

CONVERSION OF COLORADO-BIG THOMPSON WATER UNITS

Motion to approve Resolution #R-, of the Loveland City Council authorizing an application to, and contract with, the Northern Colorado Water Conservancy District for beneficial use of 282 acre-feet of Colorado-Big Thompson Project Water

This is an administrative action to adopt a resolution approving the conversion of 282 Colorado-Big Thompson ("C-BT") units from a Temporary Use Permit to a Permanent Section 131 Contract. The units were purchased in 2012. No additional costs are associated with the conversion.

14. WATER & POWER (presenter: Greg Dewey)

IGA WITH NORTHERN COLORADO WATER CONSERVANCY DISTRICT – TRANSMISSION AND TREATMENT STUDY

Motion to approve Resolution #R-, approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Northern Colorado Water Conservancy District for participation in the 2012-2013 Regional Transmission and Treatment Study

This is an administrative action to approve an intergovernmental agreement with the Northern Colorado Water Conservancy District for participation in the 2012-2013 regional transmission and treatment study. The funds to be committed are $11,818 and have been appropriated and are available in the 2013 Water & Power budget.

15. DEVELOPMENT SERVICES (presenter: Karl Barton)

PUBLIC HEARING

AMEND COMPREHENSIVE MASTER PLAN (LAND USE PLAN)

Motion to approve Resolution #R-, of the Loveland City Council amending the future Land Use Plan set forth in Section 4.7 of the City of Loveland 2005 Comprehensive Master Plan

This is a public hearing and legislative action to consider a resolution amending the City of Loveland Future Land Use Plan by changing the future land use designation on approximately 815 acres from DR- Development Reserve to a combination of RAC – Regional Activity Center and E – Employment. The area subject to the amendment is located west of I-25: extending to County Road 7 and north from State Highway 60 one and a half miles. This amendment is proposed by City staff. The Planning Commission held a public hearing to consider the Land Use Plan amendment on January 14, 2013 and unanimously approved the resolution recommending approval.

16. PARKS & RECREATION (presenter: Janet Meisel-Burns)
CONTRACT AMENDMENT – MEHAFFEY PARK DESIGN AND ENGINEERING FEE
Motion to approve an amendment to the service contract with Logan Simpson Design, Inc., to increase the fees for Mehaffey Park design and engineering services from a not to exceed amount of $489,859 to a not to exceed amount of $714,000 and to authorize the City Manager to execute the contract amendment on behalf of the City
This is an administrative action to authorize the City Manager to enter into a contract amendment with Logan Simpson Design, Inc. for additional design and engineering services for the Mehaffey Park project not to exceed $714,000. The fee increase is desired to 1) expanded design services for a 29th Street access, 2) provide additional design required for the master planning and engineering for the 9.36 acres purchased to expand the park, and 3) complete additional design services to meet requirements for Special Review Plans and required Site Development Plans needed for approval of the entire 69 acre park through the City's development review process. Funding for the additional design services will be absorbed within the 2012 and 2013 approved Mehaffey Park project budget.

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

17. DEVELOPMENT SERVICES (presenter: Bethany Clark)
PUBLIC HEARING
HISTORIC DESIGNATION – ELKS LODGE / LOVELANDER HOTEL
Motion to approve and order published on first reading an ordinance designating as a historic landmark the Loveland Elks Lodge/Lovelander Hotel located at 103 East 4th Street in Loveland, Colorado
A public hearing to consider a legislative action to adopt an ordinance on first reading designating as a Historic Landmark the "Elks Lodge/Lovelander Hotel" at 103 East 4th

Street, per Chapter 15.56 of the Municipal Code dealing with Historic Preservation. The application is owner-initiated and staff reviewed the benefits and obligations of historic designation with the property owner. The Historic Preservation Commission on January 21, 2013, found the Elks Lodge/Lovelander Hotel to be eligible for designation and is forwarding this recommendation to City Council.

18. CITY CLERK (presenter: Terry Andrews)

APPROVAL OF COUNCIL MINUTES

Motion to approve Council minutes from the January 8, 2013 study session.

This is an administrative action. This item is on the regular agenda as not all Councilors were present at the meeting.

19. CITY MANAGER (presenter: Bill Cahill)

APPOINTMENT TO SENIOR ADVISORY BOARD

Motion to appoint Paula Clark to the Senior Advisory Board for a term effective until December 31, 2015

This is an administrative action recommending the appointment of a member to the Senior Advisory Board.

20. CITY MANAGER (presenter: Rod Wensing)

PUBLIC HEARING

EXTENSION OF COMCAST FRANCHISE AGREEMENT

Motion to approve and order published on first reading an ordinance amending the Cable Franchise Agreement between the City of Loveland, Colorado and Comcast of Colorado II, LLC to extend the term of the Franchise Agreement

This is an administrative action. The ordinance moves the expiration of the current cable franchise from April 30, 2013 to December 31, 2013.

21. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)

ARTSPACE PROJECT

Motion to approve Resolution #R-, approving a Conditional Loan and Materials Use Tax Waiver for the Artspace Project

This is an administrative action. The resolution approves and authorizes the City Manager to sign a commitment letter based on the term sheet negotiated by staff and Artspace. The commitment letter awards a loan of $300,000 in support of the project. The loan would fill the gap in funding and complete the financing package for the CHFA tax credit application due on March 1. The commitment letter also includes a waiver of Construction Materials Use Tax estimated to be $71,000. These commitments (the loan and use tax waiver) are expressly subject to satisfaction of the following conditions by December 31, 2013: (a) award of the tax credits by CHFA; (b) appropriation of loan amount and final approval of the use tax waiver by Council; and (c) approval and execution of a final loan agreement, note, and deed of trust based on the term sheet attached to the letter. The City is not formally committing any funds at this time. The loan and materials use tax waiver are contingent upon Artspace being awarded the tax credits from the Colorado Housing and Finance Authority (CHFA). If Artspace is awarded the tax credits by December 31, 2013, full consideration by Council of an appropriation ordinance, the use tax waiver, and a loan agreement (including a note and deed of trust) would occur with no guarantee of approval.

22. WATER & POWER (presenter: Jim Lees)

WATER ENTERPRISE FUNDING

Motion to approve on first reading Resolution #R-16-2013 concerning funding for the Water Enterprise to improve the Water Treatment Plant and undertake a comprehensive water line replacement program

This is an administrative action to adopt a resolution on first reading that provides funding mechanisms for the Water Enterprise through external and internal loans, a series of rate increases, and an annual transfer of funds from the General Fund to the Water Enterprise. This funding will be used to improve the Water Treatment Plant and undertake a comprehensive water line replacement program.

23. CITY MANAGER

Proposed Executive Session concerning Klen v. City of Loveland lawsuit

ADJOURN

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, Taylor and Clark.

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.

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. Sheila Carrasco removed Item 1. Councilor McKean removed Item 3. Councilor Clark removed Item 6. Councilor Shaffer moved to approve the Consent Agenda with the exceptions of Items 1,3 and 6. The motion was seconded by Councilor Trenary and a roll call vote was taken with all councilors present voting in favor thereof.

1. CITY MANAGER

Board & Commission Appointments

Motion — This item was pulled from the Consent Agenda.

2. CITY CLERK

Establish the Location for Meeting Notices in 2013

Resolution #R-1-2013 — Administrative Action: Resolution #R-1-2013 establishing the location for the posting of City of Loveland notices for 2013 was approved.

RESOLUTION #R-1-2013

A RESOLUTION ESTABLISHING THE LOCATION FOR THE POSTING OF CITY OF LOVELAND NOTICES FOR 2013

WHEREAS, City Charter Section 4-4(b) requires that the notice of each regular and special City Council meeting shall be posted at least twenty-four hours in advance of the meeting; and

WHEREAS, under C.R.S. Section 24-6-402(2)(c) a local public body is deemed to have given full and timely notice of its meetings if the meeting notice is posted in a designated public place within the local public body's boundaries no less than twenty-four hours prior to the holding of the meeting; and

WHEREAS, C.R.S. Section 24-6-402 (2)(c) further provides that the public place for posting such notice shall be designated annually by the local public body at its first regular meeting in each calendar year; and

WHEREAS, City Council meetings are held in the Council Chambers located at 500 E. 3rd St, immediately adjacent to the City Clerks Office.

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

Section 1. The City Council hereby designates the place for the posting of all meeting notices for the Loveland City Council and Loveland's Boards and Commissions to be the bulletin board immediately adjacent to the Loveland City Council Chambers located at 500 East 3rd Street, City of Loveland, Colorado.

Section 2. In the event the designated posting location is not accessible or in existence due to natural disaster or other similar cause, the emergency posting location will be in the foyer at the City's Fire Administration Building located at 410 E. 5th Street, Loveland, Colorado.

Section 3. This Resolution shall go into effect on the date and time of its adoption.

ADOPTED this 15th day of January, 2013.

Cecil A. Gutierrez, Mayor
Attest: Teresa G. Andrews, City Clerk

3. ECONOMIC DEVELOPMENT

Downtown Loveland –Brinkman / North Catalyst Project

This item was pulled from the Consent Agenda.

4. DEVELOPMENT SERVICES

2013 Three Mile Plan

Resolution #R-2-2013 & P.H. Legislative Action: A public hearing was held and Resolution #R-2-2013 adopting a Three Mile Plan for the City of Loveland, Colorado was approved.

RESOLUTION #R-2-2013

A RESOLUTION ADOPTING A THREE MILE PLAN FOR THE CITY OF LOVELAND, COLORADO

WHEREAS, pursuant to C.R.S. §31-12-105(1)(e)(I), as amended, prior to the completion of any annexation within a three mile area outside of the municipal boundaries of a municipality ("Three Mile Area"), a municipality is required to have in place a plan ("Three Mile Plan") which generally describes the proposed location, character and extent of certain public facilities to be provided within and the proposed land uses for the Three Mile Area; and

WHEREAS, pursuant to C.R.S. §31-12-105(1)(e)(I), as amended, the Three Mile Plan must be updated at least once annually; and

WHEREAS, the City of Loveland has enacted, adopted and approved the various plans, documents, ordinances and resolutions (collectively "Plans") listed on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the City Council has determined that the Plans, when considered together as a whole, adequately comply with the requirements of state law and shall constitute the annual updated Three Mile Plan for the City of Loveland; and

WHEREAS, to ensure that future annexations by the City of Loveland are completed in compliance with the provisions of state law, the City Council, by this Resolution, desires to formalize its understanding and intention that the Plans serve as the Three Mile Plan for the City of Loveland.

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

Section 1. That the Plans, as described in Exhibit A, when considered together as a whole, shall constitute the Three Mile Plan for the City of Loveland required pursuant to C.R.S. §31-12-105(1)(e)(I), as amended.

Section 2. That the Three Mile Plan shall be reviewed and revised as may be necessary at least annually, and additional Plans may be added from time to time, as they are developed and adopted.

Section 3. That this Resolution shall be effective as of the date and time of its adoption.

Adopted this 15th day of January, 2013.

Cecil A. Gutierrez, Mayor
Attest: Teresa G. Andrews, City Clerk
Exhibit A is available in the City Clerk's Office.

5. CITY ATTORNEY

Third Amendment regarding Environmental Fees (High Plains Environmental Center)

Resolution #R-3-2013 Administrative Action: Resolution #R-3-2013 approving the Third Amendment to Agreement regarding Environmental Fees was approved.

RESOLUTION #R-3-2013

A RESOLUTION APPROVING THE THIRD AMENDMENT TO AGREEMENT REGARDING ENVIRONMENTAL FEES

WHEREAS, on June 13, 2006, City Council adopted Resolution #R-37-2006, which Resolution approved an Agreement Regarding Environmental Fees dated June 27, 2006, and recorded with the Larimer County Clerk and Recorder on July 11, 2006 at Reception No. 2006-0051710 ("Agreement") among the City of Loveland ("City"), McWhinney Real Estate Services, Inc., ("Developer") and the High Plains Foundation and the High Plains Environmental Center, Colorado non-profit corporations, collectively referred to as the "Environmental Entities"); and

WHEREAS, pursuant to Resolution #R-73-2008, the City, the Developer, and the Environmental Entities entered into the First Amendment to Agreement Regarding Environmental Fees dated June 24, 2008, and recorded with the Larimer County Clerk and Recorder on September 23, 2008 at Reception No. 2008-0060422 ("First Amendment"), for the purpose of subjecting property within the Grange Addition to Non-Residential Environmental Fees; and

WHEREAS, pursuant to Resolution #R-34-2009, the City, the Developer, and the Environmental Entities entered into the Second Amendment to Agreement Regarding Environmental Fees dated June 3, 2009, and recorded with the Larimer County Clerk and Recorder on June 8, 2009 at Reception No. 2009-0037286 ("Second Amendment"); and

WHEREAS, the Term of the Agreement, the First Amendment, and the Second Amendment continues through December 31, 2030, terminating on January 1, 2031; and

WHEREAS, the City, the Developer, and the Environmental Entities have agreed to extend the Term of the Agreement, the First Amendment, the Second Amendment through December 31, 2040 as more fully set forth in the Third Amendment to Agreement Regarding Environmental Fees attached hereto as Exhibit A and incorporated by reference (the "Third Amendment") ; and

WHEREAS, the City, the Developer, and the Environmental Entities have further agreed to modify the provisions of the Agreement, the First Amendment, the Second Amendment to clarify the process for allocating, reporting, and accounting for monies for "Open Space Purposes" and for "HPEC Purposes" as set forth in the Third Amendment; and

WHEREAS, pursuant to Section 11 of the Agreement, the consent of McStain Enterprises, Inc. to this Third Amendment is not required.

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

Section 1. That the Third Amendment is hereby approved.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form of the Third Amendment 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 of Loveland.

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

ADOPTED this 15th day of January, 2013.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

6. FINANCE

Supplemental Appropriation to 2013 City of Loveland Budget (to increase 2013 Airport Budget)

1st Rdg Ord & P.H. This item was pulled from the Consent Agenda.

7. FINANCE

Supplemental Appropriation – Loveland Fire Rescue Authority 2013 budget

1) 1st Rdg Ord & P.H. Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR THE CITY SHARE OF THE COSTS FOR AN ADDITIONAL POSITION IN THE LOVELAND FIRE RESCUE AUTHORITY" was approved and ordered published on first reading.

2) Resolution #R-4-2013 Administrative Action: Resolution #R-4-2013 approving a supplemental budget and appropriation to the Loveland Fire Rescue Authority 2013 budget was approved.

RESOLUTION #R-4-2013

A RESOLUTION APPROVING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE LOVELAND FIRE RESCUE AUTHORITY 2013 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-013, approved a supplemental appropriation for its 2013 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 2013 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 2013 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 2013 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, 2013 and ending December 31, 2013, with revenues in the amount of $71,000, and expenditures of $71,000 for operations, is hereby approved.

Section 2. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 15th day of January, 2013.

Cecil A. Gutierrez, Mayor
Attest: Teresa G. Andrews, City Clerk
Exhibit A is available in the City Clerk's Office

8. PUBLIC WORKS

Contract Award – Design and Engineering of the Service Center Expansion / Remodel

Motion Administrative Action: A motion to approve the contract for RNL Design to design and engineer the expansion and remodel of the Service Center for the total amount of $975,000 and to authorize the City Manager to execute the contract on behalf of the City was approved.

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports None

b) Business from Council

Shaffer	Councilor Shaffer announced the North Front Range Metropolitan Planning Organization (MPO) elected officers. She also attended the North Front Range Transit Vision Steering Committee meeting.
Fogle	Councilor Fogle highlighted news from the meeting of the Loveland Fire Rescue Authority about the Rural Fire Protection District regarding the purchase of a new Command Vehicle and, because of the mill levy approve, they will be able to fund their share of a new type 6 engine. City Council will send a letter of appreciation to the Rural Fire Protection District.
Farley	Councilor Farley mentioned a meeting today of the Thompson Education Foundation honoring six people for various "Employee of the Year" categories. King Buick is giving a free two month lease to all award recipients and a free two year lease to the Educator of the Year recipient.
Klassen	Councilor Klassen attended a meeting of the Northern Colorado Legislative Alliance. Speakers which included Eric Wilkinson from Northern Colorado Water Conservancy District and Attorney Jep Seman speaking on the topic of fracking.
Clark	Councilor Clark anounced the annual Chamber of Commerce dinner is Friday, January 18, 2013, from 5:30 - 10:30 p.m. at the Embassy Suites Loveland. The theme is "Building Leaders Today & Making Stars Tomorrow".
Trenary	Councilor Trenary thanked the Chamber of Commerce and members for their work.
Gutierrez	Mayor Gutierrez mentioned Airport Manager Jason Licon will report later tonight on activities at the Fort Collins-Loveland Airport. The Highway 287 Coalition meeting was last week. The Metro Mayor Caucus is in discussion with the State on future legislation regarding the formation of districts.
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

1. CITY MANAGER
Board & Commission Appointments

Motion	Administrative Action: City Manager Cahill introduced this item. This is an Administrative Item recommending appointment of the following members to the Citizens' Finance Advisory Commission, Creative Sector Development Advisory Commission, Cultural Services Board, Library Board, Open Lands Advisory Commission, Parks and Recreation Commission, and Visual Arts Commission. Sheila Carrasco, 1303 Harlow, spoke to Council about the Creative Sector Development Commission. Councilor Shaffer made a motion to appoint the following members:

• Richard Ball and Meg Corwin were appointed and Jodi Radke reappointed to the Citizens' Finance Advisory Commission, each for a three year term effective until December 31, 2015.
• Mary Bahus-Meyer and Aloria Weaver were appointed to the Creative Sector Development Advisory Commission each for a partial term effective until December 31, 2013 and Curtis Rowland was appointed as an Alternate member for a term effective until December 31, 2013.
• Teresa Mueller and Kris Ortmann were reappointed to the Cultural Services Board, each for a four year term effective until December 31, 2016.
• ShawnaLee Washam was reappointed to the Library Board for a five year term effective until December 31, 2017.
• Ross Livingston was appointed to the Open Lands Advisory Commission for a term effective until December 31, 2016 and Jim Roode was appointed as an Alternate member for a term effective until December 31, 2013.
• Deb Huffsmith was appointed to the Parks and Recreation Advisory Commission for a partial term effective until December 31, 2014 and Gene Alvine, Deborah Manderscheid, and Leighton Millar were reappointed each for a full term effective until December 31, 2015.
• Beverly Cardarelli and Dennis Soucek were reappointed and Tony Adams was appointed to the Police Citizen Advisory Board, each for a term effective until December 31, 2015 and Mark Kirkpatrick was appointed as an Alternate member for a one-year term effective until December 31, 2013.
• Kim Ferro representing the Aspen Club / Senior Services (University Colorado Health) and Doug East representing the Chilson Senior Advisory Board were appointed to the Senior Advisory Board for terms effective until January 15, 2015.
• Sherri Heckel-Kuhlman, Greg Hoff, and Margaret Rosborough were reappointed and Judy O'Gorman was appointed to the Visual Arts Commission, each for a three term effective until December 31, 2015.
Councilor Klassen seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

3. ECONOMIC DEVELOPMENT

Downtown Loveland –Brinkman / North Catalyst Project

This is an administrative action. Staff did not make a presentation. City Manager Bill Cahill stated he will be meeting with representatives of Larimer County to finalize the terms of an Intergovernmental Agreement which will be brought back to Council.The combined actions would provide the final approval of the Development and Disposition Agreement for the sale of the property located at 541 N. Lincoln Street and the appropriations necessary to facilitate the construction of a $9.3 million, 69 unit market rate housing development in Downtown Loveland by the Brinkman Partners of Fort Collins acting through its investment entity 541 N. Lincoln L.L.C. The Brinkman/North Catalyst project is the result of both extensive planning by the City and two years of negotiations with the Brinkman Partners. (See the Staff Report for details) On December 18, 2012 City Council unanimously approved the first reading of the ordinances.

#1) Ordinance #5736

Administrative Action: Councilor Shaffer moved to approve and ordered published on second reading “AN ORDINANCE OF THE LOVELAND CITY COUNCIL AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT AMONG THE CITY, THE LOVELAND URBAN RENEWAL AUTHORITY, AND 541 N. LINCOLN L.L.C. AND CONVEYANCE OF LOTS 1 THROUGH 8, BLOCK 12, ORIGINAL PLAT OF THE CITY

OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO FOR THE DEVELOPMENT OF THE NORTH CATALYST PROJECT AT 541 N. LINCOLN IN LOVELAND, COLORADO". Councilor Trenary seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

#2) Ordinance #5737 — Administrative Action: Councilor Shaffer moved to approve and ordered published on second reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR A LOAN TO THE LOVELAND URBAN RENEWAL AUTHORITY IN CONNECTION WITH THE NORTH CATALYST PROJECT LOCATED AT 541 N. LINCOLN IN LOVELAND, COLORADO" was approved and ordered published on second reading. Councilor Trenary seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

At 7:17 p.m. City Council adjourned and convened as the Board of Commissioners for the Loveland Urban Renewal Authority (LURA)

#3) Ordinance #5738 — Administrative Action: Councilor Shaffer moved to approve and ordered published on second reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 LOVELAND URBAN RENEWAL AUTHORITY BUDGET TO FUND PAYMENTS TO THE DEVELOPER OF THE NORTH CATALYST PROJECT AT 541 N. LINCOLN, LOVELAND, COLORADO FOR PUBLIC IMPROVEMENTS" was approved and ordered published on second reading. Councilor Trenary seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

At 7:18 p.m. the Board of Commissioners for the Loveland Urban Renewal Authority adjourned and reconvened as City Council.

11. AIRPORT

Consensus of Council was to consider Items 11 and 6 sequentially. One public hearing was held for both items.

Supplemental appropriation – 2013 Airport Budget Realignment

1st Rdg Ord & P.H. — Administrative Action: Airport Manager Jason Licon introduced this item. The ordinance reduces the revenue and expense budget for the Airport due to the loss of commercial service. Jason also provided an update to Council regarding a new commercial airline. The Mayor opened the public hearing at 7:34 p.m. and hearing no comments closed the hearing at 7:34 p.m. Councilor Shaffer moved to approve and ordered published on first reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 FT. COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET TO REALIGN THE BUDGET DUE TO THE LOSS OF COMMERCIAL SERVICE". Councilor Klassen seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

6. FINANCE

Supplemental Appropriation to 2013 City of Loveland Budget (to increase 2013 Airport Budget)

1st Rdg Ord & P.H. — Administrative Action: The ordinance appropriates funding ($92,500) to increase the City's contribution to the Airport to partially offset revenue reductions due to the loss of commercial service. The Mayor opened the public hearing at 7:34 pm and hearing no comments closed the hearing at 7:34 pm. Councilor Shaffer moved to approve and

ordered published on first reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET TO INCREASE THE CITY'S CONTRIBUTION TO THE FT. COLLINS-LOVELAND MUNICIPAL AIRPORT DUE TO THE LOSS OF COMMERCIAL SERVICE" was approved and ordered published on first reading. Councilor Klassen seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

9. CITY CLERK

Approval of Council Minutes

Administrative Action: City Clerk Terry Andrews introduced this item, which approves minutes from December Council meetings.

a) Motion for December 11, 2012 Study Session

Councilor Shaffer moved to approve Council minutes from the December 11, 2012 study session. Councilor McKean seconded the motion and a roll call vote was taken with six Councilors present voting in favor thereof and Councilors Taylor, Farley and Clark abstaining. The motion passed

b) Motion for December 18, 2012 Regular Meeting

Councilor Shaffer moved to approve Council minutes from the December 18, 2012 regular meeting. Councilor McKean seconded the motion and a roll call vote was taken with eight Councilors present voting in favor thereof and Councilor Taylor abstaining. The motion passed.

10. ECONOMIC DEVELOPMENT

Supplemental Appropriation – Pro Cycle Challenge

1st Rdg Ord & P.H.

Administrative Action: Visitor Services Coordinator Cindy Mackin introduced this item. The ordinance appropriates funds of $100,000 associated with hosting the US Pro Cycling Challenge event. The funding is from reserves in the Lodging Tax Fund, and reduces the flexibility for funding other future events or programs. The Mayor opened the public hearing at 8:15 pm and hearing no comments closed the hearing at 8:15 pm. Councilor Shaffer made a motion to approve and ordered published on first reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR COSTS ASSOCIATED WITH HOSTING THE US PRO CYCLING CHALLENGE EVENT". Councilor Clark seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

12. CITY MANAGER

Council Procedural Change Resolution

Administrative Action: The City Manager and City Attorney introduced this item to Council. This is an administrative action as authorized in City Charter Section 4-1(a) to adopt by resolution rules of procedure for City Council meetings. Councilor McKean moved to table this item and bring it back at a future study session. Discussion ensued. Councilor Farley made a motion to the call the question and a roll call vote was taken with all Councilors present voting in favor thereof. Councilor Klassen seconded the original motion and a roll call vote was taken with all Councilors present voting in favor thereof.

Consensus of Council was to remove Items 13 and 14 from the agenda. Council was asked to direct any questions they may have to staff and cc to the rest of Council.

The Mayor requested the City Manager work with the Reporter Herald to publish a progress report on the Cumberland and Weston site activities.

13. FINANCE

November 2012 Finance Report

Information Only

Finance Director Brent Worthington introduced this item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending November 30, 2012.

14. ECONOMIC DEVELOPMENT

Investment Report for November 2012

Information Only

Executive Fiscal Advisor Alan Krcmarik introduced this item to Council. The budget estimate for investment earnings for 2012 was $2,729,560. Through November 2012, the amount posted to the investment account is $2,334,153 including realized gains. Actual year-to-date earnings are lower than the year-to-date projection by $159,945. Based on the monthly statement, the estimated annualized yield on the securities held by USBank was up from last month 1.24%, well under the annual target rate of 1.70% for 2012. Reinvestment rates are near record low levels, much lower than the budget projection.

15. CITY MANAGER

Executive Session concerning Klen v. City of Loveland lawsuit

At 8:38 p.m. Councilor Shaffer moved that the City Council go into executive session, as authorized in CRS Sections 24-6-402(4)(b), (4)(e) and (4)(g) and in City Charter Sections 4-4(c)(1), (c)(3) and (c)(6). This executive session will address a lawsuit currently pending in Colorado Federal District Court, *Klen v. City of Loveland*, together with such other matters as may relate to or affect this lawsuit. The purposes of the executive session will be to receive legal advice from the City's legal counsel, including from attorney Tom Lyons; and since this lawsuit is a matter that may become subject to negotiations: to receive reports concerning any negotiation discussions; to develop the City's negotiation positions and strategies; and to instruct the City's negotiators concerning those positions and strategies. In addition, documents and records related to this lawsuit may be considered protected by the mandatory non-disclosure provisions of the Colorado Open Records Act, including, without limitation, work product documents.
Councilor Trenary seconded the motion and a roll call vote was held and all Councilors present voted in favor thereof. Council reconvened at 10:15 p.m.

ADJOURNMENT

Having no further business to come before Council, the January 15, 2013 Regular Meeting was adjourned at 10:15 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: **2**
MEETING DATE: 2/5/2013
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill

TITLE:
Appointments to Golf Advisory Board, Creative Sector Development Advisory Commission and Senior Advisory Board

RECOMMENDED CITY COUNCIL ACTION:
Motion to appoint Curtis Rowland to the Creative Sector Development Advisory Commission for a partial term effective until December 31, 2013
Motion to reappoint Julie Nelson and to appoint Tom O'Gorman, and Jan Wall to the Golf Advisory Board, each for a term effective until December 31, 2015
Motion to appoint Jerry Weitzel as an Alternate member of the Golf Advisory Board for a term effective until December 31, 2013
Motion to reappoint Anne Brown, Betty Herder and Marigail Jury to the Senior Advisory Board, each for a term effective until December 31, 2015
Motion to appoint Jacqueline Gresham to the Senior Advisory Board, for a partial term effective until December 31, 2014
Motion to reappoint Richard Zlamany as an Alternate member on the Senior Advisory Board for a term effective until December 31, 2013
Motion to reappoint Bobbi Sutton as the representative from McKee Medical Center to the Senior Advisory Board for a term effective until February 5, 2014
Motion to reappoint Doug East as the representative from Chilson Senior Advisory Committee to the Senior Advisory Board for a term effective until February 5, 2014

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

DESCRIPTION:
This is an administrative action recommending appointment of members to the Creative Sector Development Advisory Commission, Golf Advisory Board, and Senior Advisory Board.

BUDGET IMPACT:
☐ Positive

☐ Negative
☒ Neutral or negligible

SUMMARY:
On January 15, 2013, City Council approved the appointment of Curtis Rowland as an Alternate member on the Creative Sector Development Advisory Commission ("CSDAC"). Meg Corwin resigned from CSDAC when she was approved for appointment to the Citizen Finance Advisory Commission, which was approved by Council at the January 15, 2013 meeting. The commission recommends the appointment of Curtis Rowland as a regular member on the Creative Sector Advisory Commission for a partial term effective until December 31, 2013.

The Golf Advisory Board had three term vacancies for which applications were received during the Fall 2012 recruiting cycle. Interviews were held with five applicants on December 13, 2013. The committee recommends the reappointment of Julie Nelson and the appointment of Tom O'Gorman, and Jan Wall to GAB, each for a term effective until December 31, 2015. Jerry Weitzel, formerly a regular GAB member, is recommended for appointment as an Alternate member on the board for a term effective until December 31, 2013.

The Fall 2012 recruiting cycle was conducted for four regular membership term vacancies. Another regular member resigned effective 1/1/13. Four of the terms for members nominated by the Senior Board per the code section either expired or the individual resigned. Two of the nominated members were approved by Council at the January 15, 2013 meeting: Kim Ferro, representing University Colorado Health Aspen Club/Senior Services [formerly Poudre Valley Health Systems] and Doug East, representing Chilson Senior Advisory Committee. (The ordinance amending the Code to change "Poudre Valley Hospital Health Systems" to "University Colorado Health" will come to Council on first reading February 19, 2013.)

The three individuals recommended for appointment as regular members are Anne Brown, Betty Herder, and Marigail Jury. Each of these individuals are recommended for terms effective until December 31, 2015. Jacqueline Gresham is recommended for appointment to the partial term (replacing Carol Rehme who resigned 1/1/13). Ms. Gresham's term will be effective until December 31, 2014. Richard Zlamany is recommended for reappointment as an Alternate member on the Senior Advisory Board for a term effective until December 31, 2013.

> Section 2.60.240 **Senior Advisory Board** of the Municipal Code states:
> A. There is established a senior advisory board consisting of fifteen members. Nine members shall be appointed by the city council to serve terms of three years. Six members shall be nominated by the senior advisory board, and approved by the city council, to serve terms of two years. These six members shall consist of one at large member, and one member from each of the following organizations: Chilson Senior Advisory Committee, Housing Authority of the City of Loveland, Colorado, McKee Senior Services, the Poudre Valley Hospital Aspen Club, and the McKee Medical Center Seasons Club. (Ord. 5665 § 1, 2012; Ord. 5449 § 1, 2009; Ord. 5481 § 1, 2010)

Bobbi Sutton is recommended for appointment as the representative from McKee Medical Center for a two year term effective until February 4, 2014. Doug East is recommended for appointment as the representative from Chilson Senior Advisory Committee for a term effective until February 5, 2014.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:
None

CITY OF LOVELAND
ECONOMIC DEVELOPMENT OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
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AGENDA ITEM: **3**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Betsey Hale, Economic Development Department
PRESENTER: Cindy Mackin, Economic Development

TITLE:
An ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for costs associated with hosting the US Pro Cycling Challenge event

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 funds of $100,000 associated with hosting the US Pro Cycling Challenge event. This was approved unanimously by City Council on January 15, 2013.

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible
The funding is from reserves in the Lodging Tax Fund, and reduces the flexibility for funding other future events or programs.

SUMMARY:
Loveland, Fort Collins, Estes Park and Windsor came together in 2012 to submit a bid to host a beginning and ending stage of the 2013 Pro Cycling Challenge. On Tuesday, December 18, 2012, Northern Colorado was awarded the 6th stage of the Pro Cycling Challenge tour, on Saturday, August 24th, 2013. Historically the Saturday stage has yielded the highest

attendance. The communities partnered with a number of local businesses including McWhinney Corporation, the Group Real Estate, and the Ranch among others to bring this event to our part of the State.

The event is consistent with the Destination Loveland Strategic Plan, which calls for promoting Loveland as a destination and partnering with regional and state tourism organizations on marketing and promotion efforts. The ordinance was supported and recommended by the Community Marketing Commission.

This event will create a positive economic impact and a local spending benefit, but more importantly, this event provides media exposure on a statewide, national and international scale. The US Pro Cycling Challenge will bring an estimated $2 - $4 million in publicity. The exact route is yet to be determined; however, it will start and pass through Loveland and end in Fort Collins.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for costs associated with hosting the US Pro Cycling Challenge event
2. PowerPoint Presentation
3. Lodging Tax Summary Report

FIRST READING January 15, 2013

SECOND READING February 5, 2013

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR COSTS ASSOCIATED WITH HOSTING THE US PRO CYCLING CHALLENGE EVENT

WHEREAS, the City, along with Fort Collins, Estes Park and Windsor, submitted a bid to host the beginning and ending stages of the 2013 U.S. Pro Cycling Challenge and was awarded the sixth stage of the event; and

WHEREAS, the City desires to appropriate funds to pay a portion of the costs associated with hosting this event; and

WHEREAS, the Community Marketing Commission has voted to recommend the appropriation of City lodging tax funds in the amount of $100,000 for the purposes of hosting the U.S. Pro Cycling Challenge event to promote tourism, conventions and related activities within the City by marketing the City and sponsoring community events in support of such purposes, as required under Loveland Municipal Code Section 3.24.105; and

WHEREAS, the City has reserved funds not appropriated at the time of the adoption of the City budget for 2013; 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 2013, 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 $100,000 from fund balance in the Lodging Tax Fund 206 are available for appropriation. Revenues in the total amount of $100,000 are hereby appropriated for costs associated with hosting the U.S. Pro Cycling Challenge event 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		100,000
Total Revenue		**100,000**
Appropriations		
206-18-182-1507-43450	Professional Services	100,000
Total Appropriations		**100,000**

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

ADOPTED this 5th day of February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt

Deputy City Attorney

U.S. Pro Cycling Challenge 2013

Northern Colorado Bid

2012 USA PRO CYCLING CHALLENGE

City of Fort Collins

ADVENTURE CASUAL

LOVELAND · COLORADO · EVERYTHING YOU LOVE

City of Loveland

EP ESTES PARK COLORADO

OVERVIEW

- For one week each year, cyclists and the many fans of the sport turn their attention to Colorado for the USA Pro Cycling Challenge.
- Started in 2011, this event has brought National and World wide attention to our State and the communities that serve as hosts to this International Competition.
- Video

NORTHERN COLORADO BID

- A group of Northern Colorado businesses, communities and cycling leaders have come together to bring this event to our part of the State.
- Economic impact and local spending a benefit
- More importantly, this event provides positive media exposure on a statewide, national and international scale.
- Estimated this event will bring $2 - $4 Million in publicity. Publicity our communities will need to recover from the High Park Fires

BY THE NUMBERS

- The Pro Cycling Challenge is the largest annual spectator sporting event in Colorado and one of the largest cycling events in North America with more than 1 million spectators attending in 2011!
- 17 World Class Teams with 136 riders representing 24 countries.

TV COVERAGE & WEBSITE

- More than 25 hours of coverage on Versus and NBC
- Over 3 **Billion** Media impressions world wide
- More than 1.1 million unique Visitors to the USA Pro Cycling Challenge Website.
- http://www.usaprocyclingchallenge.com/
- 50,000 Facebook and Twitter Followers
- More than 150,000 visitors to the on-line Tour Tracker

THE PEOPLE

- More than 1,000 person event entourage (including riders, event staff and media)
- More than 5,000 Volunteers
- Average attendance on a weekday 10,000 people. Friday – Sunday attendance upwards of 150,000 people last year recorded in Vail.

THE PEOPLE…

ABOUT THE TOUR

- The US Pro Cycling Challenge will take place the week of August 19th – 25th, 2013
- Once the cities are chosen the first week of December 2012, cities will be awarded stages
- Northern Colorado is applying for August 18th – 24th, 2013
- Racers -17 teams with 136 racers
- Riders Represent 24 Countries

COST

- The cost associated with a production this size is large.
- It will take a true community effort to pull it off. Average cost of a typical bid put together by a city/cities for a start/finish is around $500,000-$600,000.
- We have an opportunity to work together as a Northern Colorado Community to share the cost of this production and make this event successful for Loveland, Fort Collins and Estes Park.

WHAT WILL THE SPONSOR FUNDS BE USED FOR:

- Race Operations Requirements including:
- Infrastructure and public safety – Public Works, Fire, Police, EMT
- Hotels (to house riders and staff)
- Meals (riders and staff)
- Resident/Business notifications and general outreach.

NOCO BID
How do we get people excited?

- We have created a website explaining how we are trying to bring the US Pro Cycling Challenge to Northern Colorado
- Website

NOCO BID
How do we get people excited?

- Fort Collins, Loveland and Estes Park will be hosting Launch parties August 15, 16 and 17th hosted by the Voice of American Racing David Towle.

THE INVITATION

VIP PASS

You Are Invited to the USA Pro Cycling Challenge Launch Party

Loveland – Fort Collins – Estes Park

August 15th, 16th, & 17th, 2012

For details on this invitation only event and to RSVP please visit: www.nococycling.com/vip

The communities of Fort Collins, Loveland and Estes Park are linking together to bring the USA Pro Cycling Challenge to Northern Colorado for the 2013 race.

- Over 3 Billion Media Impressions Worldwide
- Largest Annual Spectator Sporting Event in Colorado
- Over $83 Million Dollars in Revenue for Colorado
- More than 1,000 riders, event staff and media each race day
- 25 hours of race coverage on Versus and NBC
- 17 Teams with over 130 Riders from more than 20 Countries

Thank You to our sponsors, this would not be possible without you!

City of Fort Collins · Estes Park Colorado · Loveland Colorado · New Belgium · Wild Rock · jet marketing · McWHINNEY

SUMMARY

- The U.S. Pro Cycling Challenge is the equivalent of bringing the Olympics to our City.
- Overall – over 1 Million roadside spectators
- Broadcast in over 161 Countries World Wide
- Almost a year of online promotion for our city including professional videos produced by NBC
- 1.1 Million unique visitors to the website and 4.9 Million page views
- 3 Billion Media impressions World Wide
- Bringing thousands of visitors to Northern Colorado and sending a strong message to the rest of the State, Nation and World that we are a great Visitor destination as well as a quality place to do business.

RECOMMENDATION

- I make a motion that the CMC make a recommendation to the Loveland City Council that $100,000 of the lodging tax reserves be used for the purpose of supporting the US Pro Cycling Challenge should our bid be accepted and should the race either Start or end through Loveland in August of 2013.

- $50,000 of the funds are to be used to sponsor the event and $50,000 of the funds are to be used to compensate other City of Loveland departments which provide services during the event process.

Lodging Tax Collections

Month	2010	2011	2012
January	$ -	$ 29,157.37	$ 34,126.42
February	$ 29,454.60	$ 36,756.31	$ 32,118.23
March	$ 26,754.72	$ 35,518.99	$ 50,575.89
April	$ 31,964.72	$ 39,773.43	$ 47,687.32
May	$ 32,589.38	$ 33,264.33	$ 44,906.11
June	$ 45,645.14	$ 52,195.58	$ 52,645.28
July	$ 62,162.45	$ 68,505.05	$ 89,201.42
August	$ 65,506.58	$ 73,493.31	$ 75,806.56
September	$ 64,056.04	$ 69,447.42	$ 79,379.57
October	$ 53,858.17	$ 59,373.91	$ 64,499.62
November	$ 42,693.40	$ 45,502.02	$ 54,699.79
December	$ 31,686.45	$ 34,684.54	
13th Month	$ 29,157.35	$ 4,969.05	
Total	**$ 515,529.00**	**$ 582,641.31**	**$ 625,646.21**

Total Collections to date		**$ 1,098,170.31**	**$ 1,723,816.52**

Lodging Tax Summary	2010 Actuals	2011 Actuals	2012 YTD
Revenue			
Beginning Balance	$ -	**$ 399,260.00**	**$ 718,466.29**
Collections	$ 515,529.00	$ 582,641.31	$ 625,646.21
Interest	$ 860.00	$ 13,838.88	$ -
Total Revenue	$ 516,389.00	$ 596,480.19	$ 625,646.21
Total Resources	**$ 516,389.00**	**$ 995,740.19**	**$ 1,344,112.50**

Expenses	2010 Actuals	2011 Actuals	
Personnel Services	$ -	$ 11,724.31	
Supplies	$ 9,384.00	$ 14,204.17	
Purchased Services	$ 107,745.00	$ 256,585.12	
Transfers	$ -	$ 3,000.00	
Total	**$ 117,129.00**	**$ 277,273.90**	
Ending Balance	**$ 399,260.00**	**$ 718,466.29**	

Programs	2012 Budgeted	2012 YTD	2012 Available
Visitor Services	$ 101,000.00	$ 99,671.65	$ 1,328.35
Community Marketing	$ 280,500.00	$ 89,597.30	$ 190,902.70
Visitor Center	$ 125,000.00	$ 103,607.22	$ 21,392.78
Website	$ 25,000.00	$ 10,504.80	$ 14,495.20
Events	$ 103,000.00	$ 102,538.62	$ 461.38
Product Improvement	$ 52,000.00	$ 50,230.43	$ 1,769.57
Total	**$ 686,500.00**	**$ 456,150.02**	**$ 230,349.98**

CITY OF LOVELAND
MUNICIPAL AIRPORT
4900 Earhart Road • Loveland, Colorado 80538
(970) 962-2852 • FAX (970) 962-2855 • TDD (970) 962-2620

AGENDA ITEM: **4**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Jason Licon, Airport Director and Brent Worthington, Finance Director
PRESENTER: Jason Licon, Airport Director

TITLE:

1. An ordinance on second reading enacting a supplemental budget and appropriation to the 2013 Ft. Collins-Loveland Municipal Airport budget to realign the budget due to the loss of commercial service
2. An ordinance on second reading enacting a supplemental budget and appropriation to the 2013 City of Loveland budget to increase the City's contribution to the Ft. Collins-Loveland Municipal Airport due to the loss of commercial service

RECOMMENDED CITY COUNCIL ACTION:
Approve the ordinances 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 first ordinance appropriates funding ($92,500) to increase the City's contribution to the Airport to partially offset revenue reductions due to the loss of commercial service. The second ordinance reduces the 2013 revenue and expense budget for the Airport due to the loss of commercial service.

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible
The loss of revenues associated with commercial service requires a reduction in the operating funding for the Airport. Unassigned general fund balance is used for the additional City contribution appropriation, reducing the flexibility to fund other projects during the year.

SUMMARY:
The unexpected loss of commercial air carrier services at the airport resulted in a significant decrease in projected revenue from what was included in the original 2013 Adopted Budget. The shortfall of revenue has prompted a reduction in expenses and an increase in support from the Cities of Fort Collins and Loveland in order to maintain airport operations and safety.

The total shortfall for the airport's annual revenue for 2013 is estimated at $475,670. As a result of this ordinance the airport will be reducing its 2013 operating budget by over 15% from $803,600 to $693,100. The airport has also requested an increase in support from the two City owners of $92,500 each to cover half of the projected amount needed for anticipated Federal and State grant match. Airport staff has made recruiting another commercial air carrier to the airport a top priority, and is a critical component for the adopted airport business plan.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:
1. An ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget to increase the City's contribution to the Ft. Collins-Loveland Municipal Airport due to the loss of commercial service
2. An ordinance on first reading enacting a supplemental budget and appropriation to the 2013 Ft. Collins-Loveland Municipal Airport budget to realign the budget due to the loss of commercial service.

FIRST READING January 15, 2013

SECOND READING February 5, 2013

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET TO INCREASE THE CITY'S CONTRIBUTION TO THE FT. COLLINS-LOVELAND MUNICIPAL AIRPORT DUE TO THE LOSS OF COMMERCIAL SERVICE

WHEREAS, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; 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 2013, 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 $92,500 from Unassigned fund balance in the General Fund 100 are available for appropriation. Revenues in the total amount of $92,500 are hereby appropriated for the City's increased contribution to the airport to partially offset revenues reductions due to the loss of commercial service 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
General Fund 100

Revenues		
Fund Balance		92,500
Total Revenue		**92,500**
Appropriations		
100-91-902-0000-43714	Payment to Other Agencies	92,500
Total Appropriations		**92,500**

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

ADOPTED this 5th day of February, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

FIRST READING January 15, 2013

SECOND READING February 5, 2013

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 FT. COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET TO REALIGN THE BUDGET DUE TO THE LOSS OF COMMERCIAL SERVICE

WHEREAS, due to discontinuance of commercial airline service, the Fort Collins-Loveland Municipal Airport has experienced a reduction in revenues not anticipated at the time of the adoption of the City budget for 2013; and

WHEREAS, the City Council desires to recognize this reduction in revenues and to make reductions and realignment of expenditures by enacting a supplemental budget and appropriation to the City budget for 2013, 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 2013 operating revenues related to commercial service in the Airport Fund 600 are hereby reduced in the amount of $290,670 and that total 2013 operating expenditures are reduced by the total amount of $110,500 and are reallocated as set forth below. The reductions in revenue and adjustment of expenditures are hereby appropriated and transferred among 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
Airport Fund 600

Revenues		
600-00-000-0000-38600	Contribution - City of Loveland	92,500
600-00-000-0000-35403	ARFF Standby Fee	(14,000)
600-00-000-0000-38601	Contribution - City of Ft. Collins	92,500
600-00-000-0000-38605	Gas and Oil Commissions	(28,670)
600-00-000-0000-38606	T-Hanger Rental	5,000
600-00-000-0000-38608	Parking	(200,000)
600-00-000-0000-38610	Landing Fees	(28,000)
600-00-000-0000-38611	Terminal Lease	(25,000)
600-00-000-0000-38615	Passenger Facility Charge	(185,000)
Total Revenue		**(290,670)**
Appropriations		
600-23-290-0000-41001	Merit Increase	(1,330)
600-23-290-0000-41011	Regular Salary	(39,160)
600-23-290-0000-41012	Non-Benefited Salary	(14,980)
600-23-290-0000-41021	Overtime	(4,050)
600-23-290-0000-41543	Insurance	(11,350)
600-23-290-0000-41544	FICA	(3,100)
600-23-290-0000-41545	Retirement	(1,820)
600-23-290-0000-42011	Office Supplies	(800)
600-23-290-0000-42012	Office Equipment	(1,500)
600-23-290-0000-42014	Books and Periodicals	(50)
600-23-290-0000-42015	Computer Supplies	(2,000)
600-23-290-0000-42025	Clothing	(500)
600-23-290-0000-42031	Motor Oils and Lubricants	550
600-23-290-0000-42032	Parts and Supplies	(2,000)
600-23-290-0000-42033	Tools and Equipment	(1,000)
600-23-290-0000-42039	Tires	(50)
600-23-290-0000-42097	Safety Supplies	(250)
600-23-290-0000-42334	Building and Paint	(1,000)
600-23-290-0000-42337	Landscape Supplies	(1,250)
600-23-290-0000-42422	Food	500
600-23-290-0000-43021	Printing	(700)
600-23-290-0000-43265	Mileage	(950)
600-23-290-0000-43270	Travel/Meetings/Training	(10,000)
600-23-290-0000-43311	Insurance Deductible	(680)
600-23-290-0000-43435	Membership Fees	(1,200)
600-23-290-0000-43450	Professional Services	(500)
600-23-290-0000-43534	Vehicle Maintenance	3,100
600-23-290-0000-43562	Vehicle Maintenance - Outsource	(2,500)
600-23-290-0000-43569	Repai and maintenance	(11,550)
600-23-290-0000-43639	Storm Drainage Fees	(42,000)
600-23-290-0000-43645	Telephone	(2,500)
600-23-290-0000-43648	Building Rental	(500)
600-23-290-0000-43657	Waste Disposal	(700)
600-23-290-0000-43661	Utility Water	290
600-23-290-0000-43662	Utility Wastewater	680
600-23-290-0000-43663	Utility Storm Water	15,590
600-23-290-0000-43664	Utility Electric	12,880
600-23-290-0000-43665	Utility Gas	1,760
600-23-290-0000-43666	Utility Street Maintenance	14,350
600-23-290-0000-43833	Subscriptions	(230)
Total Appropriations		**(110,500)**

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

ADOPTED this 5th day of February, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt

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: 2/5/2013
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 2013 City of Loveland budget for the City share of the costs for an additional position in the Loveland Fire Rescue 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 funds ($58,220) from unassigned fund balance in the General Fund for the costs of an additional position in the Loveland Fire and Rescue Authority. City Council unanimously approved the first reading ordinance on January 15, 2013.

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible
The funding is from unassigned fund balance and reduces the flexibility to fund other future projects or programs. There is a $71,000 change to the budget from these contributions.

SUMMARY:
With the successful ballot approval of the new mill levy in the Loveland Rural Fire District, the Authority is adding a new Plans Reviewer position to manage the anticipated growth in

development that will occur. The position was not included in the Adopted Budget because of concerns that long term funding was not available. The Authority approved the addition at their December 13, 2012 meeting. The ordinance appropriates the City's share of the costs for the position. The total cost is $71,000.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

An ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for the City share of the costs for an additional position in the Loveland Fire Rescue Authority

FIRST READING January 15, 2013

SECOND READING February 5, 2013

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR THE CITY SHARE OF THE COSTS FOR AN ADDITIONAL POSITION IN THE LOVELAND FIRE RESCUE AUTHORITY

WHEREAS, the City has reserved funds not appropriated at the time of the adoption of the City budget for 2013; 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 2013, 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 $58,220 from Unassigned fund balance in the General Fund 100 are available for appropriation. Revenues in the total amount of $58,220 are hereby appropriated for the City's share of the cost for an additional position in the Loveland Fire Rescue Authority 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
General Fund 100

Revenues		
Fund Balance		58,220
Total Revenue		**58,220**
Appropriations		
100-91-902-0000-43714	Payment to Other Agencies	58,220
Total Appropriations		**58,220**

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 5th day of February, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt

Deputy City Attorney

CITY OF LOVELAND
FINANCE DEPARTMENT
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: **6**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: Jim Wedding

TITLE:
A Resolution approving the Second Amended and Restated Collection Agreement for the City of Loveland to collect Public Improvement Fee revenues and Retail Sales Fee revenues in the Centerra Retail Development

RECOMMENDED CITY COUNCIL ACTION:
Motion to 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 to approve amendments to the existing agreement with the Centerra Public Improvement Collection Corporation, the Centerra RSF Corporation and G&I VI Retail Prom, LLC.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
In January 2004, the City of Loveland approved the Centerra Master Financing and Intergovernmental Agreement (the “MFA”) which authorized the collection of “Public Improvement Fees (PIF)” and “Retail Sales Fees (RSF)” on retail sales generated within the Centerra Development area. The City Council approved a Collection Agreement in September 2004, which authorized the City to act as the “Designated Receiving Entity”. The Designated

Receiving Entity collects the Lifestyle RSF, the Centerra RSF and the PIF, remits the revenues to the respective recipients, and receives compensation for this service. In 2011, Council approved the First Amended and Restated Collection Agreement, which made modifications to the scope of service provided by the City and the compensation received.

All parties to the agreement desire to further amend and restate the Collection Agreement to add certain clarifications and adjustments to the scope and procedures defined in the agreement. Clarifications include:

1) Staff will visit all Centerra retail business establishments each quarter (known as register checks). This change puts the process back to the original format adopted in 2004.
2) The parties have agreed that each of the Centerra boards will appoint a "Designated Representative" to improve the efficiency of the Discovery-to-Audit process. A definition has been included in the agreement.
3) Wording on the compensation for audits has been revised to add clarity.
4) A provision has been added to allow the City Manager to approve annual revisions to the fees and scope of work outline on Exhibit J.
5) Exhibit J has been modified to reflect the amendments listed above.

The amendments to the Collection Agreement will allow the City to continue to manage the collection of PIF and RSF in an efficient manner and ensure the appropriate compensation to the City to cover the expense of the program.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:

1) Resolution
2) Redline copy of The Second Amended and Restated Collection Agreement
3) The Second Amended and Restated Collection Agreement

RESOLUTION #R-6-2013

A RESOLUTION
APPROVING THE SECOND AMENDED AND RESTATED COLLECTION AGREEMENT FOR THE CITY OF LOVELAND TO COLLECT PUBLIC IMPROVEMENT FEE REVENUES AND RETAIL SALES FEE REVENUES IN THE CENTERRA RETAIL DEVELOPMENT

WHEREAS, on January 20, 2004, the City Council approved the Centerra Master Financing and Intergovernmental Agreement (the "MFA"); and

WHEREAS, the MFA authorized a public improvement fee ("PIF") to be charged on retail sales made in the Centerra Development; and

WHEREAS, subsequently, covenants imposing and implementing the PIF, as well as a Centerra retail sales fee (the "Centerra RSF") and a Lifestyle Center retail sales fee ("Lifestyle RSF") were finalized and recorded; and

WHEREAS, pursuant to the respective covenants, the Centerra Public Improvement Collection Corporation (with respect to the PIF), the Centerra RSF Corporation (with respect to the Centerra RSF) and G&I VI Retail Prom, LLC (as the owner of the Lifestyle Center and successor in interest with respect to the Lifestyle RSF) are entitled to receipt of these respective revenues; and

WHEREAS, on September 7, 2004, the Loveland City Council adopted Resolution #R-79-2004 to approve a Collection Agreement, dated September 1, 2004 (the "Collection Agreement"), pursuant to which the City collects the Lifestyle RSF, Centerra RSF, and PIF, remits the revenues to the respective recipients, and is compensated for this service; and

WHEREAS, the Collection Agreement was previously amended by that certain First Amendment approved by the City Council's adoption of Resolution #R-27-2008 on March 18, 2008 and amended and restated in its entirety by the First Amended and Restated Collection Agreement approved by City Council's adoption of Resolution #R75-2011(the Collection Agreement, the First Amendment, and the First Amended and Restated Collection Agreement are referred to collectively as the "Collection Agreement"); and

WHEREAS, the parties desire to further amend and restate the Collection Agreement in its entirety as more fully set forth in that certain Second Amended and Restated Collection Agreement attached hereto as **Exhibit A** and incorporated herein by reference (the "Second Amended and Restated Collection Agreement").

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

Section 1: That the Second Amended and Restated Collection Agreement attached hereto as **Exhibit A** is hereby approved and shall supersede and replace the Collection Agreement in its entirety as of January 1, 2013.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to modify the Second Amended and Restated Collection 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 Second Amended and Restated Collection Agreement on behalf of the City of Loveland.

Section 4. That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this 5th day of February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

~~FIRST~~SECOND AMENDED AND RESTATED

COLLECTION AGREEMENT

DATED AND EFFECTIVE AS OF JANUARY 1, 2013~~JANUARY 1, 2012~~

RELATING TO PIF REVENUES AND RSF REVENUES

IN THE CENTERRA RETAIL DEVELOPMENT

THIS ~~FIRST~~SECOND AMENDED AND RESTATED COLLECTION AGREEMENT dated and effective as of January 1, 2013~~as of November 1, 2011~~, is entered into by and among **CENTERRA METROPOLITAN DISTRICT NO. 1 (**the **"Service District"),** a special district formed pursuant to Colorado Revised Statutes §32-1-101 *et seq*., the **CITY OF LOVELAND, COLORADO (**the **"City"),** a municipal corporation and political subdivision duly organized and existing as a home rule city under the provisions of Article XX of the Constitution and the laws of the State of Colorado and the home rule Charter of the City, Centerra Public Improvement Collection Corporation, a Colorado nonprofit corporation (the "**PIC**"), **G&I VI RETAIL PROM, LLC,** a Delaware limited liability company ("**Retail Prom")**, and the Centerra Retail Sales Fee Corporation, a Colorado nonprofit corporation ("**Centerra RSF Corp.**").

All capitalized terms used herein, unless otherwise defined herein, will have the meanings ascribed to them in **Exhibit A** attached to this Collection Agreement, or if not otherwise defined herein, as set forth in the Indenture.

BACKGROUND

A. Centerra Properties West, LLC, a Colorado limited liability company; the City of Loveland, Colorado, a Colorado municipal corporation; the Loveland Urban Renewal Authority, a body corporate and politic; the Service District; the PIC; and The Centerra Public Improvement Development Corporation, a Colorado non-profit corporation are parties to that certain Centerra Master Financing and Intergovernmental Agreement dated as of January 20, 2004 (the "**MFA**", and sometimes referred to as the "**MF&I Agreement**") concerning the development of certain real property generally known as "Centerra" (the "**Development**" or "**Centerra**") and located in Loveland, Colorado, and pertaining to, among other matters, the imposition and collection of a Public Improvement Fee. Pursuant to the MFA, the PIC is responsible for the collection and disbursement of the Public Improvement Fee.

B. Reference is made to the following documents recorded as indicated, in the real property records of Larimer County, Colorado: (i) Declaration of Covenants Imposing and Implementing the Centerra Public Improvement Fee (together with the amendments described herein and any subsequent amendments, the "**PIF Covenant**") recorded in the Larimer County Clerk and Recorder's Office on July 6, 2004 at Reception No. 2004-0067081; (ii) First Amendment to the PIF Covenant, recorded in the Larimer County Clerk and Recorder's Office on February 12, 2009 at Reception No. 20090008199 (the "**First PIF Amendment**"); (iii) Minor Modification to the First PIF Amendment, recorded in the Larimer County Clerk and Recorder's Office on February 12, 2009 at Reception No. 20090008201 (the "**Minor Modification**") (the property encumbered by the PIF Covenant, the First PIF Amendment, and the Minor Modification is more particularly described on **Exhibit B** hereto, the "**PIF Property**"), which PIF Covenant concerns the collection of a Public Improvement Fee or PIF (defined herein); (iv) Declaration of Covenants Imposing and Implementing the Centerra Retail Sales Fee (together with the amendments described herein and any subsequent amendments, the "**Centerra RSF Covenant**") recorded in the Larimer County Clerk and Recorder's Office on July 6, 2004 at Reception No. 2004-0067082; (v) First Amendment to Centerra RSF Covenant, recorded in the Larimer County Clerk and Recorder's Office on December 23, 2005 at Reception No. 2005-

0109627 (the "**First Centerra RSF Amendment**"); (vi) Second Amendment to Centerra RSF Covenant, recorded in the Larimer County Clerk and Recorder's Office on March 6, 2008 at Reception No. 20080014232 (the "**Second Centerra RSF Amendment**") (the property encumbered by the Centerra RSF Covenant, the First Centerra RSF Amendment, and the Second Centerra RSF Amendment is more particularly described on **Exhibit C** hereto, the "**Centerra RSF Property**"), which Centerra RSF Covenant concerns the collection of a Retail Sales Fee or Centerra RSF (defined herein); and (vii) Declaration of Covenants Imposing and Implementing the Lifestyle Retail Sales Fee (the "**Lifestyle RSF Covenant**"), recorded in the Larimer County Clerk and Recorder's Office on August 27, 2004 at Reception No. 2004-0084619 (the property encumbered by the Lifestyle RSF Covenant is more particularly described on **Exhibit D** hereto, the "**Lifestyle RSF Property**"), which Lifestyle RSF Covenant concerns the collection of a Retail Sales Fee or Lifestyle RSF (defined herein). The above-described covenants, together will all amendments thereto, are referred to collectively herein as the "**Covenants**."

C. Pursuant to the Covenants, the PIC (with respect to the Public Improvement Fee), Centerra RSF Corp. (with respect to the Centerra RSF) and Retail Prom (with respect to the Lifestyle RSF) are authorized to contract with a third-party, including but not limited to the City, to serve as "Designated Receiving Entity" thereunder and provide for the collection of the PIF Revenues, Centerra RSF Revenues and Lifestyle RSF Revenues, respectively.

D. The Service District is a Title 32 special district organized pursuant to the laws of the State of Colorado in order to construct, provide, operate and maintain certain public improvements and other services for itself and Centerra Metropolitan District Nos. 2, 3 and 4 (collectively, the "**Districts**") in accordance with a Consolidated Service Plan, as amended, including, without limitation, streets and other roadway improvements, public parking facilities, water and drainage facilities, traffic controls, television relay, mosquito control, fire protection, park and recreation facilities, and other improvements necessary for Centerra (the "**Projects**").

E. The Service District, as contemplated by the MFA, has previously issued District Bonds secured by certain revenues, including PIF Revenues, and plans to issue additional District Bonds in the future secured on a basis on parity with or subordinate to the District Bonds outstanding as of the effective date of this Agreement.

F. The Declarants under the Covenants have entered into Assignments of Revenues by Declarants (the "**Assignments**"), pursuant to which the Declarants have irrevocably assigned all their rights, if any, in and to the PIF Revenues, the Centerra RSF Revenues and the Lifestyle RSF Revenues to the PIC, the Centerra RSF Corp. and Retail Prom (as a successor in interest), respectively.

G. McWhinney Centerra Lifestyle Center LLC, a Delaware limited liability company, was an original party to the Collection Agreement, described in Recital L, below. McWhinney Centerra Lifestyle Center LLC subsequently designated Centerra Lifestyle LLC, a Delaware limited liability company ("Centerra Lifestyle LLC") as the "Primary RSF Recipient" under the Lifestyle Covenant and assigned all of its right, title and interest in and to the Lifestyle RSF pursuant to that certain Designation of Primary RSF Recipient and Assignment of RSF Revenues dated October 22, 2004. Such interest was subsequently acquired by CLC REO, LLC,

a Delaware limited liability company ("CLC REO") pursuant to a Uniform Commercial Code public sale conducted on July 26, 2010, and transferred by CLC REO to G&I VI Promenade, LLC, a Delaware limited liability company pursuant to that certain Designation of Primary RSF Recipient and Assignment of RSF Revenues dated and effective December 17, 2010, and by G&I VI Promenade, LLC to Retail Prom pursuant to that certain Designation of Primary Recipient and Assignment of RSF Revenues dated and effective February 1, 2011.

H. Pursuant to the District Bond Documents, and as required by the MFA, the PIC has pledged and granted a lien and security interest in, and (subject to certain exceptions) all of its rights and interest in the PIF Revenues to holders of the District Bonds and certain swap providers.

I. It is clearly intended and understood by the parties hereto that (i) the nature of the PIF and the RSF is that of fees imposed for the benefit of the parties entitled thereto under private contract and not through the exercise of any City taxing authority, (ii) neither the PIF Revenues nor the RSF Revenues are tax revenues in any form, (iii) the PIF Revenues and the RSF Revenues are the property of the parties described in the related Covenant or assignees, designees, or successors thereof, (iv) the authority of the City, as "Designated Receiving Entity" under the PIF Covenant and RSF Covenants, to receive the PIF Revenues and the RSF Revenues is derived through this Collection Agreement, the Covenants, as applicable, and the Leases and (v) pursuant to the Covenants, each Centerra Retailer is required to execute a Waiver of Confidentiality with respect to (a) information contained in the reports submitted to the Designated Receiving Entity (initially, the City) by such Centerra Retailers and (b) their books and records related thereto.

J. Notwithstanding anything to the contrary herein or any other document related to the Projects and any other public improvements related to the Development, the parties hereto acknowledge and agree that, except as such entities may be entitled to such revenues in accordance with the Covenants or any contractual assignment of revenues related thereto, (i) the Declarants under the Covenants have no dominion or control over the PIF Revenues or the RSF Revenues, (ii) to the extent any PIF Revenue or RSF Revenue is collected by a Declarant, such Declarant is acting solely as an agent for and on behalf of the parties hereto entitled to such PIF Revenue or RSF Revenue, respectively, (iii) the PIF and the RSF are fees imposed on the Centerra Retailers to finance costs permitted by the PIF Covenant and RSF Covenants, respectively.

K. **THE DISTRICT BONDS DO NOT CONSTITUTE OBLIGATIONS, DEBT OR INDEBTEDNESS OR MULTIPLE FISCAL YEAR OBLIGATIONS OF THE CITY AND DO NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE CITY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS. NEITHER THE CITY NOR THE DECLARANTS UNDER THE COVENANTS NOR ANY OF THEIR AFFILIATES HAS ANY OBLIGATION WHATSOEVER TO PAY THE PRINCIPAL OF AND/OR INTEREST ON THE DISTRICT BONDS.**

L. This ~~First~~Second Amended and Restated Collection Agreement is intended to supersede, in all respects, that certain Collection Agreement among the parties dated as of

September 1, 2004, ~~and~~ the First Amendment to Collection Agreement dated March 19, 2008, and that certain First Amended and Restated ~~ment to c~~Collection Agreement dated as of November 1, 2011.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the City, the Service District, the PIC, Retail Prom and Centerra RSF Corp. agree as follows:

ARTICLE 1
NATURE, IMPOSITION, REDUCTION AND TERMINATION OF FEES

Section1.01 Nature and Imposition of the Fees Generally.

(a) The Lifestyle RSF, the Centerra RSF and the PIF are not taxes in any form and any rights therein are the result of contractual agreement only, including but not limited to the PIF Covenant and the RSF Covenants, as applicable, and not the exercise of the taxing power of any governmental entity, including the City.

(b) The Lifestyle RSF, the Centerra RSF and the PIF shall be imposed upon and collected from each Centerra Retailer and become due and payable as provided in the applicable Covenants, the Leases, and this Collection Agreement.

(c) PIF and RSF shall be calculated and imposed on all PIF Sales and RSF Sales, respectively, at the rates stated in the applicable Covenant, respectively, prior to the calculation and assessment of any Sales Tax, and before any other State, county, municipal or other sales taxes required to be imposed by law. All Sales Tax and sales taxes of other taxing entities shall by calculated and assessed on the sum of the sales price plus the amount of the PIF and the applicable RSF.

Section1.02 Calculation of, Adjustments to, and Termination of PIF

(a) Notification of Changes to Sales Tax Credit and Calculation of PIF. Pursuant to the terms of the PIF Covenant, the PIF shall be determined by multiplying the amount of each PIF Sale by 1.25%; provided however that such rate may be reduced upon written notice thereof by the PIC, subject to consent of the City and subject to the District Bond Documents. The PIC shall be responsible for providing notice of any reduction or termination of the PIF, in addition to the Sales Tax Credit, to Centerra Retailers in accordance with the provisions of the PIF Covenant and the District Bond Documents, and shall cause such notice to be recorded in the real property records of Larimer County, Colorado.

(b) Adjustments to PIF Sales.

(i) Pursuant to the terms of the PIF Covenant, PIF Sales shall exclude any sales transactions specified by the PIC, with the consent of the City, as exempt from the

Public Improvement Fee from time to time, subject to the provisions of the District Bond Documents.

(ii) Pursuant to the terms of the PIF Covenant, any proposed exclusion from PIF Sales must be approved by the PIC and the City, and, for so long as the District Bonds are outstanding, must comply with the District Bond Documents. Upon approval by the PIC and the City of an exclusion from PIF Sales, not later than 30 days prior to the effective date of the approved exclusion from PIF Sales (which date shall be determined by the PIC), the PIC shall provide notice thereof to all Centerra Retailers, Retail Prom, Centerra RSF Corp., and the City, and shall cause such notice to be recorded in the real property records of Larimer County, Colorado.

Section1.03 Calculation, Reduction and Termination of RSF.

(a) Imposition, Reduction and Termination of RSF. Pursuant to the terms of the Lifestyle RSF Covenant and the Centerra RSF Covenant, the Lifestyle RSF and the Centerra RSF each shall be determined by multiplying the amount of each Lifestyle or Centerra RSF Sale, respectively, by 1.00%; provided however that such rate may be reduced, or the imposition of the RSF may be terminated, upon written notice thereof by Retail Prom or by Centerra RSF Corp., respectively. Retail Prom and Centerra RSF Corp. hereby agree to provide written notice of any planned reduction, subsequent increase (up to 1.00%) or termination of the Lifestyle RSF or Centerra RSF, respectively, to the City and each affected Centerra Retailer no later than 30 days prior to the effective date of such reduction, increase, or termination. Retail Prom and Centerra RSF Corp. hereby acknowledge that failure to do so will result in the inability of the City to implement such reduction, increase or termination in accordance with the terms hereof, and agree that the City will not be held responsible for any loss of revenues or other adverse effects of such failure. To the extent required by the Lifestyle RSF Covenant or the Centerra RSF Covenant, as applicable, Retail Prom and Centerra RSF Corp. shall cause notice of any such reduction, increase or termination to be recorded in the real property records of Larimer County, Colorado.

(b) Exclusions from RSF Sales. Pursuant to the terms of the Lifestyle RSF Covenant and the Centerra RSF Covenant, transactions may be excluded from Lifestyle RSF Sales or Centerra RSF Sales upon notice of the Retail Prom or Centerra RSF Corp., respectively. Notwithstanding the foregoing, in order to facilitate efficient and effective collection and enforcement procedures, as provided herein, the parties acknowledge their desire, where possible, to cause PIF Sales, Centerra RSF Sales and Lifestyle RSF Sales to be identical at all times, except with respect to the exclusion from Centerra and Lifestyle RSF Sales of automobile sales. Neither Retail Prom nor Centerra RSF Corp. shall cause or permit exclusions to be made from Lifestyle RSF Sales or Centerra RSF Sales other than in accordance with the provisions hereof and in accordance with the provisions of the Lifestyle RSF Covenant and Centerra RSF Covenant, respectively.

Section 1.04 Survival of Agreements Among Certain Parties. Unless expressly provided in writing and consented to by the Trustee (if required by the District Bond Documents so long as

any District Bonds remain outstanding), the PIC, the Retail Prom, and the Centerra RSF Corp., the provisions of this Article 1 shall survive the termination of the City's obligation to receive and remit all or any portion of the Revenues pursuant to this Collection Agreement and, in the event of such termination or appointment of a successor collection entity or otherwise, references in this Article 1 to the City shall be deemed to refer to any successor collection entity charged with receiving the Revenues.

ARTICLE 2
COLLECTION PROCEDURES

Section 2.01 Appointment of City as PIF and RSF Designated Receiving Entity.

(a) The City is hereby appointed as the initial Designated Receiving Entity under the Covenants by: (i) the PIC and the Service District, each as a beneficiary of a portion of the PIF Revenues; (ii) Retail Prom, as a beneficiary of the Lifestyle RSF Revenues; and (iii) Centerra RSF Corp. as a beneficiary of the Centerra RSF Revenues. The City is appointed as the initial Designated Receiving Entity under the Covenants for the purpose of receiving all Revenues from all Centerra Retailers. By the execution of this Collection Agreement, the City accepts the responsibility of receiving the Revenues remitted to the City by the Centerra Retailers and depositing the same in accordance with the provisions hereof. **THE CITY IS NOT THE AGENT OF ANY PARTY TO THIS COLLECTION AGREEMENT AND HAS ONLY THOSE RESPONSIBILITIES EXPRESSLY STATED HEREIN. THE OBLIGATIONS OF THE CITY UNDER THIS COLLECTION AGREEMENT SHALL NOT CONSTITUTE A MULTIPLE FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION WHATSOEVER OF THE CITY AND THE PAYMENTS OF ANY COSTS OF THE CITY INCURRED OR TO BE INCURRED IN PERFORMING ITS OBLIGATIONS HEREUNDER SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE CITY COUNCIL.**

(b) The City's obligations with respect to collection of the Revenues hereunder may be terminated, or the City may resign from such position, in accordance with the provisions of Section 3.03 hereof.

Section 2.02 Provision of Information to Centerra Retailers.

(a) The City shall prepare, in consultation with the PIC, Centerra RSF Corp., and Retail Prom, two Information Booklets: one for use by Centerra Retailers operating in the Centerra RSF Property (the "**Centerra Information Booklet**"), and one for use by Centerra Retailers operating in the Lifestyle RSF Property (the "**Lifestyle Information Booklet**"). These booklets shall be made available in electronic form on the City's website. The City shall provide each Centerra Retailer notice of the location at which an electronic copy of the applicable Information Booklet regarding the imposition of the PIF and the RSF and collection of the Revenues, consistent with the provisions of this Collection Agreement, is available prior to the "soft opening" of a Centerra Retailer's store of which the City has been notified and at such times as changes have been made to the applicable Information Booklet.

(b) In addition, the City shall provide Centerra Retailers with appropriate supplies of the reporting forms attached as **Exhibit E** hereto, as applicable, as well as procedures and other instructions concerning the collection and remittance of Revenues, developed in consultation with the PIC, Centerra RSF Corp. and Retail Prom.

(c) The costs of preparation of the Information Booklet, reporting forms, procedures and other instructions shall be paid as set forth in Section 2.08.

(d) In the event that the City proposes to change such Information Booklet, reporting forms, procedures or other instructions, such changes shall be submitted to the PIC, Centerra RSF Corp., and Retail Prom and, following the prior written approval of the PIC, Centerra RSF Corp. and Retail Prom (which approval shall not be unreasonably withheld), shall be distributed to all Centerra Retailers no less than 45 days prior to the implementation thereof.

(e) Without limiting the generality of the foregoing, the City shall notify Centerra Retailers of any procedures that the Centerra Retailers should follow with respect to notifying customers concerning the PIF or RSF, as such procedures are developed by the City in consultation with the PIC, Centerra RSF Corp. and Retail Prom, consistent with the provisions of this Collection Agreement, and so as to comply with all applicable laws and reasonable business practices.

(f) For purposes of determining the Centerra Retailers to receive information and notices from the City in accordance with the provision hereof, the City shall rely on the information received by it in connection with Centerra Retailers' application for Sales Tax licenses, information acquired from business establishment visits and any other auditing function required to be performed by the City pursuant to Section 2.06 hereof, information received by the City in response to requests made pursuant to Section 2.07(d) hereof, and any information provided to the City by the parties hereto.

Section 2.03 Collection of Revenues.

(a) The City agrees that, in order to facilitate the collection, reporting and auditing procedures required herein, it shall cause the computer software used in the City's collection of its Sales Tax to geographically code Centerra Retailers as within the Centerra RSF Area or the Lifestyle RSF Area.

(b) Not later than the 20th day of the first month following the end of each Collection Month (as evidenced by postmark), Centerra Retailers shall remit collected Revenues for the preceding Collection Month to the City by means of a check or wire transfer payable to: (i) the PIC, in the case of PIF Revenues; (ii) Centerra RSF Corp., in the case of Centerra RSF Revenues; and (iii) Retail Prom, in the case of Lifestyle RSF Revenues, together with the appropriate reporting forms substantially similar to those set forth in **Exhibit E** hereto, as the same may be modified from time to time, in accordance with procedures to be provided by the City to the Centerra Retailers consistent with Section 2.03 hereof. Upon receipt thereof, such Revenues shall be remitted by the City in accordance with Section 2.04 hereof. Such reporting

forms shall be retained on file with the City pursuant to the City's then existing record retention policy and made available to the Report Recipients for the related Revenues in accordance with Section 2.03(c) hereof. Such Revenues shall be payable by Centerra Retailers and collected by the City monthly regardless of the frequency of any such Centerra Retailers' payment of City Sales Tax.

(c) The City also shall receive from the Centerra Retailers, on or before the 20th day of the month following the close of each Collection Month (as evidenced by postmark), such reports, returns and other documents as are delivered by Centerra Retailers pursuant to the terms of the PIF Covenant, the RSF Covenants and the Leases, which shall include the reports provided by such Centerra Retailer to the City in connection with the remittance of City sales taxes for such Collection Month, and any other documentation required pursuant to the terms of the PIF Covenant, the RSF Covenants and the Leases. Upon reasonable request of any Report Recipient (other than those described in subparagraphs (iii) and (iv) of the definition thereof), the City shall make copies of such reports, returns and other documents it receives available to the requesting party at the expense of such party.

(d) Not later than the 5th day (or the next succeeding Business Day) of the second month following the close of a Collection Month, the City shall send a First Delinquency Notice (subject to subparagraph (e) hereof) to any Centerra Retailer failing to remit PIF Revenues or RSF Revenues during the preceding month and any Centerra Retailer which has remitted what the City believes (which belief may be based solely upon the City's comparison of such Centerra Retailer's sales report to its remittance) to be an incorrect amount of PIF Revenues or RSF Revenues during the preceding month. The City shall prepare and send separate First Delinquency Notices with respect to delinquent PIF Revenues, delinquent Lifestyle RSF Revenues, and delinquent Centerra RSF Revenues, which Notices shall be substantially similar to the forms set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom. The City shall send copies of all such First Delinquency Notices to the Report Recipients (other than, those described in subparagraphs (iii) and (iv) of the definition thereof) for the related Revenues.

(e) Not later than the 25th day (or the next succeeding Business Day) of the second month following the close of a Collection Month, the City shall send a Second Delinquency Notice to any Centerra Retailer which has failed to pay any PIF Revenues or RSF Revenues due and noticed in a previously distributed First Delinquency Notice. The City shall prepare and send separate Second Delinquency Notices with respect to delinquent PIF Revenues, delinquent Lifestyle RSF Revenues, and delinquent Centerra RSF Revenues, which Notices shall be substantially similar to the forms set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom. The City shall send copies of all such Second Delinquency Notices to: (i) the PIC, the Trustee, the Service District, and the Centerra Owners, if relating to delinquent PIF Revenues; (ii) Centerra RSF Corp. and the Centerra Owners, if relating to Centerra RSF; and (iii) the Retail Prom and the Centerra Owners, if relating to delinquent Lifestyle RSF Revenues.

(f) Subject to the provisions of this subparagraph (f), the City shall continue its collection efforts, following the sending of the Second Delinquency Notice, in the same manner

in which the City attempts to collect delinquent Sales Tax. Once the City collects any delinquent Sales Tax from a Centerra Retailer, the City will cease its efforts to collect delinquent PIF or RSF Revenues from such Centerra Retailer, and will turn over all relevant information with regard to the delinquent PIF Revenues or RSF Revenues to the PIC, Centerra RSF Corp., or Retail Prom, as applicable. If a Centerra Retailer who has received First and Second Delinquency Notices relating to PIF Revenues or RSF Revenues due in a particular month is still delinquent following receipt of a Second Delinquency Notice, default interest shall automatically accrue on the PIF Revenues or RSF Revenues, as applicable, as set forth in the Second Delinquency Notice, and will continue to accrue until all delinquent PIF Revenues or RSF Revenues, together with interest and late charges are paid in full.

(g) In addition to the notices described above, the City shall, if requested by a Centerra Owner, the PIC, the Service District, the Trustee, Centerra RSF Corp. or Retail Prom, send a written notice to any Centerra Retailer that such requesting entity believes has not fully complied with its obligations with respect to the PIF or the RSF, specifying the nature and extent of such Centerra Retailer's non-compliance and requesting that such Centerra Retailer remedy its non-compliance. The entity requesting such notice shall provide the City with information sufficient to enable the City to prepare and send any such notices. The City shall also provide such notice to a Centerra Retailer if the City has actual knowledge of a violation of the PIF Covenant or RSF Covenants or guidelines and procedures related thereto, including information obtained as a result of City visits to the business establishments as required by Section 2.06(g) hereof. Such notices shall be in a form substantially similar to the form set forth in **Exhibit G** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. The City and any requesting party shall provide a copy of all such communications to the Report Recipients.

(h) It is the intent of the parties hereto that all adjustments, including but not limited to refunds, additions, or other modifications to PIF Revenues or RSF Revenues due from the Centerra Retailers, shall be processed in a manner substantially similar to the process used and required by the City for any appropriate adjustments to Sales Tax. If any subsequent adjustments, additions, or modifications are made to any PIF Revenues or RSF Revenues remitted or paid, or report made, by a Centerra Retailer to the City, that Centerra Retailer shall provide the City with true and complete copies of all revised reports or other written material issued or received by a Centerra Retailer in regard thereto. If any such adjustment increases the amount of PIF Revenues or RSF Revenues which the Centerra Retailer is required to remit or pay, or results in a refund of a PIF Revenues or RSF Revenues overpayment, the Centerra Retailer shall immediately pay such additional PIF Revenues or RSF Revenues in the amount due, or shall receive an appropriate credit against the next PIF Revenues or RSF Revenues due from that Centerra Retailer in the amount of such PIF Revenues or RSF Revenues overpayment. The Centerra Retailer shall claim such credits and/or pay such additional PIF Revenues or RSF Revenues in the next monthly reporting period by use of the standard reporting and remittance forms. All reports made or provided by Centerra Retailers shall be maintained by the respective Centerra Retailers for at least three years from the date of submission thereof to the City and, upon written request, shall be made available to the Report Recipients (other than those described in subparagraphs (iii) and (iv) of the definition thereof).

Section 2.04 Remittance of Revenues by the City. PIF Revenues and RSF Revenues received by the City, in the form of checks or wire transfers payable to the PIC, Centerra RSF Corp. or Retail Prom, shall be disbursed, without deduction for collection costs, by the end of business on the next business day following receipt thereof by the City, as follows:

(a) Checks or wire transfers representing PIF Revenues payable to the PIC shall be deposited by the City into an account of a Loveland, Colorado bank designated by the PIC, in accordance with the District Bond Documents, for so long as the District Bonds are outstanding. The funds in such account shall be applied as described in the applicable District Bond Documents.

(b) Checks or wire transfers representing Centerra RSF Revenues payable to Centerra RSF Corp. shall be deposited by the City into an account of a Loveland, Colorado bank designated by Centerra RSF Corp, the funds in which account shall be under the control of the Centerra RSF Corp..

(c) Checks or wire transfers representing Lifestyle RSF Revenues payable to Retail Prom shall be deposited by the City into an account of a Loveland, Colorado bank designated by, Retail Prom, the funds in which account shall be under the control of Retail Prom.

The PIC, Centerra RSF Corp. and Retail Prom shall cooperate with the City to facilitate such deposits in an efficient manner.

The PIC, Centerra RSF Corp. and Retail Prom may each change the Loveland, Colorado bank to receive the PIF Revenues, Centerra RSF Revenues or Lifestyle RSF Revenues, respectively, in accordance with the foregoing provisions upon 30 days prior written notice to the City. The City shall not be responsible for the payment of fees owing to any such bank receiving PIF Revenues, Centerra RSF Revenues or Lifestyle RSF Revenues.

The PIC, Centerra RSF Corp. and Retail Prom are entitled to receive the PIF Revenues, Centerra RSF Revenues and Lifestyle RSF Revenues, respectively, and apply the same to any lawful purpose as each, in its sole discretion, may determine, subject to the restrictions on use set forth in the applicable Covenants and, with respect to the PIF Revenues, the MFA and the District Bond Documents.

Section 2.05. Enforcement

(a) Upon receipt of any First Delinquency Notice from the City, the PIC (if relating to delinquent PIF Revenues), Centerra RSF Corp. (if relating to delinquent Centerra RSF Revenues), or Retail Prom (if relating to Lifestyle RSF Revenues) shall take all commercially reasonable action necessary to effect a direct cause of action and exercise its full right and authority to enforce the available remedies with respect to a breach by a Centerra Retailer of its obligations imposed by the applicable Covenant, including, if such party deems it appropriate to do so, exercising their rights under the applicable Covenant to require assistance from the Centerra Owner having a Lease with a Centerra Retailer who is the subject of such a Notice. Any such party shall take commercially reasonable efforts to complete collection of delinquent

Revenues, reports, returns and other documents not later than the end of the 5th month following the Collection Month. In the event that any party obligated to do so hereunder fails to diligently pursue legal action to collect delinquent Revenues, the Enforcing Parties with respect to the related delinquent Revenues are authorized to pursue such action. Notwithstanding any of the foregoing, the City has no obligation to pursue such action.

(b) In the event that any party hereto other than the City receives or otherwise possesses any Revenues, including any penalties related thereto (except as a result of an authorized disbursement from the City in accordance with the terms hereof), inadvertently, through efforts to collect delinquent Revenues, the parties hereto hereby agree that each shall hold such funds in trust as an agent for the parties entitled thereto hereunder and under the Covenants, Assignments and District Bond Documents and shall remit to the City, immediately and without demand, all such sums so received or otherwise in its possession, after deduction of any reasonable costs incurred in connection therewith, together with a statement indicating the Centerra Retailer and Collection Month to which such amounts relate and any collection costs deducted. The City shall remit the same to the parties entitled thereto in accordance with Section 2.04 hereof. To the extent that any party hereto does not deduct from such remittance its reasonable costs associated with collecting delinquent Revenues, such party may submit a statement for such amounts as Collection Costs as follows: (i) if related solely to the Lifestyle RSF Revenues, to Retail Prom ; (ii) if related solely to the collection of delinquent Centerra RSF Revenues, to Centerra RSF Corp.; (iii) if related solely to the collection of delinquent PIF Revenues, to the PIC, or entity designated by the PIC (which may include the Trustee); and (iv) if related to the collection of both delinquent RSF Revenues and delinquent PIF Revenues, such Collection Costs shall be divided in half and submitted to the PIC (or entity designated by the PIC) and to the Retail Prom or Centerra RSF Corp., as applicable. Any Collection Costs to be paid by the Service District hereunder shall be payable solely to the extent moneys are available therefore pursuant to the terms of the District Bond Documents.

Section 2.06 Reporting and Auditing.

(a) Subject to subparagraph (c) hereof, the City shall prepare and deliver to the Report Recipients for the related Revenues, on or as soon as practicable after the 15th day of the second calendar month following the close of a Collection Month, a report (i) describing the amount of Reported Taxed Sales and the amount of Sales reported by each Centerra Retailer and the amount of Revenues received by the City from each Centerra Retailer since the date of the immediately preceding report, and (ii) describing the amount of Revenues received by the City since the date of the last report representing delinquent Revenues (including any penalties related thereto) and the Centerra Retailers and Collection Month(s) to which such delinquent Revenues (and penalties, if any) are attributable. The reports described herein shall be separate with respect to PIF Revenues, Centerra RSF Revenues and Lifestyle RSF Revenues and shall be substantially similar to the forms set forth in **Exhibit H** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom.

(b) At reasonable times during regular business hours, the Report Recipients are hereby authorized to audit or cause audits to be conducted of the City's books and records with

respect to the City's receipt of the Revenues. If an audit uncovers a deficiency in deposits of Revenues which parties are entitled to in accordance with the terms hereof, and such deficiency results from misapplication of moneys by the City as a direct result of the City's willful and wanton conduct or gross negligence, the City shall pay within 60 days of notice of such misapplication the full amount of such misapplication to the party so entitled and, in the event such amount is not paid within such 60 day period, interest thereon shall accrue from the 60th day after such notice until paid, (subject to appropriation by the City Council), the rate of such interest to be equal to ½ of the prime rate published in the Wall Street Journal on the date of notice of such deficiency to the City (not to exceed 10%).

(c) The City shall not be obligated to provide any information or reports described in this Collection Agreement with respect to any particular Centerra Retailer until such time as the City has received with respect to such Centerra Retailer a fully-executed waiver in a form substantially similar to the forms set forth in **Exhibit I** hereto. Any reports or data concerning PIF Sales, RSF Sales, PIF Revenues, RSF Revenues or Reported Taxed Sales received by the Report Recipients will remain confidential, to the extent permitted or required by law, and be used only for purposes of collecting Revenues due, enforcing Centerra Retailers' obligations under the PIF Covenant, the RSF Covenants, or their respective Leases and otherwise monitoring compliance with the provisions thereof, except with respect to information provided to Dissemination Agents or Centerra Investors (defined below), and except for such disclosures or publications as may be required by applicable laws. Any information concerning Sales, Revenues or Reported Taxed Sales of Centerra Retailers to be provided hereunder to any Dissemination Agent or any Centerra Investor (as defined in subparagraph (d) hereof) shall be provided on an aggregated basis only with other Centerra Retailers in the same retail Center within Centerra or with all Centerra Retailers, without information specific to any particular Centerra Retailer.

(d) Subject to subparagraph (c) hereof, the City shall also provide any information which would otherwise, pursuant to the provisions of this Collection Agreement, be required to be provided to a Dissemination Agent, to any investor or potential investor in Centerra and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of Centerra (referred to herein as a "**Centerra Investor**"), upon reasonable request therefore by a Centerra Owner, the PIC, Retail Prom or Centerra RSF Corp..

(e) Upon reasonable request, the City agrees to provide the data to be provided in reports described in this Section 2.06 in electronic form to the extent reasonably available.

(f) The City shall visit the business establishments of all Centerra Retailers on a quarterly basis ~~during the first year of operation~~ to ensure compliance with guidelines and procedures relating to the PIF Revenues and RSF Revenues, including but not limited to customer notification of the PIF and RSF. ~~If said establishment is in compliance for four consecutive quarters, the City will visit the establishment once in the subsequent year.~~ In the event that an item of noncompliance is discovered, the City shall provide notice thereof in accordance with Section 2.03(g) hereof, and shall revisit such business establishment within 30 days to determine if such noncompliance has been corrected. ~~The City will visit said~~

~~establishment for four consecutive quarters to assure continued compliance.~~ If the noncompliance has not been corrected by such return visit, the City shall continue to revisit such business establishments ~~quarterly~~ and, if necessary, send additional notices of noncompliance, until such noncompliance is corrected. Non-compliance may also result in remedies stipulated in the Centerra Public Improvement Fee Covenants, the Centerra Retail Sales Fee Covenants, the Lifestyle RSF Covenant and any applicable lease and/or sales instruments. The City shall provide a written report to the Report Recipients in a form substantially similar to the forms set forth in **Exhibit G** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom, together with a copy of any such noncompliance notice sent to any Centerra Retailer, in the event that any noncompliance is discovered in any such visit. The PIC, Centerra RSF Corp. and Retail Prom shall, if requested by the City, assist in bringing Centerra Retailers into compliance with such guidelines and procedures.

(g) The City shall investigate each Centerra Retailer to ensure accurate collection and remittance of the PIF Revenues and RSF Revenues according to the following two-phased process:

1. Discovery. The City shall conduct discovery on twenty (20) Centerra Retailers annually. The Centerra Retailers to be subjected to the discovery process shall be selected by the PIC (six (6) total Centerra Retailers of which three (3) shall be located within the Centerra RSF Property and three (3) shall be located within the Lifestyle RSF Property), the Centerra RSF Corp. (seven (7) Centerra Retailers~~) located within the Centerra RSF Property)~~, and Retail Prom (seven (7) Centerra Retailers ~~located within the Lifestyle RSF Property~~), and a list of such Centerra Retailers shall be provided to the City by the Designated Representatives (as defined in subparagraph 2.06(g)(3)) not later than November 30 of the year preceding the year in which the discovery is to be conducted. Discovery will consist of comparing reported sales to actual sales for the period that would be subject to audit, reviewing a reasonable sample of daily register transactions for inconsistencies in non-taxable and tax-exempt transactions. If the City does not find material discrepancies, the investigation will end at discovery. If, in doing so, the City determines that delinquent Revenues exist, the City shall follow the procedures set forth in Section 2.06(g)(2)~~2.03(e)~~ hereof. The City shall provide a written report, no later than 30 days after the completion of each discovery~~end of each calendar year~~ to the Designated Representatives~~Report Recipients~~ indicating the identity~~ies~~ of the Centerra Retailer~~s~~ subjected to discovery ~~in the preceding calendar year~~ and the results of the~~any~~ discovery. ~~indicating that a Centerra Retailer had underpaid PIF Revenues or RSF Revenues (provided that Dissemination Agents and Centerra Investors shall receive only aggregated information as described in subparagraph (c) above).~~

2. Audit. If the City determines, during the discovery process, that material discrepancies exist with a particular Centerra Retailer's compliance with the collection of Revenues described herein, the City shall confer with the Designated Representatives to obtain direction whether to initiate phase 2 of

the investigation (audit), as described in this subparagraph 2.06(g)(2). The City will conduct up to five (5) audits per year of Centerra Retailers. The cost of up to five (5) audits is included in the annual costs set forth on **Exhibit J** and the City will charge no additional hourly fee for up to five (5) audits per year. The Centerra Retailers selected for audit shall be first recommended to the Designated Representatives~~PIC, the Centerra RSF Corp., and Retail Prom~~ by the City, based on the results of the City's discovery process. Following such recommendation, the City~~,~~ and the Designated Representatives~~the PIC, the Centerra RSF Corp., and Retail Prom~~ shall collectively agree on which Centerra Retailers are to be audited each year while this Agreement shall remain in effect. In the event that such parties fail to agree on the list of Centerra Retailers to be audited, the PIC, Centerra RSF Corp., and Retail Prom shall each be allowed to select one (1) Centerra Retailer ~~from their respective Retailers~~ for audit and the City shall be allowed to select two (2) Centerra Retailers for audit. The Designated Representatives may elect to delay a decision on audit initiation from time to time in order to maximize the number of audits available annually. As a part of each such audit, the City shall compare the Reported Taxed Sales indicated on reports received by the City to PIF Sales and RSF Sales reported to the City and investigate any discrepancies in the reported amounts. Additional audits, over and above the five (5) annual audits contemplated in this subparagraph 2.06(g)(2), may be conducted upon the mutual agreement of the City~~,~~ and the PIC, the Centerra RSF Corp., or~~and~~ Retail Prom, subject to payment of the applicable hourly fees as set forth in **Exhibit J** hereto by the party or parties seeking the additional audit.

~~2.~~3. Designated Representatives. The PIC, Centerra RSF Corp., and Retail Prom shall each, from time to time, provide the City with written notice of the name of their designated representatives for the purposes of receiving discovery reports and designating whether to initiate an audit under subparagraphs 2.06(g)(1) and 2.06(g)(2) (the "Designated Representatives"). ~~.~~

(h) The parties hereto acknowledge that varied reporting may be required in connection with the District Bonds. The City agrees to provide such additional reports as may be required by the District Bond Documents if reasonably feasible; provided that if such additional reports result in a material increase in time or materials to be supplied by the City, the fees set forth on **Exhibit J** hereto shall be adjusted, and any increased costs shall be borne exclusively by the Service District.

Section2.07 Covenants of the Parties

(a) For the purpose of reasonably enforcing this Collection Agreement, and to the extent permitted by law, all books and documents in the possession of any party to this Collection Agreement relating to the collection or calculation of actual Revenues shall at all reasonable times be open to inspection by the other parties to this Collection Agreement or their designees, subject to applicable confidentiality restrictions, if any.

(b) No party hereto shall enter into any agreement amending any of the provisions relating to imposition of the PIF or RSF and payment of the Revenues contained in the Covenants or the Leases without the consent of the PIC, each Consent Party, and the City, if pertaining to the PIF Revenues, Centerra RSF Corp., if pertaining to the Centerra RSF Revenues, or Retail Prom, if pertaining to the Lifestyle RSF Revenues. Any such purported amendment or waiver shall be void and of no force and effect.

(c) The parties hereto shall at all times fully perform and comply with any agreements, covenants, terms and conditions imposed upon or assumed by them pertaining to the PIF or the RSF. If either the PIC or the City fails to do so, the Trustee, if authorized by the District Bond Documents, may give written notice of such failure to the parties hereto. If the identified failure is not corrected within ten (10) days of the receipt of any such written notice, the Trustee may (but is not obligated to), if authorized by the District Bond Documents, take any action the Trustee reasonably deems necessary or desirable to prevent or to cure any default by the PIC or the City in the performance of or compliance with any of either party's covenants or obligations pertaining to such Revenues. If authorized by the District Bond Documents, the Trustee may (but is not obligated to) pay and expend such sums of moneys as the Trustee in its reasonable discretion deems necessary for this purpose.

(d) Pursuant to the Covenants, Centerra Owners are required to provide a listing of all Centerra Retailers that then occupy their Centerra Owned Property as provided in this subparagraph (d) and within ten business days of receipt of a written request therefore from the City. The City shall (i) upon learning of a new Centerra Owner, request such Centerra Owner to provide the name and address of any Centerra Retailer occupying property within the Development owned by such Centerra Owner within 30 days of execution of any such occupation agreement, and shall provide notice of any new Centerra Retailer to the Report Recipients on a periodic basis as agreed to with the PIC, the Centerra RSF Corp. and Retail Prom; (ii) upon a request thereof from any Bank Representative, the Trustee, the PIC, the Centerra RSF Corp. or Retail Prom, request a current listing of all Centerra Retailers then occupying Centerra Owned Property from Centerra Owners (to the extent then known by the City) on a periodic basis as requested by such Report Recipient and provide the resulting listings of Centerra Retailers to all Report Recipients. The parties hereto shall advise the City and all other parties hereto on or before the first day of each month of any new Centerra Owners and Centerra Retailers or change in Centerra Owners and Centerra Retailers of which such party has actual knowledge. Notwithstanding the foregoing, the City shall have primary responsibility for determining the identity of Centerra Retailers from time to time based on information received by it in connection with Centerra Retailers' application for Sales Tax licenses, reports received by Centerra Owners as provided herein and business establishment visits by the City as required by Section 2.06(f) hereof; provided, however, that the City shall not be responsible for any lost Revenues resulting from the failure to determine the identity of a Centerra Retailer and seek collection of Revenues therefrom if the City has made reasonable efforts to determine the identities of all Centerra Retailers as provided herein. The parties hereto shall exercise their rights under the Covenants to obtain from Centerra Owners such other information reasonably requested by the parties hereto to allow them to fulfill their respective obligations under this Collection Agreement.

(e) Pursuant to the Covenants, Centerra Retailers are required to provide to the City a waiver in a form substantially similar to the forms set forth in **Exhibit I** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom. The City shall only be responsible for providing the reports described herein with respect to those Centerra Retailers for which the City has received such a waiver.

(f) In the event any party to this Collection Agreement receives actual notice in writing with respect to any action in bankruptcy by a Centerra Retailer, such party shall as soon as practicable give written notice or convey copies of the written notice it received to the City and all Report Recipients.

(g) In the event that any party hereto receives or otherwise possesses any Revenues to which, pursuant to this Collection Agreement, another party is entitled, the parties hereto hereby agree that each shall hold such funds in trust as an agent for the parties entitled thereto hereunder and under the Covenants, Assignments and the District Bond Documents and shall remit to the City, immediately and without demand, all such sums so received or otherwise in its possession, together with a statement indicating the source of such Revenues and, if applicable and known to such party, the Centerra Retailer and Collection Month to which such amounts relate. The City shall remit the same to the parties entitled thereto in accordance with Section 2.04 hereof.

Section 2.08 Fees and Reimbursable Expenses. In consideration of its performance of services hereunder, the City shall receive such fees and Reimbursable Expenses as are set forth on **Exhibit J** and as follows:

(a) Subject to subparagraph (b) hereof, the City shall receive, each calendar quarter in advance, in exchange for the services provided by it hereunder, 25% of the total fees and Reimbursable Expenses equal to the amount(s) set forth on **Exhibit J** hereto for any particular calendar year, subject to adjustment as provided in subparagraph (d) hereof. Subject to subparagraph (b) hereof, such fees and Reimbursable Expenses shall be payable on the first business day of each calendar quarter as follows: (i) 55% of the total amount of such fees and Reimbursable Expenses by the Service District, from funds available therefore in accordance with the terms of the District Bond Documents, which the Service District is hereby authorized by the PIC to pay; (ii) 31% of the total amount of such fees and Reimbursable Expenses by Retail Prom; and (iii) 14% of the total amount of such fees and Reimbursable Expenses by Centerra RSF Corp.; provided that such percentages of the total fee to be paid by each such party may be revised in accordance with a written agreement among the PIC, Retail Prom and Centerra RSF Corp., or their successors or assigns, in which event such parties shall only be obligated hereunder to pay to the City such revised percentages. No party shall be obligated to pay any portion of fees payable to the City in excess of the foregoing percentages attributable to such party (as the same may be revised). In the event that any party fails to pay its portion of fees to the City in accordance with the foregoing, the City shall continue to provide the services contemplated hereunder for the benefit of the remaining parties, unless the City has resigned with respect to such services in accordance with Section 3.03 hereof.

(b) Any time a new RSF and a new Primary Recipient for such new RSF is established, the distribution percentages for the payment of fees and Reimbursable Expenses set forth in subsection (a) above shall be reapportioned by the parties. At such time, the parties shall also have the opportunity to review and readjust the fees and Reimbursable Expenses set forth on **Exhibit J**,

(c) Extraordinary Reimbursable Expenses may only be incurred by the City after the receipt of written approval thereof by the PIC, Centerra RSF Corp. and Retail Prom. Upon receipt of such approval, Extraordinary Reimbursable Expenses shall be submitted and payable in the same manner as fees and Reimbursable Expenses set forth in subparagraph (a) hereof.

(d) The amount of the fees and Reimbursable Expenses set forth on **Exhibit J** shall be reviewed on or about June 1 of each year that this Agreement shall remain in effect, and adjustments to such fees and Reimbursable Expenses, by amount and type, may be made by the mutual written consent of all the parties hereto, provided that such adjustments are reasonable and based upon increases or decreases in actual costs of collection. Any such adjustments shall be reflected on an updated **Exhibit J** to be effective on January 1 of the calendar year following the annual June 1 review. Each annual updated **Exhibit J** shall be approved and signed by the parties, shall be appended hereto, and shall constitute an amendment of this Agreement. The City Manager shall be authorized to approve and sign annual updates of **Exhibit J** on behalf of the City.

Section 2.09 Authorization. The PIF Covenant and the RSF Covenants expressly authorize the PIC, Retail Prom and Centerra RSF Corp. to enter into a contract with the City, as a Designated Receiving Entity thereunder, pursuant to which such entity is authorized:

(a) to audit the books and records of the Centerra Retailers in determining compliance with the PIF and RSF collection and remittance obligations of Centerra Retailers under the PIF Covenant, RSF Covenants and Leases; and

(b) to release to the Report Recipients such audited information and any reports, returns and other documents as are delivered to the City by the Centerra Retailers and any relevant information gathered by the City during an audit or in reviewing such reports, returns or other documents.

ARTICLE 3
MISCELLANEOUS

Section 3.01 Beneficiaries Under Covenants and Leases. Notwithstanding the appointment of the City as the Designated Receiving Entity under the Covenants, the PIC, Centerra RSF Corp. and Retail Prom are the lawful recipients of the PIF Revenues, the Centerra RSF Revenues and the Lifestyle RSF Revenues, respectively, and, together with the Centerra Owners, are hereby and under the Covenants and Leases expressly made third party beneficiaries of the Centerra Retailers' obligations under the provisions relating to the payment of Revenues contained therein, including, but not limited to, the assessment, collection, and remittance of

Revenues. Furthermore, for as long as the PIF Revenues are pledged to pay all or any portion of the District Bonds and any amounts are owed with respect to such District Bonds, any Bank and any other holder of the District Bond shall each be deemed a third party beneficiary under the Covenants and Leases of the Centerra Retailers' obligations under the provisions relating to the payment of the PIF Revenues contained therein, including, but not limited to, the assessment, collection, and remittance of PIF Revenues. Nothing in this Collection Agreement shall impair a Centerra Owner's right to enforce its rights against Centerra Retailers under the Leases.

Section 3.02 Sovereign Powers and Immunities of the City and the Service District. Nothing in this Collection Agreement shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers or immunities of the City or the Service District.

Section 3.03 Resignation; Removal; Assignment.

(a) The City may resign by written resignation given as provided in this Section 3.03 hereof to the other parties to this Collection Agreement and each Consent Party not less than 180 days before the date when such resignation is intended to take effect; provided, however, that the City may resign from its position as Designated Receiving Entity upon not less than 60 days' written notice given to the same parties before the date such resignation is intended to take effect in the event of nonpayment of any fees, Reimbursable Expenses and Extraordinary Reimbursable Expenses due and payable to the City hereunder. The City's resignation shall take place without the appointment of a successor to its duties hereunder; provided, however, if no agreement is entered into by the PIC, Centerra RSF Corp., Retail Prom, and the Service District with a successor agent, the PIC and Service District (with respect to the PIF), the Centerra RSF Corp. (with respect to the Centerra RSF) and Retail Prom (with respect to the Lifestyle RSF)shall assume all obligations of the City hereunder prior to the effectiveness of the City's resignation, provided that, in such event, any of the aforementioned entities may engage an agent to carry out its respective duties hereunder. The City may be removed at any time, with 180 days prior written notice, with respect to its duties relating to all of the PIF and RSF Revenues, with mutual consent of the PIC, Service District, Centerra RSF Corp. and Retail Prom, and, with respect to the City's duties relating to the PIF with the consent of each Consent Party and compliance with all applicable provisions of the District Bond Documents, after payment of all outstanding fees and Reimbursable Expenses of the City, by an instrument appointing a successor to perform the City's duties hereunder, executed by the PIC, Service District, Centerra RSF Corp. and Retail Prom, and with respect to the City's duties relating to the PIF with the consent of each Consent Party. The City may also resign or be removed at any time, with 180 days prior written notice for any removal, with respect to its duties hereunder provided in connection with any one of the PIF Revenues (by the direction of the PIC with the consent of the Service District, the Trustee, and each Consent Party), the Lifestyle RSF Revenues (by the direction of Retail Prom) or Centerra RSF Revenues (by the direction of Centerra RSF Corp.). In such event, (i) the PIC (with the consent of the Service District, Trustee and each Consent Party), Retail Prom and Centerra RSF Corp. may each select separately a successor Designated Receiving Entity with respect to PIF Revenues, Lifestyle RSF Revenues and Centerra RSF Revenues, respectively, and (ii) the remaining parties shall pay their proportionate share of the fees and Reimbursable Expenses as set forth in Section 2.08(a) hereof. In the event that the City resigns or is removed as provided herein, the City agrees to provide, no later than 60 days after the notice of such

resignation or removal, to the PIC, Centerra RSF Corp, Retail Prom, Service District, any Bank Representative, and the Trustee, an electronic copy of all data files relating to the collection of Revenues hereunder as well as all previously retained documentation relating to the collection of Revenues hereunder (provided such previously retained documentation remains within the custody of the City).

(b) This Collection Agreement may not be assigned by any party hereto for any reason other than to a successor by operation of law or with the prior written consent of the other parties to this Collection Agreement; provided, however, that each of the Retail Prom and Centerra RSF Corp. may assign its rights and obligations hereunder to a successor "Primary RSF Recipient" designated in accordance with the terms of the Centerra RSF Covenant or Lifestyle RSF Covenant, respectively; and further provided that the Service District and the PIC may assign any of their rights hereunder pursuant to the District Bond Documents without the prior consent of any party hereto.

Section 3.04 Continuation After Termination of PIF. The parties hereto acknowledge their current intent that the City continue to collect RSF Revenues following any termination in the collection of PIF Revenues; provided, however, that such acknowledgement shall in no manner alter the rights of any parties hereto with respect to resignation or removal of the City as provided in Section 3.03 hereof; further, it is anticipated that such continuation of collection following termination of the PIF may require the renegotiation of fees and parties responsible for the payment thereof.

Section 3.05 Notices. All notices, certificates or other communications to be given hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail return receipt requested, postage prepaid, or sent by a confirmed facsimile addressed as follows:

If to City:	City of Loveland ATTN: City Manager 500 East Third Street Loveland, CO 80537 Fax: (970) 962-2900
With a copy to:	City of Loveland ATTN: City Attorney 500 East Third Street Loveland, CO 80537 Fax: (970) 962-2900
If to Retail Prom:	G&I VI Promenade, LLC c/o DRA Advisors, LLC ATTN: Peter Janoff 220 E. 42nd St., 27th Floor New York, NY 10017

Fax: (212) 697-7405

With a copy to:

Blank Rome LLP
Attn: Martin Luskin
The Chrysler Building
405 Lexington Avenue
New York, NY 10174-0208
Fax: (917) 332-3714

If to the PIC:

Centerra Public Improvement Collection Corporation
ATTN: Jay Hardy, President
2725 Rocky Mountain Ave, Suite 200
Loveland, CO 80538
Fax: (970) 635-3003

With a copy to:

Icenogle Seaver Pogue, P.C.
ATTN: Alan D. Pogue, Esq.
4725 S. Monaco St., Suite 225
Denver, CO 80237
Fax (303) 292-9101

If to
Centerra RSF Corp.:

Centerra Retail Sales Fee Corporation
ATTN: Josh Kane, President
2725 Rocky Mountain Ave, Suite 200
Loveland, CO 80538
Fax: (970) 635-3003

With a copy to:

Icenogle Seaver Pogue, P.C.
ATTN: Alan D. Pogue, Esq.
4725 S. Monaco St., Suite 225
Denver, CO 80237
Fax (303) 292-9101

If to
Service District:

Centerra Metropolitan District No. 1
ATTN: Peggy Dowswell
5110 Granite St., Suite C
Loveland, CO 80538
Fax (970) 669-3612

With a copy to:

Icenogle Seaver Pogue, P.C.
ATTN: Alan D. Pogue, Esq.

4725 S. Monaco St., Suite 225
Denver, CO 80237
Fax (303) 292-9101

Section 3.06 Third Party Beneficiaries of this Collection Agreement. It is expressly understood and agreed that enforcement of the terms and conditions of this Collection Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Report Recipients (excluding any Dissemination Agent), and with respect to the PIF, any Bank as well as the Report Recipients, the Enforcing Parties and their respective successors and assigns (including Centerra Investors), and nothing contained in this Collection Agreement shall give or allow any such claim or right of action by any other person with respect to this Collection Agreement.

Section 3.07 Binding Effect. This Collection Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. Notwithstanding anything herein to the contrary: (a) Centerra RSF Corp. and Retail Prom shall have no rights related to the PIF Revenues, including, without limitation, the calculation, collection, or payment thereof; (b) the PIC and Retail Prom shall have no rights related to the Centerra RSF Revenues, including, without limitation, the calculation, collection, or payment thereof; and (c) the PIC and Centerra RSF Corp. shall have no rights related to the Lifestyle RSF Revenues, including, without limitation, the calculation, collection, or payment thereof. By means of example, neither Retail Prom nor Centerra RSF Corp. shall have any right to inspect the books and documents in possession of the other party under Section 2.07(a) hereof except to the extent that such books and documents are pertinent to the Lifestyle RSF Fees or the Centerra RSF Fees, respectively.

Section 3.08 Amendments. This Collection Agreement may only be amended, changed, modified or altered in writing signed by all parties hereto; provided, however, that:

(a) Amendments hereto affecting only: (i) PIF Revenues may be affected without the consent of the Centerra RSF Corp. or Retail Prom, but with the consent of the PIC, the Service District, the Trustee, the City, and each Consent Party; (ii) Centerra RSF Revenues, may be affected without the consent of the PIC, the Service District or Retail Prom; and (iii) Lifestyle RSF Revenues, may be affected without the consent of the PIC, the Service District or the Centerra RSF Corp; and
(b) Amendments to provide for collection of future retail sales fees may be made by the City and the property owner creating the new retail sales fee.

Section 3.09 Computation of Time. In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is not a Business Day, the period is extended to include the next succeeding Business Day. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Section 3.10 Payments Due on a Day other than a Business Day. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Collection Agreement, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Collection Agreement.

Section 3.11 Severability. In the event that any provision of this Collection Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 3.12 Execution in Counterparts. This Collection Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 3.13 Applicable Law and Venue. This Collection Agreement shall be governed by and construed in accordance with the laws of the State. In the event of any dispute arising out of this PIF Covenant, the courts of the State of Colorado shall have exclusive jurisdiction over such dispute and venue shall be in the Larimer County District Courts.

Section 3.14 Indemnification by PIC, Centerra RSF Corp. and Retail Prom. The PIC, Centerra RSF Corp. and Retail Prom each hereby agree to indemnify and defend the City and its officers and employees against all claims or suits, including but not limited to, those for damages to property and injuries to persons, including accidental death, related to this Collection Agreement; provided, however that neither the PIC, nor Centerra RSF Corp., nor Retail Prom shall be responsible for indemnifying or defending the City for such claims or suits resulting from the negligence of the City or its officers or employees, or in the event that the City is in breach under this Agreement, and provided further, however, that no portion of the PIF Revenue may be used to satisfy the indemnification obligations hereunder.

Section 3.15 No Indemnification by City. The City cannot and does not agree to indemnify, hold harmless or exonerate the Service District, the PIC, Retail Prom, Centerra RSF Corp., any Centerra Owner, or any other person for any purpose whatsoever.

Section 3.16 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Collection Agreement.

This Collection Agreement is entered into and executed by the respective parties hereto as of the day and year first above written.

CITY OF LOVELAND, COLORADO, a Colorado municipal corporation

By: _____
William D. Cahill, City Manager

ATTEST:

By: _____
Terry Andrews, City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
Judith Yost Schmidt, Deputy City Attorney

CENTERRA METROPOLITAN DISTRICT NO. 1

By: _____
Kim L. Perry, President

G&I VI RETAIL PROM, LLC, a Delaware limited liability company

By: _____
David Luski, President

CENTERRA RETAIL SALES FEE CORPORATION, a Colorado nonprofit corporation

By:_____
Josh Kane, President

CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION, a Colorado nonprofit corporation.

By:_____
Jay Hardy, President

EXHIBIT A
DEFINITIONS

Set forth below is a compilation of defined terms used in this Collection Agreement. Any terms not specifically defined herein shall have the meanings assigned them in the Indenture.

"*Bank*" means any provider(s) of a letter(s) of credit or other means of credit enhancement securing payment of District Bonds and any one or more lending institutions making a direct loan or loans to the Service District, which loan or loans constitute a District Bond.

"*Bank Representative*" means, initially, U.S. Bank National Association in its capacity as the Administrative Agent pursuant to that certain Loan Agreement dated June 8, 2011 among the Service District, the other Districts party thereto, Compass Bank, U.S. Bank National Association and the other lenders from time to time parties thereto, as the same may be amended or supplemented from time to time, and its successor or assigns pursuant to said Loan Agreement. The term "Bank Representative" shall also include any other party authorized in any District Bond Document to receive information or take actions permitted or authorized to be received or taken by the Bank Representative hereunder.

"*Business Day*" means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in (i) the State, or (ii) the State of New York are authorized or required by law to close or (b) a day on which the New York Stock Exchange is closed.

"*Centerra Owners*" means any Person who owns fee title to: (i) any portion of the PIF Property, if relating to the PIF Revenues or PIF Covenant; (ii) any portion of the Centerra RSF Property, if relating to the Centerra RSF Revenues or Centerra RSF Covenant; and (iii) any portion of the Lifestyle RSF Property, if relating to the Lifestyle RSF Revenues or Lifestyle RSF Covenant, and any successors thereof

"*Centerra Retailers*" mean retail tenants and business establishments located or to be located within Centerra Project.

"*Centerra RSF Corp.*" means Centerra Retail Sales Fee Corporation, or any successor or assignee thereof to the rights hereunder of Centerra Retail Sales Fee Corporation; provided that Centerra RSF Corp. shall provide notice of any such assignment to the City, the PIC and Retail Prom.

"*Centerra RSF Covenant*" means the Declaration of Covenants Imposing and Implementing the Centerra Retail Sales Fee recorded in the real property records of Larimer County, Colorado on July 6, 2004 at Reception No. 2004-0067082, as the same has been amended and may be amended in the future from time to time.

"*Centerra RSF Recipient*" means any entity so designated by Centerra RSF Corp. to receive all or any portion of the Centerra RSF Revenues; provided that Centerra RSF Corp. provides notice thereof to the City or any successor Designated Receiving Entity.

"*Centerra RSF Revenues*" means the revenues derived from the imposition of the Centerra RSF.

"*Centerra Retail Sales Fee*" or "*Centerra RSF*" means the retail sales fee required pursuant to the Leases and the Centerra RSF Covenant to be assessed by retail tenants and business establishments located or to be located within the Centerra RSF Property on all RSF Sales occurring within the Centerra RSF Property.

"*City*" means the City of Loveland, Colorado.

"*City Sales*" means retail sales transactions subject to the Sales Tax.

"*Collection Month*" means each calendar month in which the Revenues are collected by the Centerra Retailers.

"*Consent Party*" means any party who, under any District Bond Document, has a right to consent to an action taken or proposed to be taken under this Collection Agreement with respect to the PIF or the PIF Revenues.

"*Designated Receiving Entity*" means the entity designated to receive Revenues hereunder or any successor agreement relating to the collection of Revenues (initially, the City). In the event that, pursuant to the terms hereof, the Designated Receiving Entity is not the same for the PIF Revenues, the Centerra RSF Revenues and the Lifestyle Revenues, "Designated Receiving Entity" shall mean, with respect to the PIF Revenues, the Centerra RSF Revenues and the Lifestyle Revenues, the entities designated to received such Revenues by the PIC, Centerra RSF Corp. and Retail Prom, respectively.

"*Dissemination Agent*" means any entity charged with distributing information to purchasers of the District Bonds. In the event that other entities issue debt or obligations secured in whole or in part by any of the Revenues, "Dissemination Agent" shall also mean, with respect to the revenues securing such debt or obligations, any entity charged with distributing information to purchasers of such debt or obligations.

"*District Bond Documents*" means any bond, resolution, indenture, loan agreement, interest rate exchange agreement, reimbursement agreement or contract, pursuant to which the Service District incurs debt or other financial obligations, the repayment of which is secured, in whole or in part, by PIF Revenues, as contemplated by the MFA, and any other agreement pursuant to which the PIF Revenues are pledged to the repayment of the District Bonds.

"*District Bonds*" means the financial obligations of the Service District, which obligations may be in the form of bonds, notes, loan agreements, commercial paper, or other securities issued by the Service District pursuant to the provisions of the District Bond Documents, which are payable in whole or in part from the PIF Revenues and which payment is

secured by a pledge of and lien on, among other revenues, such PIF Revenues, including without limitation refunding bonds and variable rate bonds.

"*Enforcing Parties*" means (i) Declarants of the Centerra RSF Covenant, Centerra RSF Corp., and any other Centerra RSF Recipients, with respect to the Centerra RSF Revenues; (ii) Retail Prom and any other Lifestyle RSF Recipients, with respect to the Lifestyle RSF Revenues; and (iii) the PIC, the PID, the City, the Trustee, the Bank Representative, the Loveland Urban Renewal Authority, and the Service District, with respect to the PIF Revenues.

"*Extraordinary Reimbursable Expenses*" means any Reimbursable Expenses in excess of the amounts set forth on **Exhibit J** hereto reasonably incurred when performing extraordinary services under this Collection Agreement (for example, reasonable expenses incurred by the City in assisting in the receipt of delinquent Revenues).

"*First Delinquency Notice*" means a written notice sent by first class mail providing the following (to the extent applicable): (A) the Centerra Retailer has failed to remit Revenues during the preceding month; (B) the Centerra Retailer has remitted an incorrect amount of Revenues (C) requesting immediate payment of delinquent Revenues or any shortfall in Revenues; (D) advising that if the City does not receive such amounts by the 15th of the month (as evidenced by postmark), a late fee in the amount of the greater of 10% of the delinquent Revenues or $15 will be owed and default interest will be imposed at the rate of 1% per month (the "Default Rate") commencing on the 20th day of the first month following the close of the Collection Month. Such notice shall be substantially similar to the form set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom.

"*Information Booklets*" means, collectively, the Centerra Information Booklet and the Lifestyle Information Booklet, as described in Section 2.02(a), as such Information Booklets may be changed from time to time in accordance with the provisions hereof.

"*Leases*" means the leases entered into or to be entered into by Centerra Owners with retail tenants and business establishments located or to be located within the PIF Property (including the Lifestyle RSF Property and the Centerra RSF Property). The term "*Leases*" shall also include any occupancy agreement, licenses, sales contracts or similar arrangements under which a Person may become a Centerra Retailer.

"*Lifestyle RSF Covenant*" means the Declaration of Covenants Imposing and Implementing the Lifestyle Retail Sales Fee recorded in the real property records of Larimer County, Colorado, as the same may be amended from time to time.

"*Lifestyle RSF Recipient*" means any entity so designated by Retail Prom to receive all or any portion of the Lifestyle RSF Revenues; provided that Retail Prom provides notice thereof to the City or any successor Designated Receiving Entity.

"*Lifestyle RSF Revenues*" means the revenues derived from the imposition of the Lifestyle RSF.

"*Lifestyle Retail Sales Fee*" or "*Lifestyle RSF*" means the retail sales fee required pursuant to the Leases and the Lifestyle RSF Covenant to be assessed by retail tenants and business establishments located or to be located within the Lifestyle RSF Property on all RSF Sales occurring within the Lifestyle RSF Property.

"*Person(s)*" means an individual, firm, corporation, partnership, company, limited liability company, association, joint stock company, trust, body politic or any other unincorporated organization or any trustee, receiver, assignee, or other similar representative thereof.

"*Public Improvement Fee*" or "*PIF*" means the public improvement fee required pursuant to the Leases and the PIF Covenant to be assessed by retail tenants and business establishments located or to be located within the PIF Property on all PIF Sales occurring within the PIF Property.

"*PIF Covenant*" means the Declaration of Covenants Imposing and Implementing the Centerra Public Improvements Fee Centerra recorded in the real property records of Larimer County, Colorado on July 6, 2004 at Reception No. 2004-0067081, as the same has been amended and may be amended in the future from time to time.

"*PIF Revenues*" means the revenues derived from the imposition of the PIF.

"*PIF Sales*" shall mean and refer to any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property which are on the date of recording of this Covenant subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, plus any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property which are from time to time in the future subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, less any sales transactions specified by the PIC, with the consent of the City, as exempt from the Public Improvement Fee from time to time. Notwithstanding any of the foregoing, "PIF Sales" shall at no time include internet sales made from internet terminals in the business establishment of a Centerra Retailer within any portion of the PIF Property or catalog sales placed by telephone from the business establishment of a Centerra Retailer within any portion of the PIF Property.

"*Reimbursable Expenses*" means those reasonable expenses incurred by the City in the performance of its obligations under this PIF Collection Agreement, including, but not limited to, expenses relating to computer equipment, programming, software, licensing, Internet access, office supplies, including paper, pencils, notebooks, office equipment, including file cabinets, printers/copier costs, other expenses, including but not limited to postage, personal auto mileage, travel, legal fees, training, vendor education, printing, staff salaries and proportionate benefits.

"*Reported Taxed Sales*" means, for any period specified herein, net taxable sales (meaning the total of amount of sales less sales not subject to the Sales Tax) occurring from or within the Centerra in such period, based on monthly reports received by the City from Centerra Retailers.

"*Report Recipients*" mean: (i) (a) the City, the Districts, the Trustee, the Bank Representative, the PID, CPW and the PIC, if relating to the PIF Revenues or PIF Covenant; (b) Centerra RSF Corp., any Centerra RSF Recipient and any trustee for bonds secured by Centerra RSF Revenues, if relating to the Centerra RSF Revenues or Centerra RSF Covenant; and (c) Retail Prom and any Lifestyle RSF Recipient if relating to the Lifestyle RSF Revenues or Lifestyle RSF Covenant; (ii) with respect to the specific information of any particular Centerra Retailer, the Centerra Owner or Centerra Occupant leasing, subleasing or otherwise granting rights to such Centerra Retailer to occupy such Centerra Owner's or Centerra Occupant's Owned/Leased Centerra PIF or RSF Property, (iii) any Dissemination Agent; and (iv) any investor or potential investor in Centerra and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of Centerra or a prospective purchaser of any interest in CPW.

"Retail Prom" means G&I VI Retail Prom, LLC, a Delaware limited liability company, and its successors and assigns.

"*Revenues*" means, collectively, the RSF Revenues and the PIF Revenues.

"RSF" means collectively the Centerra RSF and the Lifestyle RSF, and any additional RSF added to this Collection Agreement by amendment.

"*RSF Covenants*" means, collectively, the Centerra RSF Covenant and the Lifestyle RSF Covenant, together with any additional retail sales fee covenants that may be added to this Agreement by amendment.

"*RSF Revenues*" means, collectively, the Centerra RSF Revenues and the Lifestyle RSF Revenues, together with any revenues from any additional retail sales fee covenants that may be added to this Agreement by amendment.

"*RSF Sales*" means any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the RSF Property which are on the date of recording of any RSF Covenant subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, plus any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the RSF Property which are from time to time in the future subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, less any sales transactions specified by the Primary RSF Recipient as exempt from the Retail Sales Fee from time to time; provided, however, that RSF Sales shall not include any transaction relating to passenger vehicles, whether new or used (except that this exclusion does not apply to transactions relating to automotive parts). Notwithstanding any of the foregoing, "RSF Sales"

shall at no time include internet sales made from internet terminals in the business establishment of a Centerra Retailer within any portion of the RSF Property or catalog sales placed by telephone from the business establishment of a Centerra Retailer within any portion of the RSF Property. References in this definition to "RSF Property" shall mean, with respect to the imposition of the Centerra RSF, the Centerra RSF Property, with respect to imposition of the Lifestyle RSF, the Lifestyle RSF Property, and with respect to the imposition of any additional retail sales fee added to this Agreement by amendment, the property subjected to such RSF Covenant.

"*Sales*" means RSF Sales and PIF Sales.

"*Sales Tax*" means that tax levied by the City pursuant to the Sales Tax Ordinances.

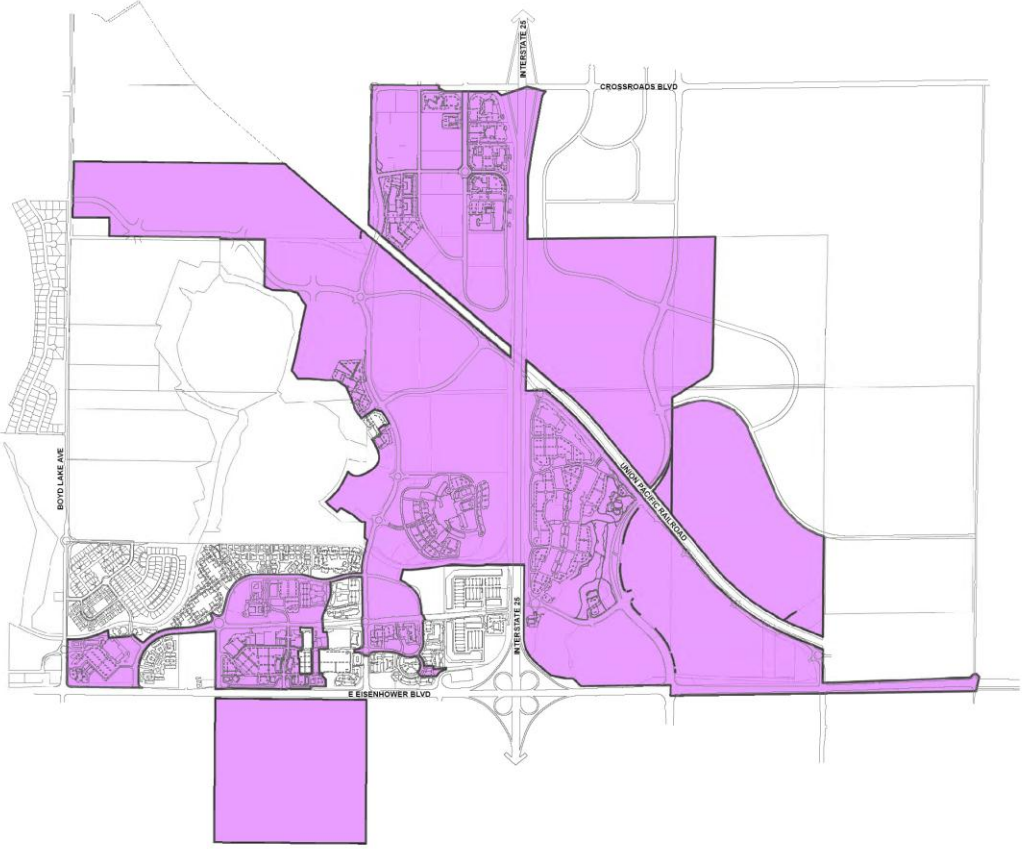
"*Sales Tax Ordinances*" means the Chapter 3.16 of the City's Municipal Code, but only to the extent pertaining to sales tax and not use tax, and regulations promulgated thereto, but only to the extent pertaining to sales tax and not use tax, both as amended from time to time.

"*Second Delinquency Notice*" means a written notice sent by first class mail providing the following (to the extent applicable): (A) the Centerra Retailer has failed to remit Revenues during the preceding month; (B) the Centerra Retailer has remitted an incorrect amount of Revenues (C) requesting immediate payment of delinquent Revenues or any shortfall in Revenues; (D) advising that a late fee in the amount of the greater of 10% of the delinquent PIF Revenues or $15 is now owed and default interest at the rate of 1% per month (the "Default Rate") is accruing from the 20th day of the first month following the close of the Collection Month. Such notice shall be substantially similar to the form set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom.

"*Trustee*" means any trustee under any indenture of trust or similar agreement, which provides for the application of PIF Revenues in connection with any District Bonds. Trustee shall also mean any custodian under any custodial or similar agreement, which provides for application of PIF Revenues in connection with any District Bonds. As of the effective date of this Agreement, U.S. Bank National Association acting in a capacity as a Custodian under that certain Custodial Agreement dated as of June 8, 2011 among the Service District, the PIC, U.S. Bank National Association (as successor to UMB Bank, n.a.), as Custodian, and U.S. Bank National Association, as Administrative Agent on behalf of the Lenders. The Service District shall notify the City and the PIC of any change in the Trustee within ten (10) days of such change.

"*Waiver of Confidentiality*" means the Waiver of Confidentiality, in a form substantially similar to the form set forth in **Exhibit I** hereto.

EXHIBIT B
PIF PROPERTY



CENTERRA
Loveland, CO

CENTERRA PUBLIC IMPROVEMENTS FEE (PIF) AREA

LEGEND

Public Improvements Fee (PIF) Area

Date: October 14, 2011

Prepared By:

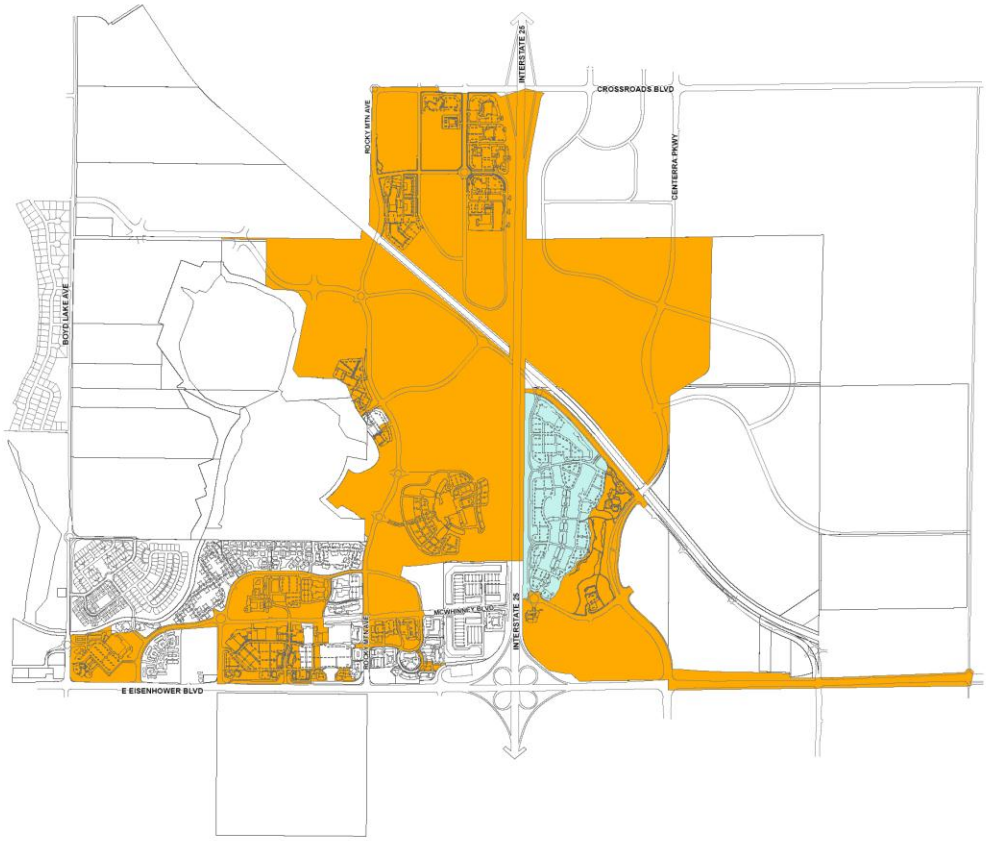
McWHINNEY
www.mcwhinney.com
970-962-9990

N

(Not To Scale)

Note: This information and/or illustration although deemed to be reliable, is conceptual in nature and McWhinney and/or its affiliates makes no warranties to its accuracy. The information shown here is subject to change at any time.

EXHIBITS C AND D
CENTERRA AND LIFESTYLE RSF PROPERTY



CENTERRA
Loveland, CO

CENTERRA COMMUNITY RETAIL SALES FEE (RSF) AREAS

LEGEND

- Promenade Shops RSF Area
- Centerra RSF Area

Date: October 18, 2011

Prepared By:

McWHINNEY
www.mcwhinney.com
970-962-9990

N

(Not To Scale)

Note: This information and/or illustration although deemed to be reliable, is conceptual in nature and McWhinney and/or its affiliates makes no warranties to its accuracy. The information shown here is subject to change at any time.

EXHIBIT E
REPORTING FORMS

PIF REVENUES FORM

CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION
PUBLIC IMPROVEMENT FEE ADMINISTRATION
C/O CITY OF LOVELAND SALES TAX ADMINISTRATION
PO BOX 892 · LOVELAND, CO 80539
(970) 962-2707

PIF PAYMENT FORM

PERIOD	DUE DATE	CITY ACCT #

COMPUTATION OF PUBLIC IMPROVEMENT FEE

1.	GROSS SALES and SERVICES		
2.	Less Sales/Services not subject to the Public Improvement Fee (Retain your records for three years)		
3.	Net Sales Subject to Public Improvement Fee (Line 1 minus Line 2)		
4.	Public Improvement Fee Collected (1.25% of Line 3)		
5.	Excess Public Improvement Fee Collected		
6.	Total Public Improvement Fee Due and Payable (Add Line 4 and Line 5)		
7.	Adjustments Prior Periods	ADD (Additional Amount Due)	
		Deduct (Credit Due to Merchant)	
8.	Late Filing Penalty	Penalty: 10% of line 6 or $15.00 whichever is greater	
		Interest: 1% of line 6 per month	
9.	**TOTAL PUBLIC IMPROVEMENT FEE DUE AND PAYABLE Payable to: CENTERRA PUBLIC IMPROVEMENT COLLECTION CORP**		

PIF Payment Form Instructions

Line 1: Report all sales made during the period covered
Line 2: Deduct only those exempted sales allowed. These exemptions are the same as the City of Loveland's sales tax exemptions.
Line 3: To calculate sales subject to PIF, subtract Line 2 from Line 1
Line 4: To calculate the PIF due, multiply Line 3 by 1.25%
Line 5: Any excess PIF collected must be reported on Line 5 and remitted
Line 6: To calculate the total PIF due, add Line 4 and Line 5
Line 7: Add or deduct any under or overpayment from previous periods
Line 8: Add 10% or $15.00 whichever is greater and Interest is calculated at 1% per month
Line 9: To calculate, total PIF due, add Line 6, 7 and 8

Make Checks Payable To: CENTERRA PUBLIC IMPROVEMENT COLLECTION CORP

NEW BUSINESS DATE MO. DAY YEAR DISCONTINUED DATE MO. DAY YEAR 1.If ownership has changed, give date of change and new owner's name. 2.If business has been permanently discontinued, give date discontinued. 3.If business location has changed, give new address. 4.If business is temporarily closed, give dates to be closed. 5.If business is seasonal, give months of operation.	SHOW BELOW CHANGE OF OWNERSHIP, NAME AND/OR ADDRESS, ETC ☐ BUS. ADDRESS ☐ MAILING ADDRESS	I, hereby certify, under penalty of perjury, that the statements made herein are to the best of my knowledge true and correct. By: Company: Phone: Title: Date:

LIFESTYLE RSF REVENUES FORM

G & I VI PROMENADE LLC
RETAIL SALES FEE ADMINISTRATION
C/O CITY OF LOVELAND SALES TAX ADMINISTRATION
PO BOX 1386 · LOVELAND, CO 80539
(970) 962-2707

RSF PAYMENT FORM

PERIOD	DUE DATE	CITY ACCT #

COMPUTATION OF RETAIL SALES FEE

1.	GROSS SALES and SERVICES		
2.	Less Sales/Services not subject to the Retail Sales Fee (Retain your records for three years)		
3.	Net Sales Subject to Retail Sales Fee (Line 1 minus Line 2)		
4.	Retail Sales Fee Collected (1.0% of Line 3)		
5.	Excess Retail Sales Fee Collected		
6.	Total Retail Sales Fee Due and Payable (Add Line 4 and Line 5)		
7.	Adjustments	ADD (Additional Amount Due)	
	Prior Periods	Deduct (Credit Due to Merchant)	
8.	Late Filing	Penalty: 10% of line 6 or $15.00 whichever is greater	
	Penalty	Interest: 1% of line 6 per month	
9.	**TOTAL RETAIL SALES FEE DUE AND PAYABLE** **Payable to: G & I VI PROMENADE LLC**		

RSF Payment Form Instructions

Line 1: Report all sales made during the period covered
Line 2: Deduct only those exempted sales allowed. These exemptions are the same as the City of Loveland's sales tax exemptions.
Line 3: To calculate sales subject to RSF subtract Line 2 from Line 1
Line 4: To calculate the RSF due, multiply Line 3 by 1.0%
Line 5: Any excess RSF collected must be reported on Line 5 and remitted
Line 6: To calculate the total RSF due, add Line 4 and Line 5
Line 7: Add or deduct any under or overpayment from previous periods
Line 8: Add 10% or $15.00 whichever is greater and Interest is calculated at 1% per month
Line 9: To calculate, total RSF due, add Line 6, 7 and 8

Make Checks Payable To: G & I VI PROMENADE LLC

NEW BUSINESS DATE MO. DAY YEAR DISCONTINUED DATE MO. DAY YEAR 1.If ownership has changed, give date of change and new owner's name. 2.If business has been permanently discontinued, give date discontinued. 3.If business location has changed, give new address. 4.If business is temporarily closed, give dates to be closed. 5.If business is seasonal, give months of operation.	SHOW BELOW CHANGE OF OWNERSHIP, NAME AND/OR ADDRESS, ETC ☐ BUS. ADDRESS ☐ MAILING ADDRESS	I, hereby certify, under penalty of perjury, that the statements made herein are to the best of my knowledge true and correct. By: Company: Phone: Title: Date:

CENTERRA RSF REVENUES FORM

CENTERRA RETAIL SALES FEE CORPORATION
RETAIL SALES FEE ADMINISTRATION
C/O CITY OF LOVELAND SALES TAX ADMINISTRATION
PO BOX 1405 · LOVELAND, CO 80539
(970) 962-2707

RSF PAYMENT FORM

PERIOD	DUE DATE	CITY ACCT #

COMPUTATION OF RETAIL SALES FEE

1.	GROSS SALES and SERVICES		
2.	Less Sales/Services not subject to the Retail Sales Fee (Retain your records for three years)		
3.	Net Sales Subject to Retail Sales Fee (Line 1 minus Line 2)		
4.	Retail Sales Fee Collected (1.0% of Line 3)		
5.	Excess Retail Sales Fee Collected		
6.	Total Retail Sales Fee Due and Payable (Add Line 4 and Line 5)		
7.	Adjustments Prior Periods	ADD (Additional Amount Due)	
		Deduct (Credit Due to Merchant)	
8.	Late Filing Penalty	Penalty: 10% of line 6 or $15.00 whichever is greater	
		Interest: 1% of line 6 per month	
9.	**TOTAL RETAIL SALES FEE DUE AND PAYABLE** **Payable to: CENTERRA RETAIL SALES FEE CORPORATION**		

RSF Payment Form Instructions

Line 1: Report all sales made during the period covered
Line 2: Deduct only those exempted sales allowed. These exemptions are the same as the City of Loveland's sales tax exemptions.
Line 3: To calculate sales subject to RSF subtract Line 2 from Line 1
Line 4: To calculate the RSF due, multiply Line 3 by 1.0%
Line 5: Any excess RSF collected must be reported on Line 5 and remitted
Line 6: To calculate the total RSF due, add Line 4 and Line 5
Line 7: Add or deduct any under or overpayment from previous periods
Line 8: Add 10% or $15.00 whichever is greater and Interest is calculated at 1% per month
Line 9: To calculate, total RSF due, add Line 6, 7 and 8

Make Checks Payable To: CENTERRA RETAIL SALES FEE CORPORATION

NEW BUSINESS DATE MO. DAY YEAR

DISCONTINUED DATE MO. DAY YEAR

1. If ownership has changed, give date of change and new owner's name.
2. If business has been permanently discontinued, give date discontinued.
3. If business location has changed, give new address.
4. If business is temporarily closed, give dates to be closed.
5. If business is seasonal, give months of operation.

SHOW BELOW CHANGE OF OWNERSHIP, NAME AND/OR ADDRESS, ETC

☐ BUS. ADDRESS ☐ MAILING ADDRESS

I, hereby certify, under penalty of perjury, that the statements made herein are to the best of my knowledge true and correct.

By:
Company:
Phone:
Title: Date:

EXHIBIT F
FORM OF FIRST DELINQUENCY NOTICE
FORM OF SECOND DELINQUENCY NOTICE

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

First Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Public Improvement Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Public Improvement Fee Schedule and payment. If you are experiencing difficulty preparing the Schedule, please feel free to contact me with any questions. I am also available by appointment for individual assistance.

As a result you are being charged a late fee in an amount equal to the greater of 10% of the delinquent PIF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid.

Payment must be made payable to Centerra Public Improvement Collection Corporation and mailed to PO Box 892, Loveland, CO 80539.

Please contact me if you need PIF Schedules mailed or faxed. Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

Second Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Public Improvement Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Public Improvement Fee Schedule and payment as requested in our First Delinquency Notice on [date of first notice]. As a result, a late fee is now due in an amount equal to the greater of 10% of the delinquent PIF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid, accruing since [date period was due].

Payment must be made payable to Centerra Public Improvement Collection Corporation and mailed to PO Box 892, Loveland, CO 80539.

If you are experiencing difficulty preparing your schedule, please feel free to contact me with any questions.

Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

First Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Retail Sales Fee Schedule and payment. If you are experiencing difficulty preparing the Schedule, please feel free to contact me with any questions. I am also available by appointment for individual assistance.

As a result you are being charged a late fee in an amount equal to the greater of 10% of the delinquent RSF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid.

Payment must be made payable to G & I VI Promenade, LLC and mailed to PO Box 1386, Loveland, CO 80539.

Please contact me if you need RSF Schedules mailed or faxed. Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

Second Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Retail Sales Fee Schedule and payment as requested in our First Delinquency Notice on [date of first notice]. As a result, a late fee is now due in an amount equal to the greater of 10% of the delinquent RSF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid, accruing since [date period was due].

Payment must be made payable to G & I VI Promenade LLC, and mailed to PO Box 1386, Loveland, CO 80539.

If you are experiencing difficulty preparing your schedule, please feel free to contact me with any questions.

Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

First Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Retail Sales Fee Schedule and payment. If you are experiencing difficulty preparing the Schedule, please feel free to contact me with any questions. I am also available by appointment for individual assistance.

As a result you are being charged a late fee in an amount equal to the greater of 10% of the delinquent RSF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid.

Payment must be made payable to Centerra Retail Sales Fee Corporation and mailed to PO Box 1386, Loveland, CO 80539.

Please contact me if you need RSF Schedules mailed or faxed. Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

Second Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Retail Sales Fee Schedule and payment as requested in our First Delinquency Notice on [date of first notice]. As a result, a late fee is now due in an amount equal to the greater of 10% of the delinquent RSF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid, accruing since [date period was due].

Payment must be made payable to Centerra Retail Sales Fee Corporation and mailed to PO Box 1386, Loveland, CO 80539.

If you are experiencing difficulty preparing your schedule, please feel free to contact me with any questions.

Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

EXHIBIT G
NOTICE OF VIOLATION OF COVENANT

OFFICIAL NOTICE

VIOLATION OF PUBLIC IMPROVEMENT FEE AND/ OR RETAIL SALES FEE REQUIREMENTS

This letter serves as official notice that on _____ (date), at _____ (time)

_____ (business) located in Suite _____ (number) at

_____, is in violation of the Public Improvement Fee and/or

Retail Sales Fee requirements as described in the Collection Agreement as follows:

- ☐ Placard not displayed by sales register.
- ☐ Public Improvement Fee combined with Sales Tax Receipt.
- ☐ Retail Sales Fee combined with Sales Tax Receipt
- ☐ Public Improvement Fee not charged on receipt.
- ☐ Retail Sales Fee not charged on receipt.
- ☐ PIF and or RSF fee rate is incorrect. PIF should be 1.25%, RSF should be 1.0% of all tangible personal property sales (See Attached Detail for corrections)
- ☐ Tenant does not have a Public Improvement Fee or Retail Sales Fee Account registered with the City.
- ☐ Other _____

This violation must be resolved by _____

If you have any questions on your PIF or RSF requirements, please contact _____

at _____.

Store Recipient _____
Print Name

Recipient Signature: _____

Inspector Initials: _____

U:\5 PROJECTS\Collection Agreement\2011 Negotiations\Exhibit H - Forms\Draft-ViolationNotice revised PIF - RSF combined.docx

EXHIBIT H
FORM OF MONTHLY REPORTS

Promenade Shops
Monthly Sales and Public Improvement Fee Collection
June 2011 Reporting Period

Store/ Company	Net Sales Subject to PIF	PIF Paid	Credit/ Balance	Non Filer	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Aeropostale						
Als Formal Specialties						
American Eagle Outfitters						
Amy's Hallmark						
AnnTaylor						
Banana Republic						
Barnes & Noble						
Bath & Body Works						
Bebe						
Bent Fork Grill						
Best Buy						
Biaggi's						
Build A Bear Workshop						
Charlotte Russe Inc						
Chicos						
Christopher & Banks						
Cingular Wireless						
The Buckle Inc						
The Childrens Place						
The Finish Line						
The Great Frame Up						
Victoria's Secret						
White House Black Market						
Yankee Candle						
Zales						
Zumiez						
New Store						
SUBTOTAL	-	-	-		-	

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to PIF	PIF Paid	Period		Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Aeropostale						
Als Formal Specialties						
American Eagle Outfitters						
Amy's Hallmark						
AnnTaylor						
Banana Republic						
Barnes & Noble						
Bath & Body Works						
Bebe						
Bent Fork Grill						
Best Buy						
Biaggi's						
Build A Bear Workshop						
Charlotte Russe Inc						
Chicos						
Christopher & Banks						
Cingular Wireless						
The Buckle Inc						
The Childrens Place						
The Finish Line						
The Great Frame Up						
Victoria's Secret						
White House Black Market						
Yankee Candle						
Zales						
Zumiez						
New Store						
SUB TOTAL	-	-			-	
GRAND TOTAL	-	-			-	

Centerra Marketplace
Monthly Sales and Public Improvement Fee Collection
June 2011 Reporting Period

Store/ Company	Net Sales Subject to PIF	PIF Paid	Credit/ Balance	Non Filer	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Banfield Pet Hospital						
Bed Bath & Beyond						
CAFE 2500						
Chick-fil-A						
Chipotle Mexican Grill						
Colorado Coffee						
CO's Bldg						
Davidson's						
Five Star Nails						
Front Range Plastic						
Good Day Pharmacy						
Good Times						
Jared Galleria						
Jeans Stores						
Justice						
King GMC						
Lane Bryant						
Menbells						
Mountain						
Medical Center of the Rockies						
Mimis						
Noodles & Company						
Northern Colo Fitness Club						
Old Chicago						
Old Navy						
Panera Bread						
Payless Shoe Source						
PetSmart						
Pier One						
PVHS Home Medical Supply						
Residence Inn						
Ross						
Sally Beauty						
Shoe Carnival						
Staples						
T Mobile						
The Market Place at MDR						
VSM Sewing						
New Store						
SUB TOTAL	-	-	-		-	-

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to PIF	PIF Paid	Period		Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Banfield Pet Hospital						
Bed Bath & Beyond						
CAFE 2500						
Chick-fil-A						
Chipotle Mexican Grill						
Colorado Coffee						
CO's Bldg						
Davidson's						
Five Star Nails						
Front Range Plastic						
Good Day Pharmacy						
Good Times						
Jared Galleria						
Jeans Stores						
Justice						
King GMC						
Lane Bryant						
Menbells						
Mountain						
Medical Center of the Rockies						
Mimis						
Noodles & Company						
Northern Colo Fitness Club						
Old Chicago						
Old Navy						
Panera Bread						
Payless Shoe Source						
PetSmart						
Pier One						
PVHS Home Medical Supply						
Residence Inn						
Ross						
Sally Beauty						
Shoe Carnival						
Staples						
T Mobile						
The Market Place at MDR						
VSM Sewing						
New Store						
SUB TOTAL	-	-			-	-
GRAND MONTHLY TOTAL	-	-			-	-

Promenade Shops
Monthly Sales and Retail Sales Fee Collection
June 2011 Reporting Period

Store/ Company	Net Sales Subject to RSF	RSF Paid	Credit/ Balance	Non Filer	Gross Sales Reported to City of Loveland
Aeropostale					
Als Formal Specialties					
American Eagle Outfitters					
Amy's Hallmark					
AnnTaylor					
Banana Republic					
Barnes & Noble					
Bath & Body Works					
Bebe					
Bent Fork Grill					
Best Buy					
Biaggi's					
Build A Bear Workshop					
Charlotte Russe Inc					
Chicos					
Christopher & Banks					
Cingular Wireless					
The Buckle Inc					
The Childrens Place					
The Finish Line					
The Great Frame Up					
Victoria's Secret					
White House Black Market					
Yankee Candle					
Zales					
Zumiez					
New Store					
SUBTOTAL	-	-	-		-

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to RSF	RSF Paid	Period		Gross Sales Reported to City of Loveland
Aeropostale					
Als Formal Specialties					
American Eagle Outfitters					
Amy's Hallmark					
AnnTaylor					
Banana Republic					
Barnes & Noble					
Bath & Body Works					
Bebe					
Bent Fork Grill					
Best Buy					
Biaggi's					
Build A Bear Workshop					
Charlotte Russe Inc					
Chicos					
Christopher & Banks					
Cingular Wireless					
The Buckle Inc					
The Childrens Place					
The Finish Line					
The Great Frame Up					
Victoria's Secret					
White House Black Market					
Yankee Candle					
Zales					
Zumiez					
New Store					
SUB TOTAL	-	-			-
GRAND TOTAL	-	-			-

Centerra Marketplace
Monthly Sales and Retail Sales Fee Collection
June 2011 Reporting Period

Store/ Company	Net Sales Subject to RSF	RSF Paid	Credit/ Balance	Non Filer	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Banfield Pet Hospital						
Bed Bath & Beyond						
CAFE 2500						
Chick-fil-A						
Chipotle Mexican Grill						
Colorado Coffee						
CO's Bldg						
Davidson's						
Five Star Nails						
Front Range Plastic						
Good Day Pharmacy						
Good Times						
Jared Galleria						
Jeans Stores						
Justice						
King GMC						
Lane Bryant						
Menbells						
Mountain						
Medical Center of the Rockies						
Mimis						
Noodles & Company						
Northern Colo Fitness Club						
Old Chicago						
Old Navy						
Panera Bread						
Payless Shoe Source						
PetSmart						
Pier One						
PVHS Home Medical Supply						
Residence Inn						
Ross						
Sally Beauty						
Shoe Carnival						
Staples						
T Mobile						
The Market Place at MDR						
VSM Sewing						
New Store						
SUB TOTAL	-	-	-		-	-

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to RSF	RSF Paid	Period		Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Banfield Pet Hospital						
Bed Bath & Beyond						
CAFE 2500						
Chick-fil-A						
Chipotle Mexican Grill						
Colorado Coffee						
CO's Bldg						
Davidson's						
Five Star Nails						
Front Range Plastic						
Good Day Pharmacy						
Good Times						
Jared Galleria						
Jeans Stores						
Justice						
King GMC						
Lane Bryant						
Menbells						
Mountain						
Medical Center of the Rockies						
Mimis						
Noodles & Company						
Northern Colo Fitness Club						
Old Chicago						
Old Navy						
Panera Bread						
Payless Shoe Source						
PetSmart						
Pier One						
PVHS Home Medical Supply						
Residence Inn						
Ross						
Sally Beauty						
Shoe Carnival						
Staples						
T Mobile						
The Market Place at MDR						
VSM Sewing						
New Store						
SUB TOTAL	-	-			-	-
GRAND MONTHLY TOTAL	-	-			-	-

EXHIBIT I
FORM OF WAIVER OF CONFIDENTIALITY

PARTIES TO LEASE:
LANDLORD: _____

TENANT: _____

DATE OF LEASE: _____

LEASE TERM: _____

PROPERTY/STORE
DESCRIPTION OR NAME: _____

ADDRESS OF TENANT: _____
_____

Tenant hereby acknowledges that it is a party to the above referenced Lease which contains provisions regarding the duty to impose and collect a Public Improvement Fee ("PIF") and a Retail Sales Fee ("RSF"), as specifically addressed in Sections 14.6 and 14.7, respectively, and also in Section 14.8 of said Lease. The undersigned is fully authorized to act on behalf of the Tenant in the matters covered by this Waiver of Confidentiality and, in such capacity, does hereby agree to the terms of Sections 14.6, 14.7 and 14.8 of the Lease. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in Exhibit A attached hereto.

With respect to the PIF, the Tenant specifically authorizes the PIF Designated Receiving Entity and any other PIF Enforcing Party to:

(i) audit the books and records of the Tenant in determining compliance with the PIF collection and remittance obligations of Tenant under the Lease; and

(ii) release to the PIF Report Recipients (but not to any other person or entity, except as required by law) such audited information and any reports, returns and other documents as are delivered to the PIF Designated Receiving Entity by the Tenant relating to the PIF and the sales tax imposed by the City of Loveland and any relevant information gathered by the PIF Designated Receiving Entity and any other PIF Enforcing Party during an audit or in reviewing such reports, returns or other documents relating to the PIF and the sales tax imposed by the City of Loveland; provided, however that any such information pertaining specifically to the Tenant provided to PIF Report Recipients described in subparagraph (iii) or (iv) of the definition of PIF Report Recipient (including Dissemination Agents) will be made only on an aggregated basis with the similar information submitted by other retailers in the same retail center in the Centerra development and/or all retailers in the Centerra development, and without separate identification (direct or indirect) of the PIF, the Sales (as defined in Section 14.8 of the Lease) or City or State sales taxes of such Tenant. Tenant hereby acknowledges that any such information will remain confidential, to the extent permitted or required by law, and be used only for purposes of collecting PIF Revenues due, enforcing Tenant's obligations under the Lease and otherwise monitoring compliance with the provisions thereof, except with respect to information provided to PIF Report Recipients described

in subparagraph (iii) or (iv) of the definition of PIF Report Recipient, and except for such disclosures or publications as may be required by applicable laws.

With respect to the RSF, the Tenant specifically authorizes the RSF Designated Receiving Entity and any other RSF Enforcing Party to:

(i) audit the books and records of the Tenant in determining compliance with the RSF collection and remittance obligations of Tenant under the Lease; and

(ii) release to the RSF Report Recipients (but not to any other person or entity, except as required by law) such audited information and any reports, returns and other documents as are delivered to the RSF Designated Receiving Entity by the Tenant relating to the RSF and the sales tax imposed by the City of Loveland and any relevant information gathered by the RSF Designated Receiving Entity and any other RSF Enforcing Party during an audit or in reviewing such reports, returns or other documents relating to the PIF and the sales tax imposed by the City of Loveland; provided, however that any such information pertaining specifically to the Tenant provided to RSF Report Recipients described in subparagraph (iii) or (iv) of the definition of RSF Report Recipient (including Dissemination Agents) will be made only on an aggregated basis with the similar information submitted by other retailers in the same retail center in the Centerra development and/or all retailers in the Centerra development, and without separate identification (direct or indirect) of the RSF, the Sales (as defined in Section 14.8 of the Lease) or City or State sales taxes of such Tenant. Tenant hereby acknowledges that any such information will remain confidential, to the extent permitted or required by law, and be used only for purposes of collecting RSF Revenues due, enforcing Tenant's obligations under the Lease and otherwise monitoring compliance with the provisions thereof, except with respect to information provided to RSF Report Recipients described in subparagraph (iii) or (iv) of the definition of RSF Report Recipient, and except for such disclosures or publications as may be required by applicable laws.

In addition, all audited information, reports, returns and other documents provided to the PIF Designated Receiving Entity and the RSF Designated Receiving Entity by Tenant shall be maintained by the Tenant for at least three (3) years from the date of submission thereof to the PIF Designated Receiving Entity or the RSF Designated Receiving Entity, respectively, and, upon written request, shall be made available to any PIF Enforcing Party and to any RSF Enforcing Party , respectively, for inspection and audit at the Tenant's place of business.

This waiver shall be in effect for any period of time during which a lease is in effect between the Tenant and Landlord, regardless of whether an initial term, a separate term or extension thereof, plus a period of three years beyond the termination of any such lease.

TENANT:
_____ (Name)

By: _____
Its: _____

EXHIBIT A
DEFINITIONS APPLICABLE TO TENANT WAIVER OF CONFIDENTIALITY

"City" shall mean and refer to the City of Loveland, Colorado.

"**Metro Districts**" shall mean and refer to Centerra Metropolitan District Nos. 1 through 4, inclusive, quasi-municipal corporations and political subdivisions of the State of Colorado to be organized and acting pursuant to the provisions of the Colorado Special District Act.

"PIC" shall mean and refer to The Centerra Public Improvement Collection Corporation, a non-profit corporation organized under the laws of the State of Colorado for the sole and exclusive purpose of collecting, holding and disbursing the Public Improvement Fee, and its successors and assigns.

"**PID**" shall mean and refer to The Centerra Public Improvement Development Corporation, or in the event of the dissolution or bankruptcy of such corporation, any other non-profit corporation organized by Centerra Properties West, LLC, under the laws of the State of Colorado for the purpose of constructing certain public improvements generally in the vicinity of Centerra and otherwise applying the Public Improvement Fees to the purposes permitted herein, and any such entity's successors and assigns

"**PIF Bond Trustee**" shall mean and refer to the trustee or trustees for the holders of any other obligations secured in whole or in part by the PIF revenues.

"**PIF Covenant**" means a Declaration of Covenants Imposing and Implementing the Centerra Public Improvement Fee relating to the PIF and recorded or to be recorded against certain real property, including the real property leased by Tenant under the Lease.

"PIF Designated Receiving Entity" shall mean and refer to any entity designated by the PIC from time to time to receive the Public Improvement Fee revenues and perform any other functions in connection with the Public Improvement Fee revenues, which may include the City. The designation of any such entity by the PIC shall be subject to the prior written approval of the City Manager, which approval shall not be unreasonably withheld; provided, however that if the City Manager's written approval is not received within 20 days of request therefore by the PIC, the City Manager shall be deemed to have given such approval. If no such entity has been designated by the PIC (and approved by the City Manager), references herein to "PIF Designated Receiving Entity" shall mean the PIC.

"**PIF Dissemination Agent**" shall mean and refer to any entity charged with providing information to purchasers of debt or obligations secured in whole or in part by the PIF revenues, which may include the PIF Bond Trustee**.**

"PIF Enforcing Party" shall mean and refer to any one (1) or more of the Declarants of the PIF Covenant, the Centerra Metropolitan District No. 1, the City, the Loveland Urban Renewal Authority, the PIF Bond Trustee, the PID, the PIC, any PIF Designated Receiving Entity, or any third party designated by any of the foregoing.

"PIF Report Recipient" (i) the PIC, the PIF Bond Trustee, the PID, Centerra Properties West, LLC, the Metro Districts, and the City, (ii) with respect to the specific information of the Tenant, the Landlord, (iii) any PIF Dissemination Agent; and (iv) any investor or potential investor in the Centerra development and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of the Centerra development or a prospective purchaser of any interest in Centerra Properties West, LLC.

"**Primary RSF Recipient**" shall mean and refer to [Centerra Retail Sales Fee Corporation][G&I VI Retail Prom, LLC] or any entity to whom the [Centerra Retail Sales Fee Corporation] [G&I VI Retail

Prom, LLC], or any subsequent Primary RSF Recipient, has assigned its rights in and control over, as provided in the RSF Covenant, the RSF revenues.

"**RSF Bond Trustee**" shall mean and refer to the trustee or trustees for the holders of any other obligations secured in whole or in part by the RSF revenues, if any.

"**RSF Covenant**" means a Declaration of Covenants Imposing and Implementing the [Centerra Retail Sales Fee] [Lifestyle Retail Sales Fee] relating to the RSF and recorded or to be recorded against certain real property, including the real property leased by Tenant under the Lease.

"RSF Designated Receiving Entity" shall mean and refer to any entity designated by the Primary RSF Recipient from time to time to receive the RSF revenues and perform any other functions in connection with the RSF revenues, which may include the City. If no such entity has been designated by the Primary RSF Recipient, references herein to "RSF Designated Receiving Entity" shall mean the Primary RSF Recipient.

"**RSF Dissemination Agent**" shall mean and refer to any entity charged with providing information to purchasers of debt or obligations secured in whole or in part by the RSF revenues, which may include the RSF Bond Trustee**.**

"RSF Enforcing Party" shall mean and refer to [Centerra Retail Sales Fee: any one (1) or more of the Declarants of the RSF Covenant, the Primary RSF Recipient, any RSF Designated Receiving Entity and other RSF Recipient, or any third party designated by any of the foregoing] [Lifestyle Retail Sales Fee: any one (1) or more of the Primary RSF Recipient, any RSF Designated Receiving Entity and other RSF Recipient, or any third party designated by any of the foregoing].

"**RSF Recipient**" shall mean and refer to any entity to whom the Declarants of the RSF Covenant, the Primary RSF Recipient or any other RSF Recipient has assigned all or any portion of its rights in and to the RSF Revenues.

"RSF Report Recipient" shall mean and refer to: (i) the Primary RSF Recipient, the RSF Bond Trustee, and any other RSF Recipient; (ii) with respect to the specific information of the Tenant, the Landlord, (iii) any RSF Dissemination Agent; and (iv) any investor or potential investor in the Centerra development and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of the Centerra development or a prospective purchaser of any interest in Centerra Properties West, LLC.

EXHIBIT J
SCHEDULE OF CITY'S FEES AND REIMBURSABLE EXPENSES

2013 Exhibit J

Basic Collections Agreement

Services		Estimated Annual Hours
Compliance Checks	Review register reciepts, placards, etc.	300
New Store set-up and Minor Enforcement	Store visits by Auditors to train and enforce fee collection policies and/or ensure payment of past due fees	125
Deposits	Per the City's separation of duties policies, an auditor prepares daily deposits 15-31 times each month	180
Daily and Monthly Accounting & Reporting	Manage returns, complete daily/monthly/annual reports, field vendor questions, all daily administration, Special/one time events	1040
General Administration and Supervision	Overview and supervision by Revenue Manager and Sales Tax Manager	117
	Total Estimated Hours - Collection	**1762**
	Annual Cost for 2013	**$ 71,000.00**

Discovery and Additional Enforcement

Discovery	20 discoveries per year	130
Audit	Maximum 5 audits per year	450
Collection Calls and Additional Enforcement	Full participation in the City's Delinquency Process	208
General Administration and Supervision	Overview and supervision by Revenue Manager and Sales Tax Manager	**150**
	Total Estimated Hours - Discovery/Enforcement	938
	Annual Cost for 2013	**$ 42,400.00**

Total Direct and Indirect Costs	Personal Services, Supplies, Purchased Services, (IT) Information Technology, Telecommunications, Legal & Facilities	$ 113,400

Total Estimated Hours - Collections/Discovery/Enforcement	$ 2,700
Your Total Annual Cost for 2013	**$ 113,400**
Percentage base on $4.3 million Total Collections	**2.64%**

Extraordinary Reimbursable Expenses

Audits	**In Excess of 5 audits per year (hourly rate)**	**$45 per hour**

Annual Approvals

City of Loveland - By: _____

Centerra Metropolitan District No. 1 - By: _____

G&I VI Retail Prom, LLC - By: _____

Centerra Retail Sales Fee Corporation - By: _____

Centerra Public Improvement Collection Corporation - By: _____

Revised 12/4/2012

SECOND AMENDED AND RESTATED

COLLECTION AGREEMENT

DATED AND EFFECTIVE AS OF JANUARY 1, 2013

RELATING TO PIF REVENUES AND RSF REVENUES

IN THE CENTERRA RETAIL DEVELOPMENT

THIS SECOND AMENDED AND RESTATED COLLECTION AGREEMENT dated and effective as of January 1, 2013, is entered into by and among **CENTERRA METROPOLITAN DISTRICT NO. 1 (**the **"Service District"),** a special district formed pursuant to Colorado Revised Statutes §32-1-101 *et seq*., the **CITY OF LOVELAND, COLORADO (**the **"City"),** a municipal corporation and political subdivision duly organized and existing as a home rule city under the provisions of Article XX of the Constitution and the laws of the State of Colorado and the home rule Charter of the City, Centerra Public Improvement Collection Corporation, a Colorado nonprofit corporation (the "**PIC**"), **G&I VI RETAIL PROM, LLC,** a Delaware limited liability company ("**Retail Prom")**, and the Centerra Retail Sales Fee Corporation, a Colorado nonprofit corporation ("**Centerra RSF Corp.**").

All capitalized terms used herein, unless otherwise defined herein, will have the meanings ascribed to them in **Exhibit A** attached to this Collection Agreement, or if not otherwise defined herein, as set forth in the Indenture.

BACKGROUND

A. Centerra Properties West, LLC, a Colorado limited liability company; the City of Loveland, Colorado, a Colorado municipal corporation; the Loveland Urban Renewal Authority, a body corporate and politic; the Service District; the PIC; and The Centerra Public Improvement Development Corporation, a Colorado non-profit corporation are parties to that certain Centerra Master Financing and Intergovernmental Agreement dated as of January 20, 2004 (the "**MFA**", and sometimes referred to as the "**MF&I Agreement**") concerning the development of certain real property generally known as "Centerra" (the "**Development**" or "**Centerra**") and located in Loveland, Colorado, and pertaining to, among other matters, the imposition and collection of a Public Improvement Fee. Pursuant to the MFA, the PIC is responsible for the collection and disbursement of the Public Improvement Fee.

B. Reference is made to the following documents recorded as indicated, in the real property records of Larimer County, Colorado: (i) Declaration of Covenants Imposing and Implementing the Centerra Public Improvement Fee (together with the amendments described herein and any subsequent amendments, the "**PIF Covenant**") recorded in the Larimer County Clerk and Recorder's Office on July 6, 2004 at Reception No. 2004-0067081; (ii) First Amendment to the PIF Covenant, recorded in the Larimer County Clerk and Recorder's Office on February 12, 2009 at Reception No. 20090008199 (the "**First PIF Amendment**"); (iii) Minor Modification to the First PIF Amendment, recorded in the Larimer County Clerk and Recorder's Office on February 12, 2009 at Reception No. 20090008201 (the "**Minor Modification**") (the property encumbered by the PIF Covenant, the First PIF Amendment, and the Minor Modification is more particularly described on **Exhibit B** hereto, the "**PIF Property**"), which PIF Covenant concerns the collection of a Public Improvement Fee or PIF (defined herein); (iv) Declaration of Covenants Imposing and Implementing the Centerra Retail Sales Fee (together with the amendments described herein and any subsequent amendments, the "**Centerra RSF Covenant**") recorded in the Larimer County Clerk and Recorder's Office on July 6, 2004 at Reception No. 2004-0067082; (v) First Amendment to Centerra RSF Covenant, recorded in the Larimer County Clerk and Recorder's Office on December 23, 2005 at Reception No. 2005-

0109627 (the "**First Centerra RSF Amendment**"); (vi) Second Amendment to Centerra RSF Covenant, recorded in the Larimer County Clerk and Recorder's Office on March 6, 2008 at Reception No. 20080014232 (the "**Second Centerra RSF Amendment**") (the property encumbered by the Centerra RSF Covenant, the First Centerra RSF Amendment, and the Second Centerra RSF Amendment is more particularly described on **Exhibit C** hereto, the "**Centerra RSF Property**"), which Centerra RSF Covenant concerns the collection of a Retail Sales Fee or Centerra RSF (defined herein); and (vii) Declaration of Covenants Imposing and Implementing the Lifestyle Retail Sales Fee (the "**Lifestyle RSF Covenant**"), recorded in the Larimer County Clerk and Recorder's Office on August 27, 2004 at Reception No. 2004-0084619 (the property encumbered by the Lifestyle RSF Covenant is more particularly described on **Exhibit D** hereto, the "**Lifestyle RSF Property**"), which Lifestyle RSF Covenant concerns the collection of a Retail Sales Fee or Lifestyle RSF (defined herein). The above-described covenants, together will all amendments thereto, are referred to collectively herein as the "**Covenants**."

C. Pursuant to the Covenants, the PIC (with respect to the Public Improvement Fee), Centerra RSF Corp. (with respect to the Centerra RSF) and Retail Prom (with respect to the Lifestyle RSF) are authorized to contract with a third-party, including but not limited to the City, to serve as "Designated Receiving Entity" thereunder and provide for the collection of the PIF Revenues, Centerra RSF Revenues and Lifestyle RSF Revenues, respectively.

D. The Service District is a Title 32 special district organized pursuant to the laws of the State of Colorado in order to construct, provide, operate and maintain certain public improvements and other services for itself and Centerra Metropolitan District Nos. 2, 3 and 4 (collectively, the "**Districts**") in accordance with a Consolidated Service Plan, as amended, including, without limitation, streets and other roadway improvements, public parking facilities, water and drainage facilities, traffic controls, television relay, mosquito control, fire protection, park and recreation facilities, and other improvements necessary for Centerra (the "**Projects**").

E. The Service District, as contemplated by the MFA, has previously issued District Bonds secured by certain revenues, including PIF Revenues, and plans to issue additional District Bonds in the future secured on a basis on parity with or subordinate to the District Bonds outstanding as of the effective date of this Agreement.

F. The Declarants under the Covenants have entered into Assignments of Revenues by Declarants (the "**Assignments**"), pursuant to which the Declarants have irrevocably assigned all their rights, if any, in and to the PIF Revenues, the Centerra RSF Revenues and the Lifestyle RSF Revenues to the PIC, the Centerra RSF Corp. and Retail Prom (as a successor in interest), respectively.

G. McWhinney Centerra Lifestyle Center LLC, a Delaware limited liability company, was an original party to the Collection Agreement, described in Recital L, below. McWhinney Centerra Lifestyle Center LLC subsequently designated Centerra Lifestyle LLC, a Delaware limited liability company ("Centerra Lifestyle LLC") as the "Primary RSF Recipient" under the Lifestyle Covenant and assigned all of its right, title and interest in and to the Lifestyle RSF pursuant to that certain Designation of Primary RSF Recipient and Assignment of RSF Revenues dated October 22, 2004. Such interest was subsequently acquired by CLC REO, LLC,

a Delaware limited liability company ("CLC REO") pursuant to a Uniform Commercial Code public sale conducted on July 26, 2010, and transferred by CLC REO to G&I VI Promenade, LLC, a Delaware limited liability company pursuant to that certain Designation of Primary RSF Recipient and Assignment of RSF Revenues dated and effective December 17, 2010, and by G&I VI Promenade, LLC to Retail Prom pursuant to that certain Designation of Primary Recipient and Assignment of RSF Revenues dated and effective February 1, 2011.

H. Pursuant to the District Bond Documents, and as required by the MFA, the PIC has pledged and granted a lien and security interest in, and (subject to certain exceptions) all of its rights and interest in the PIF Revenues to holders of the District Bonds and certain swap providers.

I. It is clearly intended and understood by the parties hereto that (i) the nature of the PIF and the RSF is that of fees imposed for the benefit of the parties entitled thereto under private contract and not through the exercise of any City taxing authority, (ii) neither the PIF Revenues nor the RSF Revenues are tax revenues in any form, (iii) the PIF Revenues and the RSF Revenues are the property of the parties described in the related Covenant or assignees, designees, or successors thereof, (iv) the authority of the City, as "Designated Receiving Entity" under the PIF Covenant and RSF Covenants, to receive the PIF Revenues and the RSF Revenues is derived through this Collection Agreement, the Covenants, as applicable, and the Leases and (v) pursuant to the Covenants, each Centerra Retailer is required to execute a Waiver of Confidentiality with respect to (a) information contained in the reports submitted to the Designated Receiving Entity (initially, the City) by such Centerra Retailers and (b) their books and records related thereto.

J. Notwithstanding anything to the contrary herein or any other document related to the Projects and any other public improvements related to the Development, the parties hereto acknowledge and agree that, except as such entities may be entitled to such revenues in accordance with the Covenants or any contractual assignment of revenues related thereto, (i) the Declarants under the Covenants have no dominion or control over the PIF Revenues or the RSF Revenues, (ii) to the extent any PIF Revenue or RSF Revenue is collected by a Declarant, such Declarant is acting solely as an agent for and on behalf of the parties hereto entitled to such PIF Revenue or RSF Revenue, respectively, (iii) the PIF and the RSF are fees imposed on the Centerra Retailers to finance costs permitted by the PIF Covenant and RSF Covenants, respectively.

K. **THE DISTRICT BONDS DO NOT CONSTITUTE OBLIGATIONS, DEBT OR INDEBTEDNESS OR MULTIPLE FISCAL YEAR OBLIGATIONS OF THE CITY AND DO NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE CITY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS. NEITHER THE CITY NOR THE DECLARANTS UNDER THE COVENANTS NOR ANY OF THEIR AFFILIATES HAS ANY OBLIGATION WHATSOEVER TO PAY THE PRINCIPAL OF AND/OR INTEREST ON THE DISTRICT BONDS.**

L. This Second Amended and Restated Collection Agreement is intended to supersede, in all respects, that certain Collection Agreement among the parties dated as of

September 1, 2004, the First Amendment to Collection Agreement dated March 19, 2008, and that certain First Amended and Restated Collection Agreement dated as of November 1, 2011.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the City, the Service District, the PIC, Retail Prom and Centerra RSF Corp. agree as follows:

ARTICLE 1
NATURE, IMPOSITION, REDUCTION AND TERMINATION OF FEES

Section1.01 Nature and Imposition of the Fees Generally.

(a) The Lifestyle RSF, the Centerra RSF and the PIF are not taxes in any form and any rights therein are the result of contractual agreement only, including but not limited to the PIF Covenant and the RSF Covenants, as applicable, and not the exercise of the taxing power of any governmental entity, including the City.

(b) The Lifestyle RSF, the Centerra RSF and the PIF shall be imposed upon and collected from each Centerra Retailer and become due and payable as provided in the applicable Covenants, the Leases, and this Collection Agreement.

(c) PIF and RSF shall be calculated and imposed on all PIF Sales and RSF Sales, respectively, at the rates stated in the applicable Covenant, respectively, prior to the calculation and assessment of any Sales Tax, and before any other State, county, municipal or other sales taxes required to be imposed by law. All Sales Tax and sales taxes of other taxing entities shall by calculated and assessed on the sum of the sales price plus the amount of the PIF and the applicable RSF.

Section1.02 Calculation of, Adjustments to, and Termination of PIF

(a) Notification of Changes to Sales Tax Credit and Calculation of PIF. Pursuant to the terms of the PIF Covenant, the PIF shall be determined by multiplying the amount of each PIF Sale by 1.25%; provided however that such rate may be reduced upon written notice thereof by the PIC, subject to consent of the City and subject to the District Bond Documents. The PIC shall be responsible for providing notice of any reduction or termination of the PIF, in addition to the Sales Tax Credit, to Centerra Retailers in accordance with the provisions of the PIF Covenant and the District Bond Documents, and shall cause such notice to be recorded in the real property records of Larimer County, Colorado.

(b) Adjustments to PIF Sales.

(i) Pursuant to the terms of the PIF Covenant, PIF Sales shall exclude any sales transactions specified by the PIC, with the consent of the City, as exempt from the Public Improvement Fee from time to time, subject to the provisions of the District Bond Documents.

(ii) Pursuant to the terms of the PIF Covenant, any proposed exclusion from PIF Sales must be approved by the PIC and the City, and, for so long as the District Bonds are outstanding, must comply with the District Bond Documents. Upon approval by the PIC and the City of an exclusion from PIF Sales, not later than 30 days prior to the effective date of the approved exclusion from PIF Sales (which date shall be determined by the PIC), the PIC shall provide notice thereof to all Centerra Retailers, Retail Prom, Centerra RSF Corp., and the City, and shall cause such notice to be recorded in the real property records of Larimer County, Colorado.

Section1.03 Calculation, Reduction and Termination of RSF.

(a) Imposition, Reduction and Termination of RSF. Pursuant to the terms of the Lifestyle RSF Covenant and the Centerra RSF Covenant, the Lifestyle RSF and the Centerra RSF each shall be determined by multiplying the amount of each Lifestyle or Centerra RSF Sale, respectively, by 1.00%; provided however that such rate may be reduced, or the imposition of the RSF may be terminated, upon written notice thereof by Retail Prom or by Centerra RSF Corp., respectively. Retail Prom and Centerra RSF Corp. hereby agree to provide written notice of any planned reduction, subsequent increase (up to 1.00%) or termination of the Lifestyle RSF or Centerra RSF, respectively, to the City and each affected Centerra Retailer no later than 30 days prior to the effective date of such reduction, increase, or termination. Retail Prom and Centerra RSF Corp. hereby acknowledge that failure to do so will result in the inability of the City to implement such reduction, increase or termination in accordance with the terms hereof, and agree that the City will not be held responsible for any loss of revenues or other adverse effects of such failure. To the extent required by the Lifestyle RSF Covenant or the Centerra RSF Covenant, as applicable, Retail Prom and Centerra RSF Corp. shall cause notice of any such reduction, increase or termination to be recorded in the real property records of Larimer County, Colorado.

(b) Exclusions from RSF Sales. Pursuant to the terms of the Lifestyle RSF Covenant and the Centerra RSF Covenant, transactions may be excluded from Lifestyle RSF Sales or Centerra RSF Sales upon notice of the Retail Prom or Centerra RSF Corp., respectively. Notwithstanding the foregoing, in order to facilitate efficient and effective collection and enforcement procedures, as provided herein, the parties acknowledge their desire, where possible, to cause PIF Sales, Centerra RSF Sales and Lifestyle RSF Sales to be identical at all times, except with respect to the exclusion from Centerra and Lifestyle RSF Sales of automobile sales. Neither Retail Prom nor Centerra RSF Corp. shall cause or permit exclusions to be made from Lifestyle RSF Sales or Centerra RSF Sales other than in accordance with the provisions hereof and in accordance with the provisions of the Lifestyle RSF Covenant and Centerra RSF Covenant, respectively.

Section 1.04 Survival of Agreements Among Certain Parties. Unless expressly provided in writing and consented to by the Trustee (if required by the District Bond Documents so long as any District Bonds remain outstanding), the PIC, the Retail Prom, and the Centerra RSF Corp., the provisions of this Article 1 shall survive the termination of the City's obligation to receive

and remit all or any portion of the Revenues pursuant to this Collection Agreement and, in the event of such termination or appointment of a successor collection entity or otherwise, references in this Article 1 to the City shall be deemed to refer to any successor collection entity charged with receiving the Revenues.

ARTICLE 2
COLLECTION PROCEDURES

Section 2.01 Appointment of City as PIF and RSF Designated Receiving Entity.

(a) The City is hereby appointed as the initial Designated Receiving Entity under the Covenants by: (i) the PIC and the Service District, each as a beneficiary of a portion of the PIF Revenues; (ii) Retail Prom, as a beneficiary of the Lifestyle RSF Revenues; and (iii) Centerra RSF Corp. as a beneficiary of the Centerra RSF Revenues. The City is appointed as the initial Designated Receiving Entity under the Covenants for the purpose of receiving all Revenues from all Centerra Retailers. By the execution of this Collection Agreement, the City accepts the responsibility of receiving the Revenues remitted to the City by the Centerra Retailers and depositing the same in accordance with the provisions hereof. **THE CITY IS NOT THE AGENT OF ANY PARTY TO THIS COLLECTION AGREEMENT AND HAS ONLY THOSE RESPONSIBILITIES EXPRESSLY STATED HEREIN. THE OBLIGATIONS OF THE CITY UNDER THIS COLLECTION AGREEMENT SHALL NOT CONSTITUTE A MULTIPLE FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION WHATSOEVER OF THE CITY AND THE PAYMENTS OF ANY COSTS OF THE CITY INCURRED OR TO BE INCURRED IN PERFORMING ITS OBLIGATIONS HEREUNDER SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE CITY COUNCIL.**

(b) The City's obligations with respect to collection of the Revenues hereunder may be terminated, or the City may resign from such position, in accordance with the provisions of Section 3.03 hereof.

Section 2.02 Provision of Information to Centerra Retailers.

(a) The City shall prepare, in consultation with the PIC, Centerra RSF Corp., and Retail Prom, two Information Booklets: one for use by Centerra Retailers operating in the Centerra RSF Property (the "**Centerra Information Booklet**"), and one for use by Centerra Retailers operating in the Lifestyle RSF Property (the "**Lifestyle Information Booklet**"). These booklets shall be made available in electronic form on the City's website. The City shall provide each Centerra Retailer notice of the location at which an electronic copy of the applicable Information Booklet regarding the imposition of the PIF and the RSF and collection of the Revenues, consistent with the provisions of this Collection Agreement, is available prior to the "soft opening" of a Centerra Retailer's store of which the City has been notified and at such times as changes have been made to the applicable Information Booklet.

(b) In addition, the City shall provide Centerra Retailers with appropriate supplies of the reporting forms attached as **Exhibit E** hereto, as applicable, as well as procedures and other instructions concerning the collection and remittance of Revenues, developed in consultation with the PIC, Centerra RSF Corp. and Retail Prom.

(c) The costs of preparation of the Information Booklet, reporting forms, procedures and other instructions shall be paid as set forth in Section 2.08.

(d) In the event that the City proposes to change such Information Booklet, reporting forms, procedures or other instructions, such changes shall be submitted to the PIC, Centerra RSF Corp., and Retail Prom and, following the prior written approval of the PIC, Centerra RSF Corp. and Retail Prom (which approval shall not be unreasonably withheld), shall be distributed to all Centerra Retailers no less than 45 days prior to the implementation thereof.

(e) Without limiting the generality of the foregoing, the City shall notify Centerra Retailers of any procedures that the Centerra Retailers should follow with respect to notifying customers concerning the PIF or RSF, as such procedures are developed by the City in consultation with the PIC, Centerra RSF Corp. and Retail Prom, consistent with the provisions of this Collection Agreement, and so as to comply with all applicable laws and reasonable business practices.

(f) For purposes of determining the Centerra Retailers to receive information and notices from the City in accordance with the provision hereof, the City shall rely on the information received by it in connection with Centerra Retailers' application for Sales Tax licenses, information acquired from business establishment visits and any other auditing function required to be performed by the City pursuant to Section 2.06 hereof, information received by the City in response to requests made pursuant to Section 2.07(d) hereof, and any information provided to the City by the parties hereto.

Section 2.03 Collection of Revenues.

(a) The City agrees that, in order to facilitate the collection, reporting and auditing procedures required herein, it shall cause the computer software used in the City's collection of its Sales Tax to geographically code Centerra Retailers as within the Centerra RSF Area or the Lifestyle RSF Area.

(b) Not later than the 20th day of the first month following the end of each Collection Month (as evidenced by postmark), Centerra Retailers shall remit collected Revenues for the preceding Collection Month to the City by means of a check or wire transfer payable to: (i) the PIC, in the case of PIF Revenues; (ii) Centerra RSF Corp., in the case of Centerra RSF Revenues; and (iii) Retail Prom, in the case of Lifestyle RSF Revenues, together with the appropriate reporting forms substantially similar to those set forth in **Exhibit E** hereto, as the same may be modified from time to time, in accordance with procedures to be provided by the City to the Centerra Retailers consistent with Section 2.03 hereof. Upon receipt thereof, such Revenues shall be remitted by the City in accordance with Section 2.04 hereof. Such reporting

forms shall be retained on file with the City pursuant to the City's then existing record retention policy and made available to the Report Recipients for the related Revenues in accordance with Section 2.03(c) hereof. Such Revenues shall be payable by Centerra Retailers and collected by the City monthly regardless of the frequency of any such Centerra Retailers' payment of City Sales Tax.

(c) The City also shall receive from the Centerra Retailers, on or before the 20th day of the month following the close of each Collection Month (as evidenced by postmark), such reports, returns and other documents as are delivered by Centerra Retailers pursuant to the terms of the PIF Covenant, the RSF Covenants and the Leases, which shall include the reports provided by such Centerra Retailer to the City in connection with the remittance of City sales taxes for such Collection Month, and any other documentation required pursuant to the terms of the PIF Covenant, the RSF Covenants and the Leases. Upon reasonable request of any Report Recipient (other than those described in subparagraphs (iii) and (iv) of the definition thereof), the City shall make copies of such reports, returns and other documents it receives available to the requesting party at the expense of such party.

(d) Not later than the 5th day (or the next succeeding Business Day) of the second month following the close of a Collection Month, the City shall send a First Delinquency Notice (subject to subparagraph (e) hereof) to any Centerra Retailer failing to remit PIF Revenues or RSF Revenues during the preceding month and any Centerra Retailer which has remitted what the City believes (which belief may be based solely upon the City's comparison of such Centerra Retailer's sales report to its remittance) to be an incorrect amount of PIF Revenues or RSF Revenues during the preceding month. The City shall prepare and send separate First Delinquency Notices with respect to delinquent PIF Revenues, delinquent Lifestyle RSF Revenues, and delinquent Centerra RSF Revenues, which Notices shall be substantially similar to the forms set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom. The City shall send copies of all such First Delinquency Notices to the Report Recipients (other than, those described in subparagraphs (iii) and (iv) of the definition thereof) for the related Revenues.

(e) Not later than the 25th day (or the next succeeding Business Day) of the second month following the close of a Collection Month, the City shall send a Second Delinquency Notice to any Centerra Retailer which has failed to pay any PIF Revenues or RSF Revenues due and noticed in a previously distributed First Delinquency Notice. The City shall prepare and send separate Second Delinquency Notices with respect to delinquent PIF Revenues, delinquent Lifestyle RSF Revenues, and delinquent Centerra RSF Revenues, which Notices shall be substantially similar to the forms set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom. The City shall send copies of all such Second Delinquency Notices to: (i) the PIC, the Trustee, the Service District, and the Centerra Owners, if relating to delinquent PIF Revenues; (ii) Centerra RSF Corp. and the Centerra Owners, if relating to Centerra RSF; and (iii) the Retail Prom and the Centerra Owners, if relating to delinquent Lifestyle RSF Revenues.

(f) Subject to the provisions of this subparagraph (f), the City shall continue its collection efforts, following the sending of the Second Delinquency Notice, in the same manner

in which the City attempts to collect delinquent Sales Tax. Once the City collects any delinquent Sales Tax from a Centerra Retailer, the City will cease its efforts to collect delinquent PIF or RSF Revenues from such Centerra Retailer, and will turn over all relevant information with regard to the delinquent PIF Revenues or RSF Revenues to the PIC, Centerra RSF Corp., or Retail Prom, as applicable. If a Centerra Retailer who has received First and Second Delinquency Notices relating to PIF Revenues or RSF Revenues due in a particular month is still delinquent following receipt of a Second Delinquency Notice, default interest shall automatically accrue on the PIF Revenues or RSF Revenues, as applicable, as set forth in the Second Delinquency Notice, and will continue to accrue until all delinquent PIF Revenues or RSF Revenues, together with interest and late charges are paid in full.

(g) In addition to the notices described above, the City shall, if requested by a Centerra Owner, the PIC, the Service District, the Trustee, Centerra RSF Corp. or Retail Prom, send a written notice to any Centerra Retailer that such requesting entity believes has not fully complied with its obligations with respect to the PIF or the RSF, specifying the nature and extent of such Centerra Retailer's non-compliance and requesting that such Centerra Retailer remedy its non-compliance. The entity requesting such notice shall provide the City with information sufficient to enable the City to prepare and send any such notices. The City shall also provide such notice to a Centerra Retailer if the City has actual knowledge of a violation of the PIF Covenant or RSF Covenants or guidelines and procedures related thereto, including information obtained as a result of City visits to the business establishments as required by Section 2.06(g) hereof. Such notices shall be in a form substantially similar to the form set forth in **Exhibit G** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. The City and any requesting party shall provide a copy of all such communications to the Report Recipients.

(h) It is the intent of the parties hereto that all adjustments, including but not limited to refunds, additions, or other modifications to PIF Revenues or RSF Revenues due from the Centerra Retailers, shall be processed in a manner substantially similar to the process used and required by the City for any appropriate adjustments to Sales Tax. If any subsequent adjustments, additions, or modifications are made to any PIF Revenues or RSF Revenues remitted or paid, or report made, by a Centerra Retailer to the City, that Centerra Retailer shall provide the City with true and complete copies of all revised reports or other written material issued or received by a Centerra Retailer in regard thereto. If any such adjustment increases the amount of PIF Revenues or RSF Revenues which the Centerra Retailer is required to remit or pay, or results in a refund of a PIF Revenues or RSF Revenues overpayment, the Centerra Retailer shall immediately pay such additional PIF Revenues or RSF Revenues in the amount due, or shall receive an appropriate credit against the next PIF Revenues or RSF Revenues due from that Centerra Retailer in the amount of such PIF Revenues or RSF Revenues overpayment. The Centerra Retailer shall claim such credits and/or pay such additional PIF Revenues or RSF Revenues in the next monthly reporting period by use of the standard reporting and remittance forms. All reports made or provided by Centerra Retailers shall be maintained by the respective Centerra Retailers for at least three years from the date of submission thereof to the City and, upon written request, shall be made available to the Report Recipients (other than those described in subparagraphs (iii) and (iv) of the definition thereof).

Section 2.04 Remittance of Revenues by the City. PIF Revenues and RSF Revenues received by the City, in the form of checks or wire transfers payable to the PIC, Centerra RSF Corp. or Retail Prom, shall be disbursed, without deduction for collection costs, by the end of business on the next business day following receipt thereof by the City, as follows:

(a) Checks or wire transfers representing PIF Revenues payable to the PIC shall be deposited by the City into an account of a Loveland, Colorado bank designated by the PIC, in accordance with the District Bond Documents, for so long as the District Bonds are outstanding. The funds in such account shall be applied as described in the applicable District Bond Documents.

(b) Checks or wire transfers representing Centerra RSF Revenues payable to Centerra RSF Corp. shall be deposited by the City into an account of a Loveland, Colorado bank designated by Centerra RSF Corp, the funds in which account shall be under the control of the Centerra RSF Corp..

(c) Checks or wire transfers representing Lifestyle RSF Revenues payable to Retail Prom shall be deposited by the City into an account of a Loveland, Colorado bank designated by, Retail Prom, the funds in which account shall be under the control of Retail Prom.

The PIC, Centerra RSF Corp. and Retail Prom shall cooperate with the City to facilitate such deposits in an efficient manner.

The PIC, Centerra RSF Corp. and Retail Prom may each change the Loveland, Colorado bank to receive the PIF Revenues, Centerra RSF Revenues or Lifestyle RSF Revenues, respectively, in accordance with the foregoing provisions upon 30 days prior written notice to the City. The City shall not be responsible for the payment of fees owing to any such bank receiving PIF Revenues, Centerra RSF Revenues or Lifestyle RSF Revenues.

The PIC, Centerra RSF Corp. and Retail Prom are entitled to receive the PIF Revenues, Centerra RSF Revenues and Lifestyle RSF Revenues, respectively, and apply the same to any lawful purpose as each, in its sole discretion, may determine, subject to the restrictions on use set forth in the applicable Covenants and, with respect to the PIF Revenues, the MFA and the District Bond Documents.

Section 2.05. Enforcement

(a) Upon receipt of any First Delinquency Notice from the City, the PIC (if relating to delinquent PIF Revenues), Centerra RSF Corp. (if relating to delinquent Centerra RSF Revenues), or Retail Prom (if relating to Lifestyle RSF Revenues) shall take all commercially reasonable action necessary to effect a direct cause of action and exercise its full right and authority to enforce the available remedies with respect to a breach by a Centerra Retailer of its obligations imposed by the applicable Covenant, including, if such party deems it appropriate to do so, exercising their rights under the applicable Covenant to require assistance from the Centerra Owner having a Lease with a Centerra Retailer who is the subject of such a Notice. Any such party shall take commercially reasonable efforts to complete collection of delinquent

Revenues, reports, returns and other documents not later than the end of the 5th month following the Collection Month. In the event that any party obligated to do so hereunder fails to diligently pursue legal action to collect delinquent Revenues, the Enforcing Parties with respect to the related delinquent Revenues are authorized to pursue such action. Notwithstanding any of the foregoing, the City has no obligation to pursue such action.

(b) In the event that any party hereto other than the City receives or otherwise possesses any Revenues, including any penalties related thereto (except as a result of an authorized disbursement from the City in accordance with the terms hereof), inadvertently, through efforts to collect delinquent Revenues, the parties hereto hereby agree that each shall hold such funds in trust as an agent for the parties entitled thereto hereunder and under the Covenants, Assignments and District Bond Documents and shall remit to the City, immediately and without demand, all such sums so received or otherwise in its possession, after deduction of any reasonable costs incurred in connection therewith, together with a statement indicating the Centerra Retailer and Collection Month to which such amounts relate and any collection costs deducted. The City shall remit the same to the parties entitled thereto in accordance with Section 2.04 hereof. To the extent that any party hereto does not deduct from such remittance its reasonable costs associated with collecting delinquent Revenues, such party may submit a statement for such amounts as Collection Costs as follows: (i) if related solely to the Lifestyle RSF Revenues, to Retail Prom ; (ii) if related solely to the collection of delinquent Centerra RSF Revenues, to Centerra RSF Corp.; (iii) if related solely to the collection of delinquent PIF Revenues, to the PIC, or entity designated by the PIC (which may include the Trustee); and (iv) if related to the collection of both delinquent RSF Revenues and delinquent PIF Revenues, such Collection Costs shall be divided in half and submitted to the PIC (or entity designated by the PIC) and to the Retail Prom or Centerra RSF Corp., as applicable. Any Collection Costs to be paid by the Service District hereunder shall be payable solely to the extent moneys are available therefore pursuant to the terms of the District Bond Documents.

Section 2.06 Reporting and Auditing.

(a) Subject to subparagraph (c) hereof, the City shall prepare and deliver to the Report Recipients for the related Revenues, on or as soon as practicable after the 15th day of the second calendar month following the close of a Collection Month, a report (i) describing the amount of Reported Taxed Sales and the amount of Sales reported by each Centerra Retailer and the amount of Revenues received by the City from each Centerra Retailer since the date of the immediately preceding report, and (ii) describing the amount of Revenues received by the City since the date of the last report representing delinquent Revenues (including any penalties related thereto) and the Centerra Retailers and Collection Month(s) to which such delinquent Revenues (and penalties, if any) are attributable. The reports described herein shall be separate with respect to PIF Revenues, Centerra RSF Revenues and Lifestyle RSF Revenues and shall be substantially similar to the forms set forth in **Exhibit H** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom.

(b) At reasonable times during regular business hours, the Report Recipients are hereby authorized to audit or cause audits to be conducted of the City's books and records with

respect to the City's receipt of the Revenues. If an audit uncovers a deficiency in deposits of Revenues which parties are entitled to in accordance with the terms hereof, and such deficiency results from misapplication of moneys by the City as a direct result of the City's willful and wanton conduct or gross negligence, the City shall pay within 60 days of notice of such misapplication the full amount of such misapplication to the party so entitled and, in the event such amount is not paid within such 60 day period, interest thereon shall accrue from the 60th day after such notice until paid, (subject to appropriation by the City Council), the rate of such interest to be equal to ½ of the prime rate published in the Wall Street Journal on the date of notice of such deficiency to the City (not to exceed 10%).

(c) The City shall not be obligated to provide any information or reports described in this Collection Agreement with respect to any particular Centerra Retailer until such time as the City has received with respect to such Centerra Retailer a fully-executed waiver in a form substantially similar to the forms set forth in **Exhibit I** hereto. Any reports or data concerning PIF Sales, RSF Sales, PIF Revenues, RSF Revenues or Reported Taxed Sales received by the Report Recipients will remain confidential, to the extent permitted or required by law, and be used only for purposes of collecting Revenues due, enforcing Centerra Retailers' obligations under the PIF Covenant, the RSF Covenants, or their respective Leases and otherwise monitoring compliance with the provisions thereof, except with respect to information provided to Dissemination Agents or Centerra Investors (defined below), and except for such disclosures or publications as may be required by applicable laws. Any information concerning Sales, Revenues or Reported Taxed Sales of Centerra Retailers to be provided hereunder to any Dissemination Agent or any Centerra Investor (as defined in subparagraph (d) hereof) shall be provided on an aggregated basis only with other Centerra Retailers in the same retail Center within Centerra or with all Centerra Retailers, without information specific to any particular Centerra Retailer.

(d) Subject to subparagraph (c) hereof, the City shall also provide any information which would otherwise, pursuant to the provisions of this Collection Agreement, be required to be provided to a Dissemination Agent, to any investor or potential investor in Centerra and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of Centerra (referred to herein as a "**Centerra Investor**"), upon reasonable request therefore by a Centerra Owner, the PIC, Retail Prom or Centerra RSF Corp..

(e) Upon reasonable request, the City agrees to provide the data to be provided in reports described in this Section 2.06 in electronic form to the extent reasonably available.

(f) The City shall visit the business establishments of all Centerra Retailers on a quarterly basis to ensure compliance with guidelines and procedures relating to the PIF Revenues and RSF Revenues, including but not limited to customer notification of the PIF and RSF. In the event that an item of noncompliance is discovered, the City shall provide notice thereof in accordance with Section 2.03(g) hereof, and shall revisit such business establishment within 30 days to determine if such noncompliance has been corrected. If the noncompliance has not been corrected by such return visit, the City shall continue to revisit such business establishments and, if necessary, send additional notices of noncompliance, until such noncompliance is corrected.

Non-compliance may also result in remedies stipulated in the Centerra Public Improvement Fee Covenants, the Centerra Retail Sales Fee Covenants, the Lifestyle RSF Covenant and any applicable lease and/or sales instruments. The City shall provide a written report to the Report Recipients in a form substantially similar to the forms set forth in **Exhibit G** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom, together with a copy of any such noncompliance notice sent to any Centerra Retailer, in the event that any noncompliance is discovered in any such visit. The PIC, Centerra RSF Corp. and Retail Prom shall, if requested by the City, assist in bringing Centerra Retailers into compliance with such guidelines and procedures.

(g) The City shall investigate each Centerra Retailer to ensure accurate collection and remittance of the PIF Revenues and RSF Revenues according to the following two-phased process:

1. Discovery. The City shall conduct discovery on twenty (20) Centerra Retailers annually. The Centerra Retailers to be subjected to the discovery process shall be selected by the PIC (six (6) total Centerra Retailers of which three (3) shall be located within the Centerra RSF Property and three (3) shall be located within the Lifestyle RSF Property), the Centerra RSF Corp. (seven (7) Centerra Retailers), and Retail Prom (seven (7) Centerra Retailers), and a list of such Centerra Retailers shall be provided to the City by the Designated Representatives (as defined in subparagraph 2.06(g)(3)) not later than November 30 of the year preceding the year in which the discovery is to be conducted. Discovery will consist of comparing reported sales to actual sales for the period that would be subject to audit, reviewing a reasonable sample of daily register transactions for inconsistencies in non-taxable and tax-exempt transactions. If the City does not find material discrepancies, the investigation will end at discovery. If, in doing so, the City determines that delinquent Revenues exist, the City shall follow the procedures set forth in Section 2.06(g)(2) hereof. The City shall provide a written report, no later than 30 days after the completion of each discovery to the Designated Representatives indicating the identity of the Centerra Retailer subjected to discovery and the results of the discovery.

2. Audit. If the City determines, during the discovery process, that material discrepancies exist with a particular Centerra Retailer's compliance with the collection of Revenues described herein, the City shall confer with the Designated Representatives to obtain direction whether to initiate phase 2 of the investigation (audit), as described in this subparagraph 2.06(g)(2). The City will conduct up to five (5) audits per year of Centerra Retailers. The cost of up to five (5) audits is included in the annual costs set forth on **Exhibit J** and the City will charge no additional hourly fee for up to five (5) audits per year. The Centerra Retailers selected for audit shall be first recommended to the Designated Representatives by the City, based on the results of the City's discovery process. Following such recommendation, the City and the Designated Representatives shall collectively agree on which Centerra

Retailers are to be audited each year while this Agreement shall remain in effect. In the event that such parties fail to agree on the list of Centerra Retailers to be audited, the PIC, Centerra RSF Corp., and Retail Prom shall each be allowed to select one (1) Centerra Retailer for audit and the City shall be allowed to select two (2) Centerra Retailers for audit. The Designated Representatives may elect to delay a decision on audit initiation from time to time in order to maximize the number of audits available annually. As a part of each such audit, the City shall compare the Reported Taxed Sales indicated on reports received by the City to PIF Sales and RSF Sales reported to the City and investigate any discrepancies in the reported amounts. Additional audits, over and above the five (5) annual audits contemplated in this subparagraph 2.06(g)(2), may be conducted upon the mutual agreement of the City and the PIC, the Centerra RSF Corp., or Retail Prom, subject to payment of the applicable hourly fees as set forth in **Exhibit J** hereto by the party or parties seeking the additional audit.

3. Designated Representatives. The PIC, Centerra RSF Corp., and Retail Prom shall each, from time to time, provide the City with written notice of the name of their designated representatives for the purposes of receiving discovery reports and designating whether to initiate an audit under subparagraphs 2.06(g)(1) and 2.06(g)(2) (the "Designated Representatives").

(h) The parties hereto acknowledge that varied reporting may be required in connection with the District Bonds. The City agrees to provide such additional reports as may be required by the District Bond Documents if reasonably feasible; provided that if such additional reports result in a material increase in time or materials to be supplied by the City, the fees set forth on **Exhibit J** hereto shall be adjusted, and any increased costs shall be borne exclusively by the Service District.

Section2.07 Covenants of the Parties

(a) For the purpose of reasonably enforcing this Collection Agreement, and to the extent permitted by law, all books and documents in the possession of any party to this Collection Agreement relating to the collection or calculation of actual Revenues shall at all reasonable times be open to inspection by the other parties to this Collection Agreement or their designees, subject to applicable confidentiality restrictions, if any.

(b) No party hereto shall enter into any agreement amending any of the provisions relating to imposition of the PIF or RSF and payment of the Revenues contained in the Covenants or the Leases without the consent of the PIC, each Consent Party, and the City, if pertaining to the PIF Revenues, Centerra RSF Corp., if pertaining to the Centerra RSF Revenues, or Retail Prom, if pertaining to the Lifestyle RSF Revenues. Any such purported amendment or waiver shall be void and of no force and effect.

(c) The parties hereto shall at all times fully perform and comply with any agreements, covenants, terms and conditions imposed upon or assumed by them pertaining to the

PIF or the RSF. If either the PIC or the City fails to do so, the Trustee, if authorized by the District Bond Documents, may give written notice of such failure to the parties hereto. If the identified failure is not corrected within ten (10) days of the receipt of any such written notice, the Trustee may (but is not obligated to), if authorized by the District Bond Documents, take any action the Trustee reasonably deems necessary or desirable to prevent or to cure any default by the PIC or the City in the performance of or compliance with any of either party's covenants or obligations pertaining to such Revenues. If authorized by the District Bond Documents, the Trustee may (but is not obligated to) pay and expend such sums of moneys as the Trustee in its reasonable discretion deems necessary for this purpose.

(d) Pursuant to the Covenants, Centerra Owners are required to provide a listing of all Centerra Retailers that then occupy their Centerra Owned Property as provided in this subparagraph (d) and within ten business days of receipt of a written request therefore from the City. The City shall (i) upon learning of a new Centerra Owner, request such Centerra Owner to provide the name and address of any Centerra Retailer occupying property within the Development owned by such Centerra Owner within 30 days of execution of any such occupation agreement, and shall provide notice of any new Centerra Retailer to the Report Recipients on a periodic basis as agreed to with the PIC, the Centerra RSF Corp. and Retail Prom; (ii) upon a request thereof from any Bank Representative, the Trustee, the PIC, the Centerra RSF Corp. or Retail Prom, request a current listing of all Centerra Retailers then occupying Centerra Owned Property from Centerra Owners (to the extent then known by the City) on a periodic basis as requested by such Report Recipient and provide the resulting listings of Centerra Retailers to all Report Recipients. The parties hereto shall advise the City and all other parties hereto on or before the first day of each month of any new Centerra Owners and Centerra Retailers or change in Centerra Owners and Centerra Retailers of which such party has actual knowledge. Notwithstanding the foregoing, the City shall have primary responsibility for determining the identity of Centerra Retailers from time to time based on information received by it in connection with Centerra Retailers' application for Sales Tax licenses, reports received by Centerra Owners as provided herein and business establishment visits by the City as required by Section 2.06(f) hereof; provided, however, that the City shall not be responsible for any lost Revenues resulting from the failure to determine the identity of a Centerra Retailer and seek collection of Revenues therefrom if the City has made reasonable efforts to determine the identities of all Centerra Retailers as provided herein. The parties hereto shall exercise their rights under the Covenants to obtain from Centerra Owners such other information reasonably requested by the parties hereto to allow them to fulfill their respective obligations under this Collection Agreement.

(e) Pursuant to the Covenants, Centerra Retailers are required to provide to the City a waiver in a form substantially similar to the forms set forth in **Exhibit I** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom. The City shall only be responsible for providing the reports described herein with respect to those Centerra Retailers for which the City has received such a waiver.

(f) In the event any party to this Collection Agreement receives actual notice in writing with respect to any action in bankruptcy by a Centerra Retailer, such party shall as soon

as practicable give written notice or convey copies of the written notice it received to the City and all Report Recipients.

(g) In the event that any party hereto receives or otherwise possesses any Revenues to which, pursuant to this Collection Agreement, another party is entitled, the parties hereto hereby agree that each shall hold such funds in trust as an agent for the parties entitled thereto hereunder and under the Covenants, Assignments and the District Bond Documents and shall remit to the City, immediately and without demand, all such sums so received or otherwise in its possession, together with a statement indicating the source of such Revenues and, if applicable and known to such party, the Centerra Retailer and Collection Month to which such amounts relate. The City shall remit the same to the parties entitled thereto in accordance with Section 2.04 hereof.

Section 2.08 Fees and Reimbursable Expenses. In consideration of its performance of services hereunder, the City shall receive such fees and Reimbursable Expenses as are set forth on **Exhibit J** and as follows:

(a) Subject to subparagraph (b) hereof, the City shall receive, each calendar quarter in advance, in exchange for the services provided by it hereunder, 25% of the total fees and Reimbursable Expenses equal to the amount(s) set forth on **Exhibit J** hereto for any particular calendar year, subject to adjustment as provided in subparagraph (d) hereof. Subject to subparagraph (b) hereof, such fees and Reimbursable Expenses shall be payable on the first business day of each calendar quarter as follows: (i) 55% of the total amount of such fees and Reimbursable Expenses by the Service District, from funds available therefore in accordance with the terms of the District Bond Documents, which the Service District is hereby authorized by the PIC to pay; (ii) 31% of the total amount of such fees and Reimbursable Expenses by Retail Prom; and (iii) 14% of the total amount of such fees and Reimbursable Expenses by Centerra RSF Corp.; provided that such percentages of the total fee to be paid by each such party may be revised in accordance with a written agreement among the PIC, Retail Prom and Centerra RSF Corp., or their successors or assigns, in which event such parties shall only be obligated hereunder to pay to the City such revised percentages. No party shall be obligated to pay any portion of fees payable to the City in excess of the foregoing percentages attributable to such party (as the same may be revised). In the event that any party fails to pay its portion of fees to the City in accordance with the foregoing, the City shall continue to provide the services contemplated hereunder for the benefit of the remaining parties, unless the City has resigned with respect to such services in accordance with Section 3.03 hereof.

(b) Any time a new RSF and a new Primary Recipient for such new RSF is established, the distribution percentages for the payment of fees and Reimbursable Expenses set forth in subsection (a) above shall be reapportioned by the parties. At such time, the parties shall also have the opportunity to review and readjust the fees and Reimbursable Expenses set forth on **Exhibit J**,

(c) Extraordinary Reimbursable Expenses may only be incurred by the City after the receipt of written approval thereof by the PIC, Centerra RSF Corp. and Retail Prom. Upon receipt of such approval, Extraordinary Reimbursable Expenses shall be submitted and payable in the same manner as fees and Reimbursable Expenses set forth in subparagraph (a) hereof.

(d) The amount of the fees and Reimbursable Expenses set forth on **Exhibit J** shall be reviewed on or about June 1 of each year that this Agreement shall remain in effect, and adjustments to such fees and Reimbursable Expenses, by amount and type, may be made by the mutual written consent of all the parties hereto, provided that such adjustments are reasonable and based upon increases or decreases in actual costs of collection. Any such adjustments shall be reflected on an updated **Exhibit J** to be effective on January 1 of the calendar year following the annual June 1 review. Each annual updated **Exhibit J** shall be approved and signed by the parties, shall be appended hereto, and shall constitute an amendment of this Agreement. The City Manager shall be authorized to approve and sign annual updates of **Exhibit J** on behalf of the City.

Section 2.09 Authorization. The PIF Covenant and the RSF Covenants expressly authorize the PIC, Retail Prom and Centerra RSF Corp. to enter into a contract with the City, as a Designated Receiving Entity thereunder, pursuant to which such entity is authorized:

(a) to audit the books and records of the Centerra Retailers in determining compliance with the PIF and RSF collection and remittance obligations of Centerra Retailers under the PIF Covenant, RSF Covenants and Leases; and

(b) to release to the Report Recipients such audited information and any reports, returns and other documents as are delivered to the City by the Centerra Retailers and any relevant information gathered by the City during an audit or in reviewing such reports, returns or other documents.

ARTICLE 3
MISCELLANEOUS

Section 3.01 Beneficiaries Under Covenants and Leases. Notwithstanding the appointment of the City as the Designated Receiving Entity under the Covenants, the PIC, Centerra RSF Corp. and Retail Prom are the lawful recipients of the PIF Revenues, the Centerra RSF Revenues and the Lifestyle RSF Revenues, respectively, and, together with the Centerra Owners, are hereby and under the Covenants and Leases expressly made third party beneficiaries of the Centerra Retailers' obligations under the provisions relating to the payment of Revenues contained therein, including, but not limited to, the assessment, collection, and remittance of Revenues. Furthermore, for as long as the PIF Revenues are pledged to pay all or any portion of the District Bonds and any amounts are owed with respect to such District Bonds, any Bank and any other holder of the District Bond shall each be deemed a third party beneficiary under the Covenants and Leases of the Centerra Retailers' obligations under the provisions relating to the payment of the PIF Revenues contained therein, including, but not limited to, the assessment, collection, and remittance of PIF Revenues. Nothing in this Collection Agreement shall impair a Centerra Owner's right to enforce its rights against Centerra Retailers under the Leases.

Section 3.02 Sovereign Powers and Immunities of the City and the Service District. Nothing in this Collection Agreement shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers or immunities of the City or the Service District.

Section 3.03 Resignation; Removal; Assignment.

(a) The City may resign by written resignation given as provided in this Section 3.03 hereof to the other parties to this Collection Agreement and each Consent Party not less than 180 days before the date when such resignation is intended to take effect; provided, however, that the City may resign from its position as Designated Receiving Entity upon not less than 60 days' written notice given to the same parties before the date such resignation is intended to take effect in the event of nonpayment of any fees, Reimbursable Expenses and Extraordinary Reimbursable Expenses due and payable to the City hereunder. The City's resignation shall take place without the appointment of a successor to its duties hereunder; provided, however, if no agreement is entered into by the PIC, Centerra RSF Corp., Retail Prom, and the Service District with a successor agent, the PIC and Service District (with respect to the PIF), the Centerra RSF Corp. (with respect to the Centerra RSF) and Retail Prom (with respect to the Lifestyle RSF)shall assume all obligations of the City hereunder prior to the effectiveness of the City's resignation, provided that, in such event, any of the aforementioned entities may engage an agent to carry out its respective duties hereunder. The City may be removed at any time, with 180 days prior written notice, with respect to its duties relating to all of the PIF and RSF Revenues, with mutual consent of the PIC, Service District, Centerra RSF Corp. and Retail Prom, and, with respect to the City's duties relating to the PIF with the consent of each Consent Party and compliance with all applicable provisions of the District Bond Documents, after payment of all outstanding fees and Reimbursable Expenses of the City, by an instrument appointing a successor to perform the City's duties hereunder, executed by the PIC, Service District, Centerra RSF Corp. and Retail Prom, and with respect to the City's duties relating to the PIF with the consent of each Consent Party. The City may also resign or be removed at any time, with 180 days prior written notice for any removal, with respect to its duties hereunder provided in connection with any one of the PIF Revenues (by the direction of the PIC with the consent of the Service District, the Trustee, and each Consent Party), the Lifestyle RSF Revenues (by the direction of Retail Prom) or Centerra RSF Revenues (by the direction of Centerra RSF Corp.). In such event, (i) the PIC (with the consent of the Service District, Trustee and each Consent Party), Retail Prom and Centerra RSF Corp. may each select separately a successor Designated Receiving Entity with respect to PIF Revenues, Lifestyle RSF Revenues and Centerra RSF Revenues, respectively, and (ii) the remaining parties shall pay their proportionate share of the fees and Reimbursable Expenses as set forth in Section 2.08(a) hereof. In the event that the City resigns or is removed as provided herein, the City agrees to provide, no later than 60 days after the notice of such resignation or removal, to the PIC, Centerra RSF Corp, Retail Prom, Service District, any Bank Representative, and the Trustee, an electronic copy of all data files relating to the collection of Revenues hereunder as well as all previously retained documentation relating to the collection of Revenues hereunder (provided such previously retained documentation remains within the custody of the City).

(b) This Collection Agreement may not be assigned by any party hereto for any reason other than to a successor by operation of law or with the prior written consent of the other

parties to this Collection Agreement; provided, however, that each of the Retail Prom and Centerra RSF Corp. may assign its rights and obligations hereunder to a successor "Primary RSF Recipient" designated in accordance with the terms of the Centerra RSF Covenant or Lifestyle RSF Covenant, respectively; and further provided that the Service District and the PIC may assign any of their rights hereunder pursuant to the District Bond Documents without the prior consent of any party hereto.

Section 3.04 Continuation After Termination of PIF. The parties hereto acknowledge their current intent that the City continue to collect RSF Revenues following any termination in the collection of PIF Revenues; provided, however, that such acknowledgement shall in no manner alter the rights of any parties hereto with respect to resignation or removal of the City as provided in Section 3.03 hereof; further, it is anticipated that such continuation of collection following termination of the PIF may require the renegotiation of fees and parties responsible for the payment thereof.

Section 3.05 Notices. All notices, certificates or other communications to be given hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail return receipt requested, postage prepaid, or sent by a confirmed facsimile addressed as follows:

If to City:	City of Loveland ATTN: City Manager 500 East Third Street Loveland, CO 80537 Fax: (970) 962-2900
With a copy to:	City of Loveland ATTN: City Attorney 500 East Third Street Loveland, CO 80537 Fax: (970) 962-2900
If to Retail Prom:	G&I VI Promenade, LLC c/o DRA Advisors, LLC ATTN: Peter Janoff 220 E. 42nd St., 27th Floor New York, NY 10017 Fax: (212) 697-7405
With a copy to:	Blank Rome LLP Attn: Martin Luskin The Chrysler Building 405 Lexington Avenue New York, NY 10174-0208 Fax: (917) 332-3714

If to the PIC:	Centerra Public Improvement Collection Corporation ATTN: Jay Hardy, President 2725 Rocky Mountain Ave, Suite 200 Loveland, CO 80538 Fax: (970) 635-3003
With a copy to:	Icenogle Seaver Pogue, P.C. ATTN: Alan D. Pogue, Esq. 4725 S. Monaco St., Suite 225 Denver, CO 80237 Fax (303) 292-9101
If to Centerra RSF Corp.:	Centerra Retail Sales Fee Corporation ATTN: Joshua Kane, President 2725 Rocky Mountain Ave, Suite 200 Loveland, CO 80538 Fax: (970) 635-3003
With a copy to:	Icenogle Seaver Pogue, P.C. ATTN: Alan D. Pogue, Esq. 4725 S. Monaco St., Suite 225 Denver, CO 80237 Fax (303) 292-9101
If to Service District:	Centerra Metropolitan District No. 1 ATTN: Peggy Dowswell 5110 Granite St., Suite C Loveland, CO 80538 Fax (970) 669-3612
With a copy to:	Icenogle Seaver Pogue, P.C. ATTN: Alan D. Pogue, Esq. 4725 S. Monaco St., Suite 225 Denver, CO 80237 Fax (303) 292-9101

Section 3.06 Third Party Beneficiaries of this Collection Agreement. It is expressly understood and agreed that enforcement of the terms and conditions of this Collection Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Report Recipients (excluding any Dissemination Agent), and with respect to the PIF, any Bank

as well as the Report Recipients, the Enforcing Parties and their respective successors and assigns (including Centerra Investors), and nothing contained in this Collection Agreement shall give or allow any such claim or right of action by any other person with respect to this Collection Agreement.

Section 3.07 Binding Effect. This Collection Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. Notwithstanding anything herein to the contrary: (a) Centerra RSF Corp. and Retail Prom shall have no rights related to the PIF Revenues, including, without limitation, the calculation, collection, or payment thereof; (b) the PIC and Retail Prom shall have no rights related to the Centerra RSF Revenues, including, without limitation, the calculation, collection, or payment thereof; and (c) the PIC and Centerra RSF Corp. shall have no rights related to the Lifestyle RSF Revenues, including, without limitation, the calculation, collection, or payment thereof. By means of example, neither Retail Prom nor Centerra RSF Corp. shall have any right to inspect the books and documents in possession of the other party under Section 2.07(a) hereof except to the extent that such books and documents are pertinent to the Lifestyle RSF Fees or the Centerra RSF Fees, respectively.

Section 3.08 Amendments. This Collection Agreement may only be amended, changed, modified or altered in writing signed by all parties hereto; provided, however, that:

(a) Amendments hereto affecting only: (i) PIF Revenues may be affected without the consent of the Centerra RSF Corp. or Retail Prom, but with the consent of the PIC, the Service District, the Trustee, the City, and each Consent Party; (ii) Centerra RSF Revenues, may be affected without the consent of the PIC, the Service District or Retail Prom; and (iii) Lifestyle RSF Revenues, may be affected without the consent of the PIC, the Service District or the Centerra RSF Corp; and
(b) Amendments to provide for collection of future retail sales fees may be made by the City and the property owner creating the new retail sales fee.

Section 3.09 Computation of Time. In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is not a Business Day, the period is extended to include the next succeeding Business Day. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Section 3.10 Payments Due on a Day other than a Business Day. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Collection Agreement, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Collection Agreement.

Section 3.11 Severability. In the event that any provision of this Collection Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 3.12 Execution in Counterparts. This Collection Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 3.13 Applicable Law and Venue. This Collection Agreement shall be governed by and construed in accordance with the laws of the State. In the event of any dispute arising out of this PIF Covenant, the courts of the State of Colorado shall have exclusive jurisdiction over such dispute and venue shall be in the Larimer County District Courts.

Section 3.14 Indemnification by PIC, Centerra RSF Corp. and Retail Prom. The PIC, Centerra RSF Corp. and Retail Prom each hereby agree to indemnify and defend the City and its officers and employees against all claims or suits, including but not limited to, those for damages to property and injuries to persons, including accidental death, related to this Collection Agreement; provided, however that neither the PIC, nor Centerra RSF Corp., nor Retail Prom shall be responsible for indemnifying or defending the City for such claims or suits resulting from the negligence of the City or its officers or employees, or in the event that the City is in breach under this Agreement, and provided further, however, that no portion of the PIF Revenue may be used to satisfy the indemnification obligations hereunder.

Section 3.15 No Indemnification by City. The City cannot and does not agree to indemnify, hold harmless or exonerate the Service District, the PIC, Retail Prom, Centerra RSF Corp., any Centerra Owner, or any other person for any purpose whatsoever.

Section 3.16 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Collection Agreement.

This Collection Agreement is entered into and executed by the respective parties hereto as of the day and year first above written.

CITY OF LOVELAND, COLORADO, a Colorado municipal corporation

By: _____
William D. Cahill, City Manager

ATTEST:

By: _____
Terry Andrews, City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
Judith Yost Schmidt, Deputy City Attorney

CENTERRA METROPOLITAN DISTRICT NO. 1

By: _____
Kim L. Perry, President

G&I VI RETAIL PROM, LLC, a Delaware limited liability company

By: _____
David Luski, President

CENTERRA RETAIL SALES FEE CORPORATION, a Colorado nonprofit corporation

By:_____
Joshua Kane, President

CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION, a Colorado nonprofit corporation.

By:_____
Jay Hardy, President

EXHIBIT A
DEFINITIONS

Set forth below is a compilation of defined terms used in this Collection Agreement. Any terms not specifically defined herein shall have the meanings assigned them in the Indenture.

"*Bank*" means any provider(s) of a letter(s) of credit or other means of credit enhancement securing payment of District Bonds and any one or more lending institutions making a direct loan or loans to the Service District, which loan or loans constitute a District Bond.

"*Bank Representative*" means, initially, U.S. Bank National Association in its capacity as the Administrative Agent pursuant to that certain Loan Agreement dated June 8, 2011 among the Service District, the other Districts party thereto, Compass Bank, U.S. Bank National Association and the other lenders from time to time parties thereto, as the same may be amended or supplemented from time to time, and its successor or assigns pursuant to said Loan Agreement. The term "Bank Representative" shall also include any other party authorized in any District Bond Document to receive information or take actions permitted or authorized to be received or taken by the Bank Representative hereunder.

"*Business Day*" means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in (i) the State, or (ii) the State of New York are authorized or required by law to close or (b) a day on which the New York Stock Exchange is closed.

"*Centerra Owners*" means any Person who owns fee title to: (i) any portion of the PIF Property, if relating to the PIF Revenues or PIF Covenant; (ii) any portion of the Centerra RSF Property, if relating to the Centerra RSF Revenues or Centerra RSF Covenant; and (iii) any portion of the Lifestyle RSF Property, if relating to the Lifestyle RSF Revenues or Lifestyle RSF Covenant, and any successors thereof

"*Centerra Retailers*" mean retail tenants and business establishments located or to be located within Centerra Project.

"*Centerra RSF Corp.*" means Centerra Retail Sales Fee Corporation, or any successor or assignee thereof to the rights hereunder of Centerra Retail Sales Fee Corporation; provided that Centerra RSF Corp. shall provide notice of any such assignment to the City, the PIC and Retail Prom.

"*Centerra RSF Covenant*" means the Declaration of Covenants Imposing and Implementing the Centerra Retail Sales Fee recorded in the real property records of Larimer County, Colorado on July 6, 2004 at Reception No. 2004-0067082, as the same has been amended and may be amended in the future from time to time.

"*Centerra RSF Recipient*" means any entity so designated by Centerra RSF Corp. to receive all or any portion of the Centerra RSF Revenues; provided that Centerra RSF Corp. provides notice thereof to the City or any successor Designated Receiving Entity.

"*Centerra RSF Revenues*" means the revenues derived from the imposition of the Centerra RSF.

"*Centerra Retail Sales Fee*" or "*Centerra RSF*" means the retail sales fee required pursuant to the Leases and the Centerra RSF Covenant to be assessed by retail tenants and business establishments located or to be located within the Centerra RSF Property on all RSF Sales occurring within the Centerra RSF Property.

"*City*" means the City of Loveland, Colorado.

"*City Sales*" means retail sales transactions subject to the Sales Tax.

"*Collection Month*" means each calendar month in which the Revenues are collected by the Centerra Retailers.

"*Consent Party*" means any party who, under any District Bond Document, has a right to consent to an action taken or proposed to be taken under this Collection Agreement with respect to the PIF or the PIF Revenues.

"*Designated Receiving Entity*" means the entity designated to receive Revenues hereunder or any successor agreement relating to the collection of Revenues (initially, the City). In the event that, pursuant to the terms hereof, the Designated Receiving Entity is not the same for the PIF Revenues, the Centerra RSF Revenues and the Lifestyle Revenues, "Designated Receiving Entity" shall mean, with respect to the PIF Revenues, the Centerra RSF Revenues and the Lifestyle Revenues, the entities designated to received such Revenues by the PIC, Centerra RSF Corp. and Retail Prom, respectively.

"*Dissemination Agent*" means any entity charged with distributing information to purchasers of the District Bonds. In the event that other entities issue debt or obligations secured in whole or in part by any of the Revenues, "Dissemination Agent" shall also mean, with respect to the revenues securing such debt or obligations, any entity charged with distributing information to purchasers of such debt or obligations.

"*District Bond Documents*" means any bond, resolution, indenture, loan agreement, interest rate exchange agreement, reimbursement agreement or contract, pursuant to which the Service District incurs debt or other financial obligations, the repayment of which is secured, in whole or in part, by PIF Revenues, as contemplated by the MFA, and any other agreement pursuant to which the PIF Revenues are pledged to the repayment of the District Bonds.

"*District Bonds*" means the financial obligations of the Service District, which obligations may be in the form of bonds, notes, loan agreements, commercial paper, or other securities issued by the Service District pursuant to the provisions of the District Bond Documents, which are payable in whole or in part from the PIF Revenues and which payment is

secured by a pledge of and lien on, among other revenues, such PIF Revenues, including without limitation refunding bonds and variable rate bonds.

"*Enforcing Parties*" means (i) Declarants of the Centerra RSF Covenant, Centerra RSF Corp., and any other Centerra RSF Recipients, with respect to the Centerra RSF Revenues; (ii) Retail Prom and any other Lifestyle RSF Recipients, with respect to the Lifestyle RSF Revenues; and (iii) the PIC, the PID, the City, the Trustee, the Bank Representative, the Loveland Urban Renewal Authority, and the Service District, with respect to the PIF Revenues.

"*Extraordinary Reimbursable Expenses*" means any Reimbursable Expenses in excess of the amounts set forth on **Exhibit J** hereto reasonably incurred when performing extraordinary services under this Collection Agreement (for example, reasonable expenses incurred by the City in assisting in the receipt of delinquent Revenues).

"*First Delinquency Notice*" means a written notice sent by first class mail providing the following (to the extent applicable): (A) the Centerra Retailer has failed to remit Revenues during the preceding month; (B) the Centerra Retailer has remitted an incorrect amount of Revenues (C) requesting immediate payment of delinquent Revenues or any shortfall in Revenues; (D) advising that if the City does not receive such amounts by the 15th of the month (as evidenced by postmark), a late fee in the amount of the greater of 10% of the delinquent Revenues or $15 will be owed and default interest will be imposed at the rate of 1% per month (the "Default Rate") commencing on the 20th day of the first month following the close of the Collection Month. Such notice shall be substantially similar to the form set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom.

"*Information Booklets*" means, collectively, the Centerra Information Booklet and the Lifestyle Information Booklet, as described in Section 2.02(a), as such Information Booklets may be changed from time to time in accordance with the provisions hereof.

"*Leases*" means the leases entered into or to be entered into by Centerra Owners with retail tenants and business establishments located or to be located within the PIF Property (including the Lifestyle RSF Property and the Centerra RSF Property). The term "*Leases*" shall also include any occupancy agreement, licenses, sales contracts or similar arrangements under which a Person may become a Centerra Retailer.

"*Lifestyle RSF Covenant*" means the Declaration of Covenants Imposing and Implementing the Lifestyle Retail Sales Fee recorded in the real property records of Larimer County, Colorado, as the same may be amended from time to time.

"*Lifestyle RSF Recipient*" means any entity so designated by Retail Prom to receive all or any portion of the Lifestyle RSF Revenues; provided that Retail Prom provides notice thereof to the City or any successor Designated Receiving Entity.

"*Lifestyle RSF Revenues*" means the revenues derived from the imposition of the Lifestyle RSF.

"*Lifestyle Retail Sales Fee*" or "*Lifestyle RSF*" means the retail sales fee required pursuant to the Leases and the Lifestyle RSF Covenant to be assessed by retail tenants and business establishments located or to be located within the Lifestyle RSF Property on all RSF Sales occurring within the Lifestyle RSF Property.

"*Person(s)*" means an individual, firm, corporation, partnership, company, limited liability company, association, joint stock company, trust, body politic or any other unincorporated organization or any trustee, receiver, assignee, or other similar representative thereof.

"*Public Improvement Fee*" or "*PIF*" means the public improvement fee required pursuant to the Leases and the PIF Covenant to be assessed by retail tenants and business establishments located or to be located within the PIF Property on all PIF Sales occurring within the PIF Property.

"*PIF Covenant*" means the Declaration of Covenants Imposing and Implementing the Centerra Public Improvements Fee Centerra recorded in the real property records of Larimer County, Colorado on July 6, 2004 at Reception No. 2004-0067081, as the same has been amended and may be amended in the future from time to time.

"*PIF Revenues*" means the revenues derived from the imposition of the PIF.

"*PIF Sales*" shall mean and refer to any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property which are on the date of recording of this Covenant subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, plus any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property which are from time to time in the future subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, less any sales transactions specified by the PIC, with the consent of the City, as exempt from the Public Improvement Fee from time to time. Notwithstanding any of the foregoing, "PIF Sales" shall at no time include internet sales made from internet terminals in the business establishment of a Centerra Retailer within any portion of the PIF Property or catalog sales placed by telephone from the business establishment of a Centerra Retailer within any portion of the PIF Property.

"*Reimbursable Expenses*" means those reasonable expenses incurred by the City in the performance of its obligations under this PIF Collection Agreement, including, but not limited to, expenses relating to computer equipment, programming, software, licensing, Internet access, office supplies, including paper, pencils, notebooks, office equipment, including file cabinets, printers/copier costs, other expenses, including but not limited to postage, personal auto mileage, travel, legal fees, training, vendor education, printing, staff salaries and proportionate benefits.

"*Reported Taxed Sales*" means, for any period specified herein, net taxable sales (meaning the total of amount of sales less sales not subject to the Sales Tax) occurring from or within the Centerra in such period, based on monthly reports received by the City from Centerra Retailers.

"*Report Recipients*" mean: (i) (a) the City, the Districts, the Trustee, the Bank Representative, the PID, CPW and the PIC, if relating to the PIF Revenues or PIF Covenant; (b) Centerra RSF Corp., any Centerra RSF Recipient and any trustee for bonds secured by Centerra RSF Revenues, if relating to the Centerra RSF Revenues or Centerra RSF Covenant; and (c) Retail Prom and any Lifestyle RSF Recipient if relating to the Lifestyle RSF Revenues or Lifestyle RSF Covenant; (ii) with respect to the specific information of any particular Centerra Retailer, the Centerra Owner or Centerra Occupant leasing, subleasing or otherwise granting rights to such Centerra Retailer to occupy such Centerra Owner's or Centerra Occupant's Owned/Leased Centerra PIF or RSF Property, (iii) any Dissemination Agent; and (iv) any investor or potential investor in Centerra and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of Centerra or a prospective purchaser of any interest in CPW.

"Retail Prom" means G&I VI Retail Prom, LLC, a Delaware limited liability company, and its successors and assigns.

"*Revenues*" means, collectively, the RSF Revenues and the PIF Revenues.

"RSF" means collectively the Centerra RSF and the Lifestyle RSF, and any additional RSF added to this Collection Agreement by amendment.

"*RSF Covenants*" means, collectively, the Centerra RSF Covenant and the Lifestyle RSF Covenant, together with any additional retail sales fee covenants that may be added to this Agreement by amendment.

"*RSF Revenues*" means, collectively, the Centerra RSF Revenues and the Lifestyle RSF Revenues, together with any revenues from any additional retail sales fee covenants that may be added to this Agreement by amendment.

"*RSF Sales*" means any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the RSF Property which are on the date of recording of any RSF Covenant subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, plus any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the RSF Property which are from time to time in the future subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, less any sales transactions specified by the Primary RSF Recipient as exempt from the Retail Sales Fee from time to time; provided, however, that RSF Sales shall not include any transaction relating to passenger vehicles, whether new or used (except that this exclusion does not apply to transactions relating to automotive parts). Notwithstanding any of the foregoing, "RSF Sales"

shall at no time include internet sales made from internet terminals in the business establishment of a Centerra Retailer within any portion of the RSF Property or catalog sales placed by telephone from the business establishment of a Centerra Retailer within any portion of the RSF Property. References in this definition to "RSF Property" shall mean, with respect to the imposition of the Centerra RSF, the Centerra RSF Property, with respect to imposition of the Lifestyle RSF, the Lifestyle RSF Property, and with respect to the imposition of any additional retail sales fee added to this Agreement by amendment, the property subjected to such RSF Covenant.

"*Sales*" means RSF Sales and PIF Sales.

"*Sales Tax*" means that tax levied by the City pursuant to the Sales Tax Ordinances.

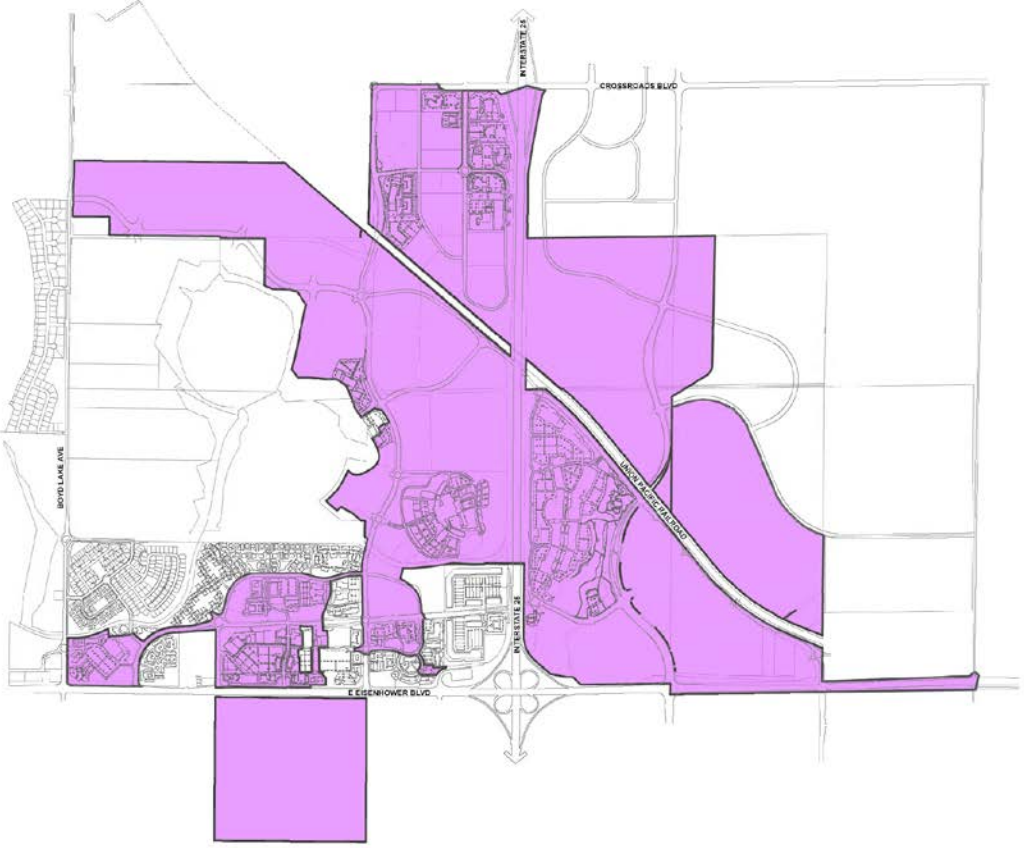
"*Sales Tax Ordinances*" means the Chapter 3.16 of the City's Municipal Code, but only to the extent pertaining to sales tax and not use tax, and regulations promulgated thereto, but only to the extent pertaining to sales tax and not use tax, both as amended from time to time.

"*Second Delinquency Notice*" means a written notice sent by first class mail providing the following (to the extent applicable): (A) the Centerra Retailer has failed to remit Revenues during the preceding month; (B) the Centerra Retailer has remitted an incorrect amount of Revenues (C) requesting immediate payment of delinquent Revenues or any shortfall in Revenues; (D) advising that a late fee in the amount of the greater of 10% of the delinquent PIF Revenues or $15 is now owed and default interest at the rate of 1% per month (the "Default Rate") is accruing from the 20th day of the first month following the close of the Collection Month. Such notice shall be substantially similar to the form set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom.

"*Trustee*" means any trustee under any indenture of trust or similar agreement, which provides for the application of PIF Revenues in connection with any District Bonds. Trustee shall also mean any custodian under any custodial or similar agreement, which provides for application of PIF Revenues in connection with any District Bonds. As of the effective date of this Agreement, U.S. Bank National Association acting in a capacity as a Custodian under that certain Custodial Agreement dated as of June 8, 2011 among the Service District, the PIC, U.S. Bank National Association (as successor to UMB Bank, n.a.), as Custodian, and U.S. Bank National Association, as Administrative Agent on behalf of the Lenders. The Service District shall notify the City and the PIC of any change in the Trustee within ten (10) days of such change.

"*Waiver of Confidentiality*" means the Waiver of Confidentiality, in a form substantially similar to the form set forth in **Exhibit I** hereto.

EXHIBIT B
PIF PROPERTY



CENTERRA
Loveland, CO

CENTERRA PUBLIC IMPROVEMENTS FEE (PIF) AREA

LEGEND

Public Improvements Fee (PIF) Area

Date: October 14, 2011

Prepared By:

McWHINNEY
www.mcwhinney.com
970-962-9900

N

(Not To Scale)

Note: This information and/or illustration, although deemed to be reliable, is conceptual in nature and McWhinney and/or its affiliates make no guarantees to its accuracy. The information shown here is subject to change at any time.

EXHIBITS C AND D
CENTERRA AND LIFESTYLE RSF PROPERTY

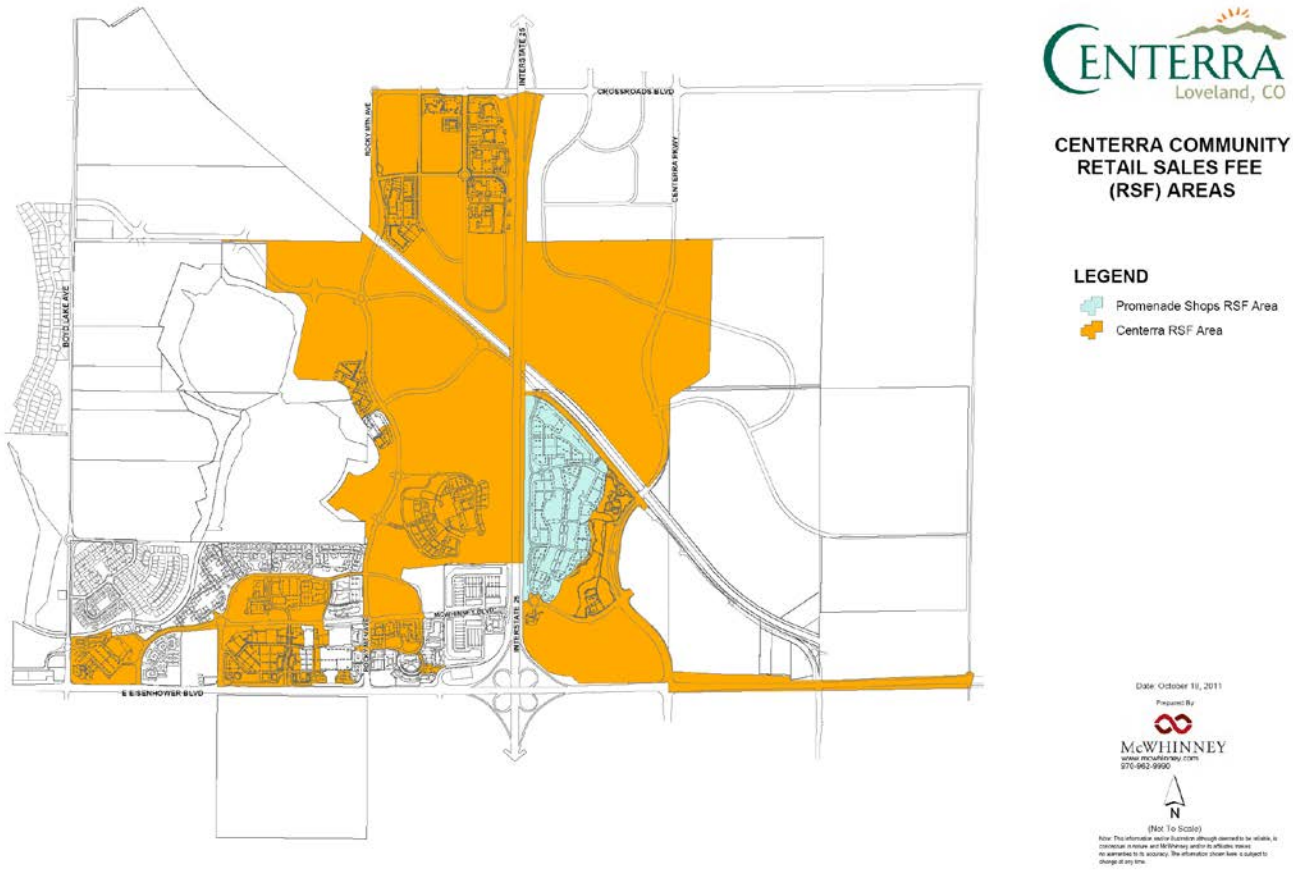


EXHIBIT E
REPORTING FORMS

PIF REVENUES FORM

CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION
PUBLIC IMPROVEMENT FEE ADMINISTRATION
C/O CITY OF LOVELAND SALES TAX ADMINISTRATION
PO BOX 892 · LOVELAND, CO 80539
(970) 962-2707

PIF PAYMENT FORM

PERIOD	DUE DATE	CITY ACCT #

COMPUTATION OF PUBLIC IMPROVEMENT FEE

1.	GROSS SALES and SERVICES		
2.	Less Sales/Services not subject to the Public Improvement Fee (Retain your records for three years)		
3.	Net Sales Subject to Public Improvement Fee (Line 1 minus Line 2)		
4.	Public Improvement Fee Collected (1.25% of Line 3)		
5.	Excess Public Improvement Fee Collected		
6.	Total Public Improvement Fee Due and Payable (Add Line 4 and Line 5)		
7.	Adjustments Prior Periods	ADD (Additional Amount Due)	
		Deduct (Credit Due to Merchant)	
8.	Late Filing Penalty	Penalty: 10% of line 6 or $15.00 whichever is greater	
		Interest: 1% of line 6 per month	
9.	**TOTAL PUBLIC IMPROVEMENT FEE DUE AND PAYABLE Payable to: CENTERRA PUBLIC IMPROVEMENT COLLECTION CORP**		

PIF Payment Form Instructions

Line 1: Report all sales made during the period covered
Line 2: Deduct only those exempted sales allowed. These exemptions are the same as the City of Loveland's sales tax exemptions.
Line 3: To calculate sales subject to PIF, subtract Line 2 from Line 1
Line 4: To calculate the PIF due, multiply Line 3 by 1.25%
Line 5: Any excess PIF collected must be reported on Line 5 and remitted
Line 6: To calculate the total PIF due, add Line 4 and Line 5
Line 7: Add or deduct any under or overpayment from previous periods
Line 8: Add 10% or $15.00 whichever is greater and Interest is calculated at 1% per month
Line 9: To calculate, total PIF due, add Line 6, 7 and 8

Make Checks Payable To: CENTERRA PUBLIC IMPROVEMENT COLLECTION CORP

NEW BUSINESS DATE MO. DAY YEAR DISCONTINUED DATE MO. DAY YEAR 1.If ownership has changed, give date of change and new owner's name. 2.If business has been permanently discontinued, give date discontinued. 3.If business location has changed, give new address. 4.If business is temporarily closed, give dates to be closed. 5.If business is seasonal, give months of operation.	SHOW BELOW CHANGE OF OWNERSHIP, NAME AND/OR ADDRESS, ETC ☐ BUS. ADDRESS ☐ MAILING ADDRESS	I, hereby certify, under penalty of perjury, that the statements made herein are to the best of my knowledge true and correct. By: Company: Phone: Title: Date:

LIFESTYLE RSF REVENUES FORM

G & I VI PROMENADE LLC
RETAIL SALES FEE ADMINISTRATION
C/O CITY OF LOVELAND SALES TAX ADMINISTRATION
PO BOX 1386 · LOVELAND, CO 80539
(970) 962-2707

RSF PAYMENT FORM

PERIOD	DUE DATE	CITY ACCT #

COMPUTATION OF RETAIL SALES FEE

1.	GROSS SALES and SERVICES		
2.	Less Sales/Services not subject to the Retail Sales Fee (Retain your records for three years)		
3.	Net Sales Subject to Retail Sales Fee (Line 1 minus Line 2)		
4.	Retail Sales Fee Collected (1.0% of Line 3)		
5.	Excess Retail Sales Fee Collected		
6.	Total Retail Sales Fee Due and Payable (Add Line 4 and Line 5)		
7.	Adjustments	ADD (Additional Amount Due)	
	Prior Periods	Deduct (Credit Due to Merchant)	
8.	Late Filing	Penalty: 10% of line 6 or $15.00 whichever is greater	
	Penalty	Interest: 1% of line 6 per month	
9.	**TOTAL RETAIL SALES FEE DUE AND PAYABLE** **Payable to: G & I VI PROMENADE LLC**		

RSF Payment Form Instructions

Line 1: Report all sales made during the period covered
Line 2: Deduct only those exempted sales allowed. These exemptions are the same as the City of Loveland's sales tax exemptions.
Line 3: To calculate sales subject to RSF subtract Line 2 from Line 1
Line 4: To calculate the RSF due, multiply Line 3 by 1.0%
Line 5: Any excess RSF collected must be reported on Line 5 and remitted
Line 6: To calculate the total RSF due, add Line 4 and Line 5
Line 7: Add or deduct any under or overpayment from previous periods
Line 8: Add 10% or $15.00 whichever is greater and Interest is calculated at 1% per month
Line 9: To calculate, total RSF due, add Line 6, 7 and 8

Make Checks Payable To: G & I VI PROMENADE LLC

NEW BUSINESS DATE MO. DAY YEAR

DISCONTINUED DATE MO. DAY YEAR

1. If ownership has changed, give date of change and new owner's name.
2. If business has been permanently discontinued, give date discontinued.
3. If business location has changed, give new address.
4. If business is temporarily closed, give dates to be closed.
5. If business is seasonal, give months of operation.

SHOW BELOW CHANGE OF OWNERSHIP, NAME AND/OR ADDRESS, ETC

☐ BUS. ADDRESS ☐ MAILING ADDRESS

I, hereby certify, under penalty of perjury, that the statements made herein are to the best of my knowledge true and correct.

By:
Company:
Phone:
Title: Date:

CENTERRA RSF REVENUES FORM

CENTERRA RETAIL SALES FEE CORPORATION
RETAIL SALES FEE ADMINISTRATION
C/O CITY OF LOVELAND SALES TAX ADMINISTRATION
PO BOX 1405 · LOVELAND, CO 80539
(970) 962-2707

RSF PAYMENT FORM

PERIOD	DUE DATE	CITY ACCT #

COMPUTATION OF RETAIL SALES FEE

1.	GROSS SALES and SERVICES		
2.	Less Sales/Services not subject to the Retail Sales Fee (Retain your records for three years)		
3.	Net Sales Subject to Retail Sales Fee (Line 1 minus Line 2)		
4.	Retail Sales Fee Collected (1.0% of Line 3)		
5.	Excess Retail Sales Fee Collected		
6.	Total Retail Sales Fee Due and Payable (Add Line 4 and Line 5)		
7.	Adjustments Prior Periods	ADD (Additional Amount Due)	
		Deduct (Credit Due to Merchant)	
8.	Late Filing Penalty	Penalty: 10% of line 6 or $15.00 whichever is greater	
		Interest: 1% of line 6 per month	
9.	**TOTAL RETAIL SALES FEE DUE AND PAYABLE** **Payable to: CENTERRA RETAIL SALES FEE CORPORATION**		

RSF Payment Form Instructions

Line 1: Report all sales made during the period covered
Line 2: Deduct only those exempted sales allowed. These exemptions are the same as the City of Loveland's sales tax exemptions.
Line 3: To calculate sales subject to RSF subtract Line 2 from Line 1
Line 4: To calculate the RSF due, multiply Line 3 by 1.0%
Line 5: Any excess RSF collected must be reported on Line 5 and remitted
Line 6: To calculate the total RSF due, add Line 4 and Line 5
Line 7: Add or deduct any under or overpayment from previous periods
Line 8: Add 10% or $15.00 whichever is greater and Interest is calculated at 1% per month
Line 9: To calculate, total RSF due, add Line 6, 7 and 8

Make Checks Payable To: CENTERRA RETAIL SALES FEE CORPORATION

NEW BUSINESS DATE MO. DAY YEAR DISCONTINUED DATE MO. DAY YEAR 1. If ownership has changed, give date of change and new owner's name. 2. If business has been permanently discontinued, give date discontinued. 3. If business location has changed, give new address. 4. If business is temporarily closed, give dates to be closed. 5. If business is seasonal, give months of operation.	SHOW BELOW CHANGE OF OWNERSHIP, NAME AND/OR ADDRESS, ETC ☐ BUS. ADDRESS ☐ MAILING ADDRESS	I, hereby certify, under penalty of perjury, that the statements made herein are to the best of my knowledge true and correct. By: Company: Phone: Title: Date:

EXHIBIT F
FORM OF FIRST DELINQUENCY NOTICE
FORM OF SECOND DELINQUENCY NOTICE

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

First Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Public Improvement Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Public Improvement Fee Schedule and payment. If you are experiencing difficulty preparing the Schedule, please feel free to contact me with any questions. I am also available by appointment for individual assistance.

As a result you are being charged a late fee in an amount equal to the greater of 10% of the delinquent PIF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid.

Payment must be made payable to Centerra Public Improvement Collection Corporation and mailed to PO Box 892, Loveland, CO 80539.

Please contact me if you need PIF Schedules mailed or faxed. Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

Second Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Public Improvement Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Public Improvement Fee Schedule and payment as requested in our First Delinquency Notice on [date of first notice]. As a result, a late fee is now due in an amount equal to the greater of 10% of the delinquent PIF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid, accruing since [date period was due].

Payment must be made payable to Centerra Public Improvement Collection Corporation and mailed to PO Box 892, Loveland, CO 80539.

If you are experiencing difficulty preparing your schedule, please feel free to contact me with any questions.

Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

First Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Retail Sales Fee Schedule and payment. If you are experiencing difficulty preparing the Schedule, please feel free to contact me with any questions. I am also available by appointment for individual assistance.

As a result you are being charged a late fee in an amount equal to the greater of 10% of the delinquent RSF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid.

Payment must be made payable to G & I VI Promenade, LLC and mailed to PO Box 1386, Loveland, CO 80539.

Please contact me if you need RSF Schedules mailed or faxed. Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

Second Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Retail Sales Fee Schedule and payment as requested in our First Delinquency Notice on [date of first notice]. As a result, a late fee is now due in an amount equal to the greater of 10% of the delinquent RSF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid, accruing since [date period was due].

Payment must be made payable to G & I VI Promenade LLC, and mailed to PO Box 1386, Loveland, CO 80539.

If you are experiencing difficulty preparing your schedule, please feel free to contact me with any questions.

Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

First Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Retail Sales Fee Schedule and payment. If you are experiencing difficulty preparing the Schedule, please feel free to contact me with any questions. I am also available by appointment for individual assistance.

As a result you are being charged a late fee in an amount equal to the greater of 10% of the delinquent RSF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid.

Payment must be made payable to Centerra Retail Sales Fee Corporation and mailed to PO Box 1386, Loveland, CO 80539.

Please contact me if you need RSF Schedules mailed or faxed. Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

City of Loveland

CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

Second Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBA$name] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period$description] Retail Sales Fee Schedule and payment as requested in our First Delinquency Notice on [date of first notice]. As a result, a late fee is now due in an amount equal to the greater of 10% of the delinquent RSF Revenues or $15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid, accruing since [date period was due].

Payment must be made payable to Centerra Retail Sales Fee Corporation and mailed to PO Box 1386, Loveland, CO 80539.

If you are experiencing difficulty preparing your schedule, please feel free to contact me with any questions.

Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXX
Revenue & Licensing Agent
City of Loveland
XXXXX@ci.loveland.co.us

cc: File
Report Recipients

EXHIBIT G
NOTICE OF VIOLATION OF COVENANT

OFFICIAL NOTICE

VIOLATION OF PUBLIC IMPROVEMENT FEE AND/ OR RETAIL SALES FEE REQUIREMENTS

This letter serves as official notice that on _____ (date), at _____ (time)

_____ (business) located in Suite _____ (number) at

_____, is in violation of the Public Improvement Fee and/or

Retail Sales Fee requirements as described in the Collection Agreement as follows:

- ☐ Placard not displayed by sales register.
- ☐ Public Improvement Fee combined with Sales Tax Receipt.
- ☐ Retail Sales Fee combined with Sales Tax Receipt
- ☐ Public Improvement Fee not charged on receipt.
- ☐ Retail Sales Fee not charged on receipt.
- ☐ PIF and or RSF fee rate is incorrect. PIF should be 1.25%, RSF should be 1.0% of all tangible personal property sales (See Attached Detail for corrections)
- ☐ Tenant does not have a Public Improvement Fee or Retail Sales Fee Account registered with the City.
- ☐ Other _____

This violation must be resolved by _____

If you have any questions on your PIF or RSF requirements, please contact _____

at _____.

Store Recipient _____
Print Name

Recipient Signature: _____

Inspector Initials: _____

U:\5 PROJECTS\Collection Agreement\2011 Negotiations\Exhibit H - Forms\Draft-ViolationNotice revised PIF - RSF combined.docx

EXHIBIT H
FORM OF MONTHLY REPORTS

Promenade Shops
Monthly Sales and Public Improvement Fee Collection
June 2011 Reporting Period

Store/ Company	Net Sales Subject to PIF	PIF Paid	Credit/ Balance	Non Filer	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Aeropostale						
Als Formal Specialties						
American Eagle Outfitters						
Amy's Hallmark						
AnnTaylor						
Banana Republic						
Barnes & Noble						
Bath & Body Works						
Bebe						
Bent Fork Grill						
Best Buy						
Biaggi's						
Build A Bear Workshop						
Charlotte Russe Inc						
Chicos						
Christopher & Banks						
Cingular Wireless						
The Buckle Inc						
The Childrens Place						
The Finish Line						
The Great Frame Up						
Victoria's Secret						
White House Black Market						
Yankee Candle						
Zales						
Zumiez						
New Store						
SUBTOTAL	-	-	-		-	

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to PIF	PIF Paid	Period		Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Aeropostale						
Als Formal Specialties						
American Eagle Outfitters						
Amy's Hallmark						
AnnTaylor						
Banana Republic						
Barnes & Noble						
Bath & Body Works						
Bebe						
Bent Fork Grill						
Best Buy						
Biaggi's						
Build A Bear Workshop						
Charlotte Russe Inc						
Chicos						
Christopher & Banks						
Cingular Wireless						
The Buckle Inc						
The Childrens Place						
The Finish Line						
The Great Frame Up						
Victoria's Secret						
White House Black Market						
Yankee Candle						
Zales						
Zumiez						
New Store						
SUB TOTAL	-	-			-	
GRAND TOTAL	-	-			-	

Centerra Marketplace
Monthly Sales and Public Improvement Fee Collection
June 2011 Reporting Period

Store/ Company	Net Sales Subject to PIF	PIF Paid	Credit/ Balance	Non Filer	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Banfield Pet Hospital						
Bed Bath & Beyond						
CAFE 2500						
Chick-fil-A						
Chipotle Mexican Grill						
Colorado Celtne						
CO's Bldg						
Davidson's						
Five Star Nails						
Front Range Plastic						
Good Day Pharmacy						
Good Times						
Jared Galleria						
Jeans Stores						
Justice						
King GMC						
Lane Bryant						
Marshalls						
Maurices						
Medical Center of the Rockies						
Mimis						
Noodles & Company						
Northern Colo Fitness Club						
Old Chicago						
Old Navy						
Panera Bread						
Petfood Shoe Source						
PetSmart						
Pier One						
PVHS Home Medical Supply						
Residence Inn						
Ross						
Sally Beauty						
Shoe Carnival						
Staples						
T Mobile						
The Market Place at MDR						
VSM Sewing						
New Store						
SUB TOTAL	-	-	-		-	-

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to PIF	PIF Paid	Period		Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Banfield Pet Hospital						
Bed Bath & Beyond						
CAFE 2500						
Chick-fil-A						
Chipotle Mexican Grill						
Colorado Celtne						
CO's Bldg						
Davidson's						
Five Star Nails						
Front Range Plastic						
Good Day Pharmacy						
Good Times						
Jared Galleria						
Jeans Stores						
Justice						
King GMC						
Lane Bryant						
Marshalls						
Maurices						
Medical Center of the Rockies						
Mimis						
Noodles & Company						
Northern Colo Fitness Club						
Old Chicago						
Old Navy						
Panera Bread						
Petfood Shoe Source						
PetSmart						
Pier One						
PVHS Home Medical Supply						
Residence Inn						
Ross						
Sally Beauty						
Shoe Carnival						
Staples						
T Mobile						
The Market Place at MDR						
VSM Sewing						
New Store						
SUB TOTAL	-	-			-	-
GRAND MONTHLY TOTAL	-	-			-	-

Promenade Shops
Monthly Sales and Retail Sales Fee Collection
June 2011 Reporting Period

Store/ Company	Net Sales Subject to RSF	RSF Paid	Credit/ Balance	Non Filer	Gross Sales Reported to City of Loveland
Aeropostale					
Als Formal Specialties					
American Eagle Outfitters					
Amy's Hallmark					
AnnTaylor					
Banana Republic					
Barnes & Noble					
Bath & Body Works					
Bebe					
Bent Fork Grill					
Best Buy					
Biaggi's					
Build A Bear Workshop					
Charlotte Russe Inc					
Chicos					
Christopher & Banks					
Cingular Wireless					
The Buckle Inc					
The Childrens Place					
The Finish Line					
The Great Frame Up					
Victoria's Secret					
White House Black Market					
Yankee Candle					
Zales					
Zumiez					
New Store					
SUBTOTAL	-	-	-		-

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to RSF	RSF Paid	Period		Gross Sales Reported to City of Loveland
Aeropostale					
Als Formal Specialties					
American Eagle Outfitters					
Amy's Hallmark					
AnnTaylor					
Banana Republic					
Barnes & Noble					
Bath & Body Works					
Bebe					
Bent Fork Grill					
Best Buy					
Biaggi's					
Build A Bear Workshop					
Charlotte Russe Inc					
Chicos					
Christopher & Banks					
Cingular Wireless					
The Buckle Inc					
The Childrens Place					
The Finish Line					
The Great Frame Up					
Victoria's Secret					
White House Black Market					
Yankee Candle					
Zales					
Zumiez					
New Store					
SUB TOTAL	-	-			-
GRAND TOTAL	-	-			-

Centerra Marketplace
Monthly Sales and Retail Sales Fee Collection
June 2011 Reporting Period

Store/ Company	Net Sales Subject to RSF	RSF Paid	Credit/ Balance	Non Filer	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Banfield Pet Hospital						
Bed Bath & Beyond						
CAFE 2500						
Chick-fil-A						
Chipotle Mexican Grill						
Colorado Cellar						
CO's Bldg						
Davidson's						
Five Star Nails						
Front Range Plastic						
Good Day Pharmacy						
Good Times						
Lund Galleria						
Lyons Stores						
Justice						
King GMC						
Lane Bryant						
Marshalls						
Maurices						
Medical Center of the Rockies						
Mimis						
Noodles & Company						
Northern Colo Fitness Club						
Old Chicago						
Old Navy						
Panera Bread						
Petsmart						
Pier One						
PVHS Home Medical Supply						
Residence Inn						
Ross						
Sally Beauty						
Shoe Carnival						
Staples						
T Mobile						
The Market Place at MDR						
VSM Sewing						
New Store						
SUB TOTAL	-	-	-		-	-

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to RSF	RSF Paid	Period		Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Banfield Pet Hospital						
Bed Bath & Beyond						
CAFE 2500						
Chick-fil-A						
Chipotle Mexican Grill						
Colorado Cellar						
CO's Bldg						
Davidson's						
Five Star Nails						
Front Range Plastic						
Good Day Pharmacy						
Good Times						
Lund Galleria						
Lyons Stores						
Justice						
King GMC						
Lane Bryant						
Marshalls						
Maurices						
Medical Center of the Rockies						
Mimis						
Noodles & Company						
Northern Colo Fitness Club						
Old Chicago						
Old Navy						
Panera Bread						
Petsmart						
Pier One						
PVHS Home Medical Supply						
Residence Inn						
Ross						
Sally Beauty						
Shoe Carnival						
Staples						
T Mobile						
The Market Place at MDR						
VSM Sewing						
New Store						
SUB TOTAL	-	-			-	-
GRAND MONTHLY TOTAL	-	-			-	-

EXHIBIT I
FORM OF WAIVER OF CONFIDENTIALITY

PARTIES TO LEASE:
LANDLORD: _____

TENANT: _____

DATE OF LEASE: _____

LEASE TERM: _____

PROPERTY/STORE
DESCRIPTION OR NAME: _____

ADDRESS OF TENANT: _____
_____

Tenant hereby acknowledges that it is a party to the above referenced Lease which contains provisions regarding the duty to impose and collect a Public Improvement Fee ("PIF") and a Retail Sales Fee ("RSF"), as specifically addressed in Sections 14.6 and 14.7, respectively, and also in Section 14.8 of said Lease. The undersigned is fully authorized to act on behalf of the Tenant in the matters covered by this Waiver of Confidentiality and, in such capacity, does hereby agree to the terms of Sections 14.6, 14.7 and 14.8 of the Lease. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in Exhibit A attached hereto.

With respect to the PIF, the Tenant specifically authorizes the PIF Designated Receiving Entity and any other PIF Enforcing Party to:

(i) audit the books and records of the Tenant in determining compliance with the PIF collection and remittance obligations of Tenant under the Lease; and

(ii) release to the PIF Report Recipients (but not to any other person or entity, except as required by law) such audited information and any reports, returns and other documents as are delivered to the PIF Designated Receiving Entity by the Tenant relating to the PIF and the sales tax imposed by the City of Loveland and any relevant information gathered by the PIF Designated Receiving Entity and any other PIF Enforcing Party during an audit or in reviewing such reports, returns or other documents relating to the PIF and the sales tax imposed by the City of Loveland; provided, however that any such information pertaining specifically to the Tenant provided to PIF Report Recipients described in subparagraph (iii) or (iv) of the definition of PIF Report Recipient (including Dissemination Agents) will be made only on an aggregated basis with the similar information submitted by other retailers in the same retail center in the Centerra development and/or all retailers in the Centerra development, and without separate identification (direct or indirect) of the PIF, the Sales (as defined in Section 14.8 of the Lease) or City or State sales taxes of such Tenant. Tenant hereby acknowledges that any such information will remain confidential, to the extent permitted or required by law, and be used only for purposes of collecting PIF Revenues due, enforcing Tenant's obligations under the Lease and otherwise monitoring compliance with the provisions thereof, except with respect to information provided to PIF Report Recipients described

in subparagraph (iii) or (iv) of the definition of PIF Report Recipient, and except for such disclosures or publications as may be required by applicable laws.

With respect to the RSF, the Tenant specifically authorizes the RSF Designated Receiving Entity and any other RSF Enforcing Party to:

(i) audit the books and records of the Tenant in determining compliance with the RSF collection and remittance obligations of Tenant under the Lease; and

(ii) release to the RSF Report Recipients (but not to any other person or entity, except as required by law) such audited information and any reports, returns and other documents as are delivered to the RSF Designated Receiving Entity by the Tenant relating to the RSF and the sales tax imposed by the City of Loveland and any relevant information gathered by the RSF Designated Receiving Entity and any other RSF Enforcing Party during an audit or in reviewing such reports, returns or other documents relating to the PIF and the sales tax imposed by the City of Loveland; provided, however that any such information pertaining specifically to the Tenant provided to RSF Report Recipients described in subparagraph (iii) or (iv) of the definition of RSF Report Recipient (including Dissemination Agents) will be made only on an aggregated basis with the similar information submitted by other retailers in the same retail center in the Centerra development and/or all retailers in the Centerra development, and without separate identification (direct or indirect) of the RSF, the Sales (as defined in Section 14.8 of the Lease) or City or State sales taxes of such Tenant. Tenant hereby acknowledges that any such information will remain confidential, to the extent permitted or required by law, and be used only for purposes of collecting RSF Revenues due, enforcing Tenant's obligations under the Lease and otherwise monitoring compliance with the provisions thereof, except with respect to information provided to RSF Report Recipients described in subparagraph (iii) or (iv) of the definition of RSF Report Recipient, and except for such disclosures or publications as may be required by applicable laws.

In addition, all audited information, reports, returns and other documents provided to the PIF Designated Receiving Entity and the RSF Designated Receiving Entity by Tenant shall be maintained by the Tenant for at least three (3) years from the date of submission thereof to the PIF Designated Receiving Entity or the RSF Designated Receiving Entity, respectively, and, upon written request, shall be made available to any PIF Enforcing Party and to any RSF Enforcing Party , respectively, for inspection and audit at the Tenant's place of business.

This waiver shall be in effect for any period of time during which a lease is in effect between the Tenant and Landlord, regardless of whether an initial term, a separate term or extension thereof, plus a period of three years beyond the termination of any such lease.

TENANT:
_____ (Name)

By: _____
Its: _____

EXHIBIT A
DEFINITIONS APPLICABLE TO TENANT WAIVER OF CONFIDENTIALITY

"City" shall mean and refer to the City of Loveland, Colorado.

"**Metro Districts**" shall mean and refer to Centerra Metropolitan District Nos. 1 through 4, inclusive, quasi-municipal corporations and political subdivisions of the State of Colorado to be organized and acting pursuant to the provisions of the Colorado Special District Act.

"PIC" shall mean and refer to The Centerra Public Improvement Collection Corporation, a non-profit corporation organized under the laws of the State of Colorado for the sole and exclusive purpose of collecting, holding and disbursing the Public Improvement Fee, and its successors and assigns.

"**PID**" shall mean and refer to The Centerra Public Improvement Development Corporation, or in the event of the dissolution or bankruptcy of such corporation, any other non-profit corporation organized by Centerra Properties West, LLC, under the laws of the State of Colorado for the purpose of constructing certain public improvements generally in the vicinity of Centerra and otherwise applying the Public Improvement Fees to the purposes permitted herein, and any such entity's successors and assigns

"**PIF Bond Trustee**" shall mean and refer to the trustee or trustees for the holders of any other obligations secured in whole or in part by the PIF revenues.

"**PIF Covenant**" means a Declaration of Covenants Imposing and Implementing the Centerra Public Improvement Fee relating to the PIF and recorded or to be recorded against certain real property, including the real property leased by Tenant under the Lease.

"PIF Designated Receiving Entity" shall mean and refer to any entity designated by the PIC from time to time to receive the Public Improvement Fee revenues and perform any other functions in connection with the Public Improvement Fee revenues, which may include the City. The designation of any such entity by the PIC shall be subject to the prior written approval of the City Manager, which approval shall not be unreasonably withheld; provided, however that if the City Manager's written approval is not received within 20 days of request therefore by the PIC, the City Manager shall be deemed to have given such approval. If no such entity has been designated by the PIC (and approved by the City Manager), references herein to "PIF Designated Receiving Entity" shall mean the PIC.

"**PIF Dissemination Agent**" shall mean and refer to any entity charged with providing information to purchasers of debt or obligations secured in whole or in part by the PIF revenues, which may include the PIF Bond Trustee**.**

"PIF Enforcing Party" shall mean and refer to any one (1) or more of the Declarants of the PIF Covenant, the Centerra Metropolitan District No. 1, the City, the Loveland Urban Renewal Authority, the PIF Bond Trustee, the PID, the PIC, any PIF Designated Receiving Entity, or any third party designated by any of the foregoing.

"PIF Report Recipient" (i) the PIC, the PIF Bond Trustee, the PID, Centerra Properties West, LLC, the Metro Districts, and the City, (ii) with respect to the specific information of the Tenant, the Landlord, (iii) any PIF Dissemination Agent; and (iv) any investor or potential investor in the Centerra development and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of the Centerra development or a prospective purchaser of any interest in Centerra Properties West, LLC.

"**Primary RSF Recipient**" shall mean and refer to [Centerra Retail Sales Fee Corporation][G&I VI Retail Prom, LLC] or any entity to whom the [Centerra Retail Sales Fee Corporation] [G&I VI Retail

Prom, LLC], or any subsequent Primary RSF Recipient, has assigned its rights in and control over, as provided in the RSF Covenant, the RSF revenues.

"**RSF Bond Trustee**" shall mean and refer to the trustee or trustees for the holders of any other obligations secured in whole or in part by the RSF revenues, if any.

"**RSF Covenant**" means a Declaration of Covenants Imposing and Implementing the [Centerra Retail Sales Fee] [Lifestyle Retail Sales Fee] relating to the RSF and recorded or to be recorded against certain real property, including the real property leased by Tenant under the Lease.

"RSF Designated Receiving Entity" shall mean and refer to any entity designated by the Primary RSF Recipient from time to time to receive the RSF revenues and perform any other functions in connection with the RSF revenues, which may include the City. If no such entity has been designated by the Primary RSF Recipient, references herein to "RSF Designated Receiving Entity" shall mean the Primary RSF Recipient.

"**RSF Dissemination Agent**" shall mean and refer to any entity charged with providing information to purchasers of debt or obligations secured in whole or in part by the RSF revenues, which may include the RSF Bond Trustee**.**

"RSF Enforcing Party" shall mean and refer to [Centerra Retail Sales Fee: any one (1) or more of the Declarants of the RSF Covenant, the Primary RSF Recipient, any RSF Designated Receiving Entity and other RSF Recipient, or any third party designated by any of the foregoing] [Lifestyle Retail Sales Fee: any one (1) or more of the Primary RSF Recipient, any RSF Designated Receiving Entity and other RSF Recipient, or any third party designated by any of the foregoing].

"**RSF Recipient**" shall mean and refer to any entity to whom the Declarants of the RSF Covenant, the Primary RSF Recipient or any other RSF Recipient has assigned all or any portion of its rights in and to the RSF Revenues.

"RSF Report Recipient" shall mean and refer to: (i) the Primary RSF Recipient, the RSF Bond Trustee, and any other RSF Recipient; (ii) with respect to the specific information of the Tenant, the Landlord, (iii) any RSF Dissemination Agent; and (iv) any investor or potential investor in the Centerra development and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of the Centerra development or a prospective purchaser of any interest in Centerra Properties West, LLC.

EXHIBIT J
SCHEDULE OF CITY'S FEES AND REIMBURSABLE EXPENSES

Basic Collections Agreement

Services		Estimated Annual Hours
Compliance Checks	Review register reciepts, placards, etc.	300
New Store set-up and Minor Enforcement	Store visits by Auditors to train and enforce fee collection policies and/or ensure payment of past due fees	125
Deposits	Per the City's separation of duties policies, an auditor prepares daily deposits 15-31 times each month	180
Daily and Monthly Accounting & Reporting	Manage returns, complete daily/monthly/annual reports, field vendor questions, all daily administration, Special/one time events	1040
General Administration and Supervision	Overview and supervision by Revenue Manager and Sales Tax Manager	117
	Total Estimated Hours - Collection	**1762**
	Annual Cost for 2013	**$ 71,000.00**

Discovery and Additional Enforcement

Discovery	20 discoveries per year	130
Audit	Maximum 5 audits per year	450
Collection Calls and Additional Enforcement	Full participation in the City's Delinquency Process	208
General Administration and Supervision	Overview and supervision by Revenue Manager and Sales Tax Manager	150
	Total Estimated Hours - Discovery/Enforcement	938
	Annual Cost for 2013	**$ 42,400.00**

Total Direct and Indirect Costs	Personal Services, Supplies, Purchased Services, (IT) Information Technology, Telecommunications, Legal & Facilities	$ 113,400

Total Estimated Hours - Collections/Discovery/Enforcement	$ 2,700
Your Total Annual Cost for 2013	**$ 113,400**
Percentage base on $4.3 million Total Collections	**2.64%**

Extraordinary Reimbursable Expenses

Audits	**In Excess of 5 audits per year (hourly rate)**	**$45 per hour**

Annual Approvals

City of Loveland - By: _____

Centerra Metropolitan District No. 1 - By: _____

G&I VI Retail Prom, LLC - By: _____

Centerra Retail Sales Fee Corporation - By: _____

Centerra Public Improvement Collection Corporation - By: _____

Revised 12/4/2012

CITY OF LOVELAND
FIRE & RESCUE DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

AGENDA ITEM: 7
MEETING DATE: 2/5/2013
TO: City Council
FROM: Randy Mirowski, Loveland Fire Rescue Authority
PRESENTER: Randy Mirowski

TITLE:
Contract Award – Heavy Rescue Truck Purchase for use by Loveland Fire Rescue Authority

RECOMMENDED CITY COUNCIL ACTION:
Motion to approve the purchase of a Heavy Rescue Truck for the new Fire Station 2 from SVI Trucks, Inc. for an amount not to exceed $635,000 and authorize the City Manager to sign the purchase order on behalf of the City

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 approving an expenditure exceeding $500,000 for the purchase of the Heavy Rescue Truck. Pursuant to Chapter 3.12 of the City Code, purchases exceeding $500,000 must be approved by City Council.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible
The truck purchase was included in the 2013 Fire Capital Expansion Fee budget with the construction of the new Fire Station 2 in the area of 29th Street and Wilson Avenue.

SUMMARY:
The heavy rescue squad was included in the Loveland Fire Rescue Authority Strategic Plan for implementation in Phase 2. It was appropriated for purchase in the 2013 Fire Capital Expansion Fee Fund and planned for delivery in 2014 as part of the expansion of new Fire Station 2. The heavy rescue squad performs a number of fire-rescue services; most of these have to do with

support operations for engine companies (forcible entry, search and rescue, laddering, ventilation, controlling utilities, and salvage and overhaul). In addition, these companies typically perform many of the more technical and specialized rescue functions (high angle, water rescue, trench rescue, and others). In the 2008 ISO evaluation, ISO recommended the addition of a service company (heavy rescue company) for the north and west portions of the fire response area. Currently, LFRA has one engine company operating out of Fire Station 2 performing the functions of both an engine company and a rescue company. Capital is required for the purchase of a heavy rescue squad vehicle for these support and technical rescue functions. The truck is a Super Vac (SVI) aluminum special service non-walk in body on a Spartan chassis tilt cab single axle vehicle.

The City has a membership with the Houston Galveston Area Council Cooperative Purchasing Program. This program has already conducted the competitive bidding process for a wide variety of products, including fire apparatus. SVI has a contract with HGAC through November 30, 2013 to provide fire apparatus according to the HGAC bid specifications, and they allow for up to 25% of the total contract price for options specific to the needs of the customer department (unpublished options). The customer department may also contract with the vendor for the specific apparatus purchase provided the contract is no less restrictive or in conflict with the SVI/HGAC contract. We have successfully used this cooperative purchasing program in the past (as recent as last year). Their comprehensive approach to the purchasing process for fire apparatus and our familiarity with SVI as a vendor for building our fire apparatus made it a favorable purchasing option. Our past experiences have shown that using HGAC has saved us time and money while still maintaining a competitive process. Because HGAC has already performed the competitive purchasing process, it assists the City with securing equipment more quickly. Each purchase contract costs the City $2,000. However, it is estimated that the cooperative purchasing program make the purchasing process so efficient that the process savings is well worth the fee. The $2,000 is included in the contract price of $634,982.

FINANCIAL: The total price of $635,000 is the amount that was planned and budgeted in the *2013 Annual Budget of the City of Loveland* (see page 21-34). This was a revised estimate/ expenditure for the heavy rescue truck and related equipment. The funding is part of the City's Capital Program and is being paid from Fire's Capital Expansion Fee (CEF) funding as part of the new and expanded services provided to the north and west side of the community.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

1. Signed contract
2. Proposal form from SVI*

*** NOTE:** The specifications document for the heavy rescue squad is available to City Council upon request. It has been held back from this cover sheet and request based on its size and technical nature; the document is 128 pages long.

(This page intentionally left blank)

CONTRACT

THIS CONTRACT is made and entered into this ____ day of _____, 2013, by and between the CITY OF LOVELAND, COLORADO, a home rule municipality ("City"), and SUPER VACUUM MANUFACTURING CO., INC, d/b/a SVI Trucks, a Colorado corporation ("Contractor").

The Contractor, in consideration of the sum to be paid to the Contractor by the City and of the covenants and agreements contained herein and in the contract documents, identified in the general conditions at section 1.0 and incorporated herein by reference, hereby agrees at the Contractor's own proper cost and expense to do all the work and furnish all the materials, tools, labor, and all appliances, machinery, and appurtenances for **one (1) custom-made Heavy Rescue Truck (Super Vac Aluminum Special Service Non-Walk in body on a Spartan Chassis Tilt Cab Single Axle)** in full compliance with the contract documents.

In consideration of the performance of the work as set forth in the contract documents, the City agrees to pay the Contractor a sum not to exceed Six Hundred Thirty Four Thousand Nine Hundred Eighty Two Dollars ($634,982.00), as adjusted in accordance with the contract documents or as otherwise herein provided, and to make such payments in the manner and at the times provided in the contract documents.

Time is the essence of this contract. The Contractor agrees to complete the work and deliver the equipment within the time set forth in the contract documents and to accept as full payment hereunder the quantities computed as determined by the contract documents and based on the unit prices set forth in the bid.

IN WITNESS WHEREOF, the parties have executed this contract as of the date first above written.

CITY OF LOVELAND, COLORADO

By:_____

Title: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

CONTRACTOR:

By:_____

Title: VICE PRESIDENT

ATTEST: (if corporation)

_____
Corporate Secretary

Date: December 3, 2012

Loveland Fire Department
Attn: Deputy Chief Ward
410 E. 5th Street
Loveland, CO 80537

Dear Chief Ward,

The following is our proposal to provide the following through HGAC: Super Vac Aluminum Special Service Non-Walk-In Body on a Spartan Chassis Tilt Cab Single Axle
BID # FS12-11 Fire Service Apparatus

H-GAC Category: DDD03 **BASE PRICE $ 345,823.00**

PUBLISHED OPTIONS:

Item #			
1	Change cab to Gladiator	$	49,750.00
3	Change cab to LFD	$	13,250.00
5	Change cab to 20" raised roof	$	7,500.00
19	LED lighting for cab exterior access compartment	$	495.00
21	Change cab electrical system to multiplexed with single screen	$	5,250.00
23	Add the eight (8) circuit wiring provision to the electrical system	$	750.00
30	Upgrade engine to 500HP (big block)	$	30,875.00
38	Change engine fan to be clutched	$	650.00
53	Upgrade front tires, wheels and suspension to 23,000LB	$	6,025.00
70	Balance tires and wheels	$	325.00
82	Upgrade to disc brakes	$	900.00

95	Upgrade front bumper length to be 28"	$	1,175.00
96	Upgrade bumper to sever duty	$	1,975.00
99	Add a winch to the front bumper	$	3,550.00
111	Upgrade air conditioner to overhead with painted aluminum	$	2,750.00
126	Upgrade to xtreme duty interior center dash	$	875.00
137	Add step trim kick plate	$	725.00
168	Upgrade alternator to 320 amps	$	775.00
174	Change front turn signals to LED	$	400.00
183	Add two 12 volt eyebrow scene light ($2,210.00 ea x 2)	$	4,420.00
186	Add 12 volt side cab flush mounted scene lights	$	1,400.00
197	Upgrade warning lights to LED ($325.00 ea x 16)	$	5,200.00
237	Add map box	$	750.00
253	Zolotone body compartments	$	4,600.00
254	Zolotone roof compartments	$	2,400.00
462	Add roll-up door protectors ($225.00ea x 8)	$	1,800.00
480	Half depth shelf ($275.00ea x 3)	$	825.00
481	Full depth shelf ($425.00ea x 8)	$	3,400.00
483	Roll-out tray - light duty ($800.00ea x 9)	$	7,200.00
490	Roll out/down tray - adjustable - heavy duty	$	2,550.00
491	Pull out aluminum tool board ($1,550.00ea x 3)	$	4,650.00
497	LED split traffic advisor	$	2,200.00
519	Electric cord reel with cable ($2,450.00ea x 2)	$	4,900.00
537	Command Light	$	16,500.00
546	Add 35' extension ladder	$	1,350.00

548	Add 28' extension ladder ($1,050.00ea x 2)	$	2,100.00
554	Add 16' roof ladder	$	600.00
558	Add 10' attic ladder	$	400.00
566	Bullard T3MAX thermal imager	$	11,500.00
TOTAL PUBLISHED OPTIONS		**$**	**206,740.00**

UN-PUBLISHED OPTIONS

1	LH exterior cab compartment to be 74" h x 11"w reversed hinged door	$	1,250.00
2	RH exterior cab compartment to be 74" h x 11"w reversed hinged door	$	1,250.00
3	Rescue tool front bumper configuration	$	950.00
4	22' body with custom roof compartment configuration	$	13,189.00
5	Crossfire tire equalization system	$	175.00
6	On-spot tire chains	$	2,100.00
7	Add four (4) 12v power points	$	135.00
8	Change driver seat to Bostrom 8-way electric	$	375.00
9	Change SCBA brackets to Bostrom SecureAll	$	1,475.00
10	Add rear and side view camera to be displayed on Vista screen	$	547.00
11	MDT mounting/wiring provision	$	500.00
12	GPS antenna installation	$	150.00
13	Radio installation	$	200.00
14	Knox box installation	$	150.00
15	Medical glove module	$	100.00
16	Storage cabinet behind engine tunnel with hinged door, shelf & 120v power	$	1,231.00
17	Three (3) rear wall storage cabinets in cab. Inc. door, shelves & 120v power	$	5,245.00
18	Plywood module	$	1,450.00
19	LFRA Paratech shore mounting	$	1,750.00
20	Air bag storage module	$	1,200.00

21	SCUBA tank mounting	$	150.00
22	Craftsman tool box	$	200.00
23	SCBA storage module for sixteen (16) bottles	$	535.00
24	Fire extinguisher storage	$	235.00
25	Rear storage module for eight (8) ladders, eight (8) pike poles and strong back lumber	$	5,500.00
26	Rope tie-off anchor points two each side and two roof mounted	$	4,235.00
27	Front lower body gravel guards	$	195.00
28	GoLight 2020 light bar mounted	$	315.00
29	Four (4) FRC Spectra LED side scene lights	$	4,700.00
30	Two (2) FRC Spectra LED rear scene lights	$	2,350.00
31	GTT Opti-Com light bar mounted	$	1,200.00
32	Onan 30KW PTO generator	$	5,835.00
33	18' roof ladder	$	550.00
34	17' Little Giant ladder	$	595.00
35	6' Pike pole	$	110.00
36	8' Pike pole	$	120.00
37	12' Pike pole	$	140.00
38	6' NY roof hook	$	115.00
39	8' NY Roof hook	$	125.00
40	6' Gator back tool	$	110.00
41	Two (2) Basher tools	$	531.00
42	724G4-H ventilation fans	$	1,950.00
43	Two (2) 8LB flathead axes	$	385.00

44	Two (2) 30" hooligan tools	$	484.00
45	Four (4) Bright Star light hawk LED lights	$	1,280.00
46	Two (2) TNT 100' reels with hose located in front bumper	$	8,210.00
47	TNT TLS-50-NEX ram	$	3,900.00
48	TNT BFC-320-NEX cutter	$	5,000.00
49	TNT S-200-32-NEX spreader	$	5,750.00
50	(4) 12 R22.5 XDN2 Rear Tires	$	492.00
TOTAL UNPUBLISHED OPTIONS:		**$**	**88,719.00**

BASE PRICE:	**$**	**345,823.00**	
PUBLISHED OPTIONS:	**$**	**206,740.00**	
UNPUBLISHED OPTIONS:	**$**	**88,719.00**	**16.06%**
UNIT PRICE:	**$**	**641,282.00**	
Quantity	**1**		
SUB-TOTAL	**$**	**641,282.00**	
CHASSIS PRE-PAY DISCOUNT	**$**	**(8,300.00)**	
HGAC Fee	**$**	**2,000.00**	
TOTAL	**$**	**634,982.00**	

By: Stephen Carleton

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: **8**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:
A Resolution of the Loveland City Council approving a supplemental budget and appropriation by the Loveland Fire Rescue Authority to its 2013 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 2013 Budget for the purchase of a command vehicle. 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 additional contributions from the Rural District to fund the vehicle. There is a $75,000 change to the budget from these contributions. No City funds are required.

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). At the Authority's January 10, 2013 meeting, Agenda Item 3, the

Authority approved a resolution amending the budget by $75,000 for the purchase of a new command vehicle. Funding for the purchase is from a contribution from the Loveland Rural Fire Prevention District. No City funding is required.

The Authority is in the process of developing specifications for the vehicle. In the coversheet for the Authority agenda, a picture of the current vehicle used for this purpose was included as an example. The actual purchase is likely to be different depending on the purchase price that can be obtained through the State bid purchasing process.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

1. A Resolution of the Loveland City Council approving a supplemental budget and appropriation by the Loveland Fire Rescue Authority to its 2013 budget.
2. Attachment A - Fire Authority Resolution #R-015 enacting a supplemental budget and appropriation to the 2013 Loveland Fire Rescue Authority Budget to appropriate additional funding from both the City of Loveland and the Loveland rural Fire Protection District to fund the Community Services Division Plans Reviewer.
3. Agenda Item 3 from the January 10, 2013 Loveland Fire Rescue Authority meeting.

RESOLUTION #R-7-2013

A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING A SUPPLEMENTAL BUDGET AND APPROPRIATION BY THE LOVELAND FIRE RESCUE AUTHORITY TO ITS 2013 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 adopted Resolution #R-015, which is attached hereto as **Exhibit A** and incorporated herein by reference, enacting a supplemental appropriation to its 2013 Budget; and

WHEREAS, the Fire Authority has also submitted Resolution #R-015 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 2013 Supplemental Budget and Appropriation reflected in Resolution #R-015.

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

Section 1. That Resolution #R-015 of the Loveland Fire Rescue Authority attached hereto as Exhibit A enacting a Supplemental Budget and Appropriation for the fiscal year beginning January 1, 2013 and ending December 31, 2013, with revenues in the amount of $75,000, and expenditures of $75,000 for operations, is hereby approved.

Section 3. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 5th day of February, 2013.

_____

Cecil a. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
_____
Deputy City Attorney

EXHIBIT A

RESOLUTION NO. R-015

A RESOLUTION ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 LOVELAND FIRE RESCUE AUTHORITY BUDGET TO APPROPRIATE ADDITIONAL FUNDING FROM THE LOVELAND RURAL FIRE PROTECTION DISTRICT (LRFPD) TO FUND THE REPLACEMENT OF A COMMAND VEHICLE

WHEREAS, the red 2002 Chevrolet Tahoe command vehicle assigned to the Loveland Fire Rescue Authority (LFRA) at Station 1 has about 105,000 miles; and

WHEREAS, the vehicle has become increasingly unreliable, with increasing maintenance costs, leading the City's Fleet Management experts to recommend replacement; and

WHEREAS, the LRFPD constituents passed a mill levy increase in November 2012, securing funds for the LRFPD's contribution as established in the Authority Strategic Plan and allowing for the retention of the District's fund balances; and

WHEREAS, the LRFPD approved $75,000 in the District's 2013 budget to contribute 100% of the replacement costs for the command vehicle at the December 5, 2012 board meeting, notwithstanding the provisions of the Intergovernmental Agreement creating the Authority, which provide for allocating the payment of costs and expenses of the Authority between the City and the Loveland Rural Fire Protection District; and

WHEREAS, the City has access to State Purchasing Bids allowing for a more efficient and expeditious purchasing process if the replacement vehicle were purchased by LFRA; and

WHEREAS, the Authority Board desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the LFRA budget for 2013; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE LOVELAND FIRE RESCUE AUTHORITY, STATE OF COLORADO, AS FOLLOWS:

Section 1. That there are additional funds from the Loveland Rural Fire Protection District agreed to after the adoption of the LFRA budget for 2013. The funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Account Title	Account Number	Amount
Sources of Funds:		
Contribution from the Rural District	604-22-227-1601-32402	$75,000
Total Sources of Funds		$75,000
Uses of Funds:		
Vehicle Replacement	604-22-226-1647-43654	$75,000
Total Uses		$75,000

Section 2. That as provided in Article IV: Section 4.1 of the Formation Agreement, 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 10th day of January, 2013.

Jeffrey M. Swanty, Chairperson

ATTEST:

Secretary

Approved as to form:

Teresa Ablao
Assistant City Attorney

Agenda Item Cover

Item No.: 3

Meeting Date: January 10, 2013

Prepared By: Renee Wheeler, Public Safety Administrative Director

TITLE

Consider Supplemental Appropriation for a Command Vehicle Replacement

EXECUTIVE SUMMARY

The LFRA Board will consider a supplemental appropriation for the replacement of the 2002 Chevy Tahoe assigned as a command vehicle. The Loveland Rural Fire Protection District Board has voted to contribute 100% of the $75,000 to replace the vehicle and the related equipment.

BACKGROUND

The City's Fleet Management policy sets a strategy for vehicle replacement of this type of vehicle at seven to ten years or 100,000 miles, considering the overall performance of the vehicle. The 2002 Chevy Tahoe was replaced in 2010 but it was retained in the fleet because there were no reserve Battalion Chief vehicles available. Based on the last three years of vehicle maintenance records, the cost to maintain it increased 37% between 2010 and 2011 and increased 47% between 2011 and 2012. The electrical system is unreliable. Since it was originally purchased as a staff vehicle, the electrical system was not designed to accommodate three mobile radios and a mobile data terminal necessary for emergency response command vehicle. Given the age and overall condition of the vehicle, it was determined that upgrading the electrical system was not a prudent investment. The vehicle is currently used approximately five to ten times a month in an emergency response capacity. The picture to the right is an example of the type of vehicle that will be purchased.

The Strategic Plan outlines $3.3 million in vehicle and apparatus replacement to be funded by the City from 2012 through 2016, the period of time the governing organizations agreed to replace the equipment they owned. The Rural District is scheduled to invest $669,000 over the same five years including this vehicle or roughly 17% of the total replacement costs for both organizations. Given the close proximity to 82%/18% contribution ratio agreed to in the IGA and that the Rural District successfully secured the mill levy funding enabling the retention of fund balances through the first five years, the investment in the replacement of this vehicle was viewed as reasonable. The Rural District Board included it in the 2013 Budget appropriated at the December 5, 2012 board meeting.

Appropriating the purchase in the LFRA budget with the 100% contribution from the Rural District is necessary to have access to the State bids allowing for a more expeditious and efficient purchasing process.

Agenda Item Cover

Item No.: 3

Meeting Date: January 10, 2013

Prepared By: Renee Wheeler, Public Safety Administrative Director

STAFF RECOMMENDATION

Approve the resolution as written

FINANCIAL/ECONOMIC IMPACTS

Reduction in maintenance costs and inclusion in the standard replacement schedule

ASSOCIATED STRATEGIC GOALS

Deliver cost effective services.

ATTACHMENTS

Resolution

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: **9**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Julia Holland, Human Resources Director
PRESENTER: Julia Holland

TITLE: A Resolution of the Loveland City Council regarding the compensation of the Municipal Judge and reappointing William E. Starks as the Municipal Judge for a new two-year term beginning February 15, 2013

RECOMMENDED CITY COUNCIL ACTION:
Motion to 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 regarding compensation and reappointment of the Municipal Judge. At the direction of City Council, the 2013 annual base salary for the Municipal Judge shall receive a three and one half percent (3.5%) merit increase beginning on the initial pay period in 2013. City Council also determined to reappoint Williams Starks as the Municipal Judge to a new two-year term beginning February 15, 2013.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
On January 8, 2013, City Council conducted its annual evaluation of Judge William Starks and City Council directed that the annual base salary for the Municipal Judge be increased by three and a half percent (3.5%) for 2013 and that William Starks be reappointed for another two-year term as the City's Municipal Judge beginning February 15, 2013.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. Addendum to the Employment Agreement between the City of Loveland and William Starks, Municipal Judge

RESOLUTION #R-8-2013

A RESOLUTION OF THE LOVELAND CITY COUNCIL REGARDING THE COMPENSATION OF THE MUNICIPAL JUDGE AND REAPPOINTING WILLIAM E. STARKS AS THE MUNICIPAL JUDGE FOR A NEW TWO-YEAR TERM BEGINNING FEBRUARY 15, 2013

WHEREAS, on February 2, 1999, the City of Loveland (the "City") and William E. Starks ("Starks") entered into an agreement appointing Starks as Loveland's Municipal Judge for a two-year term effective February 15, 1999; and

WHEREAS, on February 20, 2001, the City and Starks entered into a second agreement reappointing Starks as Loveland's Municipal Judge for a second two-year term effective February 15, 2001 (the "Agreement"); and

WHEREAS, on February 4, 2003, the City and Starks entered into that certain "Addendum to Employment Agreement" (the "First Addendum") amending the Agreement to reflect Starks' reappointment for a third two-year term effective February 15, 2003; and

WHEREAS, in January of 2005, the City and Starks entered into that certain "Second Addendum to Employment Agreement" (the "Second Addendum") amending the Agreement to reflect Starks' reappointment for a fourth two-year term effective February 15, 2005; and

WHEREAS, on February 6, 2007, the City Council adopted Resolution #R-7-2007 reappointing Starks to a fifth two-year term effective February 15, 2007, as reflected in the "Third Addendum to Employment Agreement" which the City and Starks have entered into (the "Third Addendum"); and

WHEREAS, on February 17, 2009, City Council adopted Resolution #R-13-2009 reappointing Starks to a sixth two-year term effective February 15, 2009, as reflected in the "Fourth Addendum to Employment Agreement" which the City and Starks have entered into (the "Fourth Addendum"); and

WHEREAS, on March 3, 2009, City Council adopted Resolution #R-19-2009 that increased the compensation of Starks based on its annual evaluation of Starks in his capacity as Municipal Judge; and

WHEREAS, on November 3, 2009, City Council adopted Resolution #R-106-2009 that decreased the compensation of Starks 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-68-2010 reappointing Starks to a seventh two-year term effective February 15, 2011, as reflected in the "Fifth Addendum to Employment Agreement" (the "Fifth Addendum") and excluded furlough days from Starks' compensation; and

WHEREAS, on May 17, 2011, City Council adopted Resolution #R-36-2011 that increased Starks compensation for 2011 with a one-time, merit-based payment of 1.75% of Starks' then current annual based salary as reflected in the "Sixth Addendum to Employment Agreement" (the "Sixth Addendum); and

WHEREAS, it is City Council's custom to evaluate the Municipal Judge's job performance annually; and

WHEREAS, on January 8, 2013, City Council conducted its annual evaluation of Starks as the Municipal Judge for 2012; and

WHEREAS, City Council finds that Starks' compensation for 2013 should be increased by three and one half percent (3.5%) of Starks' current base salary; and

WHEREAS, City Council further finds that it is in the best interest of the citizens of Loveland to reappoint Starks for an eighth two-year term effective February 15, 2013; and

WHEREAS, the City and Starks desire to amend the Agreement as previously amended by the First Addendum, Second Addendum, Third Addendum, Fourth Addendum, Fifth Addendum and Six Addendum to reappoint Starks for an eighth two-year term effective February 15, 2013, as reflected in the "Seventh Addendum to Employment Agreement" attached hereto as Exhibit "A" and incorporated herein by reference (the "Seventh Addendum")

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

Section 1. The Seventh Addendum is hereby approved and the Mayor is authorized to enter into the Seventh Addendum on behalf of the City to appoint Starks to a new two-year term as the City's Municipal Judge beginning February 15, 2013.

Section 2. That the Agreement, as amended by the First Addendum, Second Addendum, Third Addendum, Fourth Addendum, Fifth Addendum, Sixth Addendum and Seventh Addendum is hereby reaffirmed and ratified.

Section 3. Starks' annual salary shall be increased by three and one half percent (3.5%) of Starks' current annual base salary and shall be retroactive to the first pay period of 2013.

Section 4. Except as amended by this Resolution, Starks' compensation and benefits as set forth in the Agreement shall remain unchanged and in full force and effect.

Section 5. This Resolution shall take effect on the date and at the time of its adoption

ADOPTED this ____ day of February, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

A RESOLUTION OF THE LOVELAND CITY COUNCIL REGARDING THECOMPENSATION OF THE MUNICIPAL JUDGE AND REAPPOINTING WILLIAM E. STARKS AS THE MUNICIPAL JUDGE FOR A NEW TWO-YEAR TERM BEGINNING FEBURARY 15, 2013

EXHIBIT A

SEVENTH ADDENDUM TO EMPLOYMENT AGREEMENT

THIS SEVENTH ADDENDUM is made and entered into this ____ day of February, 2013, by and between the CITY OF LOVELAND, a Colorado municipal corporation (the "City") and WILLIAM E. STARKS ("Starks") (collectively referred to herein as the "Parties).

WITNESSETH:

WHEREAS, on February 2, 1999, the City and Starks entered into an agreement appointing Starks as Loveland's Municipal Judge for a two-year term effective February 15, 1999; and

WHEREAS, on February 20, 2001, the City and Starks entered into a second agreement reappointing Starks as Loveland's Municipal Judge for a second two-year term effective February 15, 2001 (the "Agreement"); and

WHEREAS, on February 4, 2003, the City and Starks entered into that certain "Addendum to Employment Agreement" (the "First Addendum") amending the Agreement to reflect Starks' reappointment for a third two-year term effective February 15, 2003; and

WHEREAS, in January of 2005, the City and Starks entered into that certain "Second Addendum to Employment Agreement" (the "Second Addendum") amending the Agreement to reflect Starks' reappointment for a fourth two-year term effective February 15, 2005; and

WHEREAS, on February 6, 2007, City Council adopted Resolution #R-7-2007 reappointing Starks to a fifth two-year term effective February 15, 2007, as reflected in the "Third Addendum to Employment Agreement" which the City and Starks have entered into (the "Third Addendum"); and

WHEREAS, on February 17, 2009, City Council adopted Resolution #R-13-2009 reappointing Starks to a sixth two-year term effective February 15, 2009, as reflected in the "Fourth Addendum to Employment Agreement" which the City and Starks have entered into (the "Fourth Addendum"); and

WHEREAS, on November 3, 2009, City Council adopted Resolution #R-106-2009 that decreased the compensation of Starks 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-68-2010 that reappointed Starks to a seventh two-year term effective February 15, 2011, as reflected in the "Fifth Addendum to Employment Agreement" (the "Fifth Addendum") and excluded furlough days from Starks' compensation; and

WHEREAS, on May 17, 2011, City Council adopted Resolution #R-36-2011 that increased Starks compensation for 2011 with a one-time, merit-based payment of 1.75% of Starks' then current annual based salary as reflected in the "Sixth Addendum to Employment Agreement" (the "Sixth Addendum); and

WHEREAS, the City and Starks desire to amend the Agreement as previously amended by the First Addendum, Second Addendum, Third Addendum, Fourth Addendum, Fifth Addendum and Sixth Addendum to reappoint Starks for an eighth two-year term effective February 15, 2013.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Starks is hereby re-appointed to serve as the City's Municipal Judge for an eighth two-year term commencing on February 15, 2013, and ending February 14, 2015, or until a successor is appointed, whichever last occurs.

2. That except as expressly amended in this Seventh Addendum, and except for any salary increases approved by City Council by resolution, all other terms and conditions of the Agreement, the First Addendum, Second Addendum, Third Addendum, Fourth Addendum, Fifth Addendum and Sixth Addendum shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Seventh Addendum to Employment Agreement to be executed as of the day and year first written above.

CITY OF LOVELAND

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

_____
William E. Starks

CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: **10**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Keith Reester, Public Works Department
PRESENTER: David Klockeman, PE, City Engineer

TITLE:

1. 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 replacement at the intersection of U.S. 34 and Boyd Lake Avenue in Loveland, Colorado
2. Public Hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for signal replacement and other improvements at the intersection of US 34 and Boyd Lake Avenue

RECOMMENDED CITY COUNCIL ACTION:

1. Adopt the Resolution.
2. 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. The City has received a federal grant with state matching funds ($495,000) through the Federal Hazard Elimination program for the signal replacement and other improvements at the US 34 and Boyd Lake Avenue intersection. This item includes consideration of a Resolution approving an intergovernmental agreement between the City of Loveland and the Colorado Department of Transportation (CDOT) for the project and consideration of the first reading of an ordinance to appropriate the federal and state funds for the project included in the intergovernmental agreement.

BUDGET IMPACT:

☒ Positive
☐ Negative

☐ Neutral or negligible

The project is funded from federal funds and state match funds. The City of Loveland will provide in-kind services for the oversight of the project from within the approved 2013 budget for the Public Works Department, Traffic Division.

SUMMARY:

CDOT will provide federal funds and state match funds to the City of Loveland to reimburse it for the costs, up to $495,000, of replacing the existing traffic signal and constructing other enhancements to improve the function of the intersection of U.S. 34 and Boyd Lake Avenue. This intersection is on the State Highway system, and the traffic signal is owned by CDOT. The City of Loveland maintains this traffic signal through a maintenance agreement with CDOT.

This project is currently in planning stage with design to be completed by the end of 2013. Construction is planned for the spring/summer of 2014 and is anticipated to take 2 to 3 months.

Funding Summary:		
Federal Funds		$445,500
Local Agency Match Funds*	$ 0	
Local Over-Matching Funds**	$ 0	
Subtotal Local Funds	$ 0	$ 0
State Match Funds*		$ 49,500
Total Project Funds:		$495,000

* Local Agency Match Funds are defined as funding required to be provided by a local entity as part of the Federal grant process. For Federal Hazard Elimination Program Funds, the Local Agency Match is covered by CDOT (shown above as “State Match Funds”).

** Local Over-Matching Funds are defined as funding provided by a local entity above the required amount of Local Agency Match Funds in order to complete a project. FHWA requires that this amount be shown in the documents to identify all of the funding anticipated for a project, and Overmatch Funds are encouraged.

The costs for design are estimated at $50,000, which is shown on the first page of the Intergovernmental Agreement as the “Contract Encumbrance Amount”. The remaining balance of $445,000 will be released to the City prior to the start of the construction phase of the project in accordance with the provisions of the Intergovernmental Agreement.

The City of Loveland will provide in-kind services for the oversight of the project from within the operating budget for the Public Works Department, Traffic Division.

An ordinance is required to appropriate the Federal and State Funds as the award of this project occurred after the 2013 budget was adopted.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. Intergovernmental Agreement (Exhibit A to Resolution)
3. Ordinance

RESOLUTION #R-9-2013

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 REPLACEMENT AT THE INTERSECTION OF U.S. 34 AND BOYD LAKE AVENUE IN LOVELAND, COLORADO

WHEREAS, the City of Loveland desires to design and construct a traffic signal replacement and other improvements at the intersection of U.S. 34 and Boyd Lake Avenue within the City of Loveland (the "Project"), which is to be funded by federal funds and state matching funds administered and made available through the State of Colorado, acting by and through the Colorado Department of Transportation ("CDOT"); and

WHEREAS, federal funds are available for the Project in the amount of Four Hundred Forty-five Thousand and Five Hundred Dollars ($445,500), and state funds are available for the Project in the amount of Forty-nine Thousand and Five Hundred Dollars ($49,500), for a total of Four Hundred Ninety-five Thousand Dollars ($495,000); 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.

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 5th day of February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Shawn L. Otto
Assistant City Attorney

(FSMLAWRK)
PROJECT: SHO M830-063 (19061)
REGION 4 (rp)

Rev 10/03
13 HA4 52198
SAP ID 271001801

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT executed this ____ day of _____ 20___, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and CITY OF LOVELAND, 500 East Third Street, Suite 320, Loveland , Colorado, 80537, CDOT Vendor #: 2000033, hereinafter referred to as the "Contractor" or the "Local Agency."

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function 3020, GL Acct. 4231200011, WBS Element or Cost Center 19061.10.30, (Contract Encumbrance Amount: $50,000.00).

2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.

3. 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" 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 will in the future be allocated for transportation projects requested by Local Agencies and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA"), hereinafter referred to as the "Program."

4. Pursuant to § 43-1-223, C.R.S. 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.

5. The State has requested that a certain local transportation project be funded as part of the Program, and by the date of execution of this contract, the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that before the Work begins, the Local Agency must receive an official written "Notice to Proceed" prior to commencing any part of the Work. The Local Agency further understands, before the Work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to

perform the Work described in form #463, as it may be revised.

6. Federal-aid and State funds have been made available for project SHO M830-063 (19061),which shall consist of the design and construction of a signal replacement at US 34 and Boyd Lake Avenue, referred to as the "Project" or the "Work." Such Work will be performed in Loveland, Colorado, specifically described in **Exhibit A.**

7. The State has funds available and desires to provide 100% of the funding for the Work.

8. The Local Agency desires to comply with the Federal Provisions and other applicable requirements, including the State's general administration and supervision of the Project through this contract, in order to obtain federal funds.

9. The State has estimated the total cost of the Work and the Local Agency is prepared to accept the state funding for the Work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the Work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B.**

10. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and **Exhibit B.**

11. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.

12. The Local Agency can more advantageously perform the Work.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Project or the Work under this contract shall consist of the design and construction of a signal replacement at US 34 and Boyd Lake Avenue, in Loveland, Colorado, as more specifically described in Exhibit A.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 30 of this contract
2. This contract
3. Exhibit A (Scope of Work)
4. Exhibit C (Certification for Federal-Aid Contracts)
5. Exhibit D (DBE Requirements)

6. Exhibit E (Contract Modification Tools)
7. Other Exhibits in descending order of their attachment.

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State, FHWA and the Local Agency.

Section 4. Project Funding Provisions

A. The State has estimated the total cost of the Work and the Local Agency is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

B. The Local Agency has estimated the total cost the Work to be $495,000.00, which is to be funded as follows:

a.	Federal Funds (CFDA #20.205):	$445,500.00
b.	State funds:	$ 49,500.00
	Total Funds:	$495,000.00

C. **The maximum amount payable to the Local Agency under this contract shall be $495,000.00,** unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred, it being understood that all funds in excess of $495,000.00 are borne 100% by the Local Agency. 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 contract, 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. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

Section 5. Project Payment Provisions

A. The State will reimburse the Local Agency for the federal-aid and State share of the project

charges after the State's review and approval of such charges, subject to the terms and conditions of this contract. However, any charges incurred by the Local Agency prior to the date of FHWA authorization for the Project and prior to the date this contract is executed by the State Controller or his designee will not be reimbursed absent specific FHWA and State Controller approval thereof.

B. The State will reimburse the Local Agency's reasonable, allocable, allowable costs of performance of the Work, not exceeding the maximum total amount described in Section 4. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:

1. in accordance with the provisions of Section 4 and with the terms and conditions of this contract;
2. necessary for the accomplishment of the Work;
3. reasonable in the amount for the goods and services provided;
4. actual net cost to the Local Agency (i.e. the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred);
5. incurred for Work performed after the effective date of this contract;
6. satisfactorily documented.

C. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted for in a manner consistent with this contract and project objectives.

1. All allowable costs charged to the project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

D. Upon execution of this contract, the State is authorized, in its discretion, to perform any necessary administrative support services pursuant to this contract. These services may be performed prior to and in preparation for any conditions or requirements of this contract, including prior FHWA approval of Work. The Local Agency understands and agrees that the State may perform such services, and that payments for such services shall be at no cost to the State but shall be as provided for in Section 4. At the request of the Local Agency, the State shall also provide other assistance pursuant to this contract as may be agreed in writing. In the event that federal-aid project funds

remain available for payment, the Local Agency understands and agrees the costs of any such services and assistance shall be paid to the State from project funds at the applicable rate. However, in the event that such funding is not made available or is withdrawn for this contract, or if the Local Agency terminates this contract prior to project approval or completion for any reason, then all actual incurred costs of such services and assistance provided by the State shall be the sole expense of the Local Agency.

E. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:

1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.

F. The Local Agency will prepare and submit to the State, no more than monthly, charges for costs incurred relative to the project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format to be supplied by the State.

G. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.

1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
3. Incorrect payments to the Local Agency due to omission, error, fraud or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.

4. 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 offset against current obligations due by the State to the Local Agency, at the State's election.

Section 6. State and Local Agency Commitments

The Local Agency Contract Administration Checklist in **Exhibit F** describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The "Responsible Party" referred to in this contract means the Responsible Party as identified in the Local Agency Contract Administration Checklist in **Exhibit F**.

A. Design [if applicable]

1. If the Work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the responsible party shall comply with the following requirements, as applicable:

a. perform or provide the Plans, to the extent required by the nature of the Work.
b. prepare final design (Construction Plans) in accord 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 CDOT.
c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.
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 contract documents.
g. be responsible for the Plans being accurate and complete.
h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.

2. If the Local Agency is the responsible party:

a. The 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. It 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. It may enter into a contract with a consultant to do all or any portion of the Plans and/or of construction administration. Provided, however, that if federal-aid funds are involved in the cost of such work to be done by a consultant, that consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit G** attached hereto. If the Local Agency does enter into a contract with a consultant for the Work:

(1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(1) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.
(2) it shall ensure that all changes in the consultant contract have prior approval by the State and FHWA. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.
(3) it shall require that all consultant billings under that contract shall comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
(4) it (or its consultant) shall use the CDOT procedures described in **Exhibit G** to administer that design consultant subcontract, to comply with 23 CFR 172.5(b) and (d).
(5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local Agency's attorney/authorized representative certifying compliance with **Exhibit G** and 23 CFR 172.5(b)and (d).
(6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

> (a) "The design work under this contract 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 contract 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 discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State and FHWA requirements.

B. Construction [if applicable]

1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Local Agency Contract Administration Checklist. Such administration shall include project 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 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.

2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct project 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.

3. If the Local Agency is the responsible party:

a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.

b. if bids are to be let for the construction of the project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.

(1) in advertising and awarding the bid for the construction of a federal-aid project, the Local Agency shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without

limitation, that the Local Agency/contractor shall incorporate Form 1273 in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).

(2) the Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.

(3) by indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project. This paragraph also applies to projects advertised and awarded by the State.

c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.

(1) 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 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

(2) An alternative to the above 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 CFR Part 31.

(3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction § 109.04.

(4) All force account work 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.

D. State's obligations

1. The State will perform a final project inspection prior to project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

2. Notwithstanding any consents or approvals given by the State for the Plans, the State

will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit F**, within the Work of this contract.

Section 7. ROW Acquisition and Relocation

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must 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 (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual.The manual is located at http://www.dot.state.co.us/ROW_Manual/.

If right of way is purchased for a state highway, including areas of influence of the state highway, the local agency shall immediately convey title to such right of way to CDOT after the local agency obtains title.

Section 8. Utilities

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all such clearances have been obtained.

Section 9. Railroads

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party 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 Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

1. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
2. Obtaining the railroad's detailed estimate of the cost of the Work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 10. 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.

Section 11. Maintenance Obligations

The Local Agency (or the State) will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 12. Federal Requirements

The Local Agency and/or their contractor shall at all times during the execution of this contract 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. The contractor shall also require compliance with these statutes and regulations in subgrant agreements permitted under this contract. A listing of certain federal and state laws that may be applicable are described in **Exhibit I** and **Exhibit J**.

Section 13. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of six (6) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State and FHWA to inspect the project and to inspect, review and audit the project records.

Section 14. Termination Provisions

This contract may be terminated as follows:

A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models. Photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

C. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which

are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 15. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 16. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 1, 18500 E. Colfax Avenue, Aurora, Colorado 80011. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation 1 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State:
Tim Tuttle, P.E.
CDOT Region 4 Project Manager
1420 2nd Street
Greeley, Colorado 80631
(970) 350-2211

If to the Local Agency:
Derek Schuler, P.E.
City of Loveland Project Manager
105 W. Fifth Street
Loveland, Colorado 80537
(970) 962-2647

Section 17. Successors

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

Section 18. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 19. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 20. Severability

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

Section 21. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 22. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 23. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 24. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be

incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

Section 25. Option Letters

An option letter may be used to add a phase without increasing total budgeted funds, increase or decrease the encumberance amount as shown on **Exhibit C**, and/or tranfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

Option to add a phase and/or increase or decrease the total encumberance amount

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds remaining the same. The State may simultaneously increase and/or decrease the total encumbrance amount by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

Option to transfer funds from one phase to another phase.

The State may require or permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labled **C-2**, **C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

Option to do both Options A and B.

The State may require the Local Agency to add a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by

providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**

Section 26. Disadvantaged Business Enterprise (DBE)

The Local Agency will comply with all requirements of **Exhibit D** 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 CFR Part 26 under this contract, it must submit a copy of its program's requirements to the State for review and approval before the execution of this contract. If the Local Agency uses its program for this contract, 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 its use as described above.

Section 27. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract 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 will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 28. Single Audit Act Amendment

All state and local government and non-profit organization Sub-Grantees receiving more than $500,000 from all funding sources, that are 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 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements that apply to Sub-Grantees receiving federal funds are as follows:

a) If the Sub-Grantee 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.

b) If the Sub-Grantee 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.

c) If the Sub-Grantee 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.

d) Single Audit can only be conducted by an independent CPA, not by an auditor on staff.

e) An audit is an allowable direct or indirect cost.

Section 29. 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.

Section 30. SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. CONTROLLER'S APPROVAL. CRS §24-30-202(1). This contract shall not be 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 contract 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. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor 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. Contractor 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 contract. 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 contract, to the extent capable of execution.

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

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

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF 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 contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

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***] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(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 Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, 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 contract.

Revised 1-1-09

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

City of Loveland, Colorado
Legal Name of Contracting Entity

2000033
CDOT Vendor Number

_____
Signature of Authorized Officer

_____
Print Name & Title of Authorized Officer

STATE OF COLORADO:
JOHN W. HICKENLOOPER, GOVERNOR

By _____
Timothy J. Harris, P.E., Chief Engineer
Department of Transportation

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By_____
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
DAVID J. MCDERMOTT, CPA

By_____

Date_____

Exhibit A

COLORADO DEPARTMENT OF TRANSPORTATION

DESIGN DATA

Page 1 to 3

Orig.Date: 04/30/2012 | Rev.Date: | Revision #: 0 | Region #: 04

Status: ☒ Preliminary ☐ Final ☐ Revised

Project Code # (SA#): 19061 | STIP#: SR46666

Project #: SHO M830-063

PE Project Code:

Project Description: US34 & Boyd Lake Ave.

County: 069

Municipality: Loveland

System Code: N-NHS Non-Interstate

Oversight By: Delegated/Locally Administered

Planned Length: 0.500

Submitted By PM: TUTTLET	Approved by Program Engineer:
Date:	
Revised by:	
Date:	

Geographic Location: US34 & BOYD LAKE AVENUE IN LOVELAND

Type of Terrain: Rolling

Description of Proposed Construction/Improvement(Attach map showing site location)
INTERSECTION IMPROVEMENTS

1 Project Characteristics (Proposed)

☐ Lighting	☒ Handicap Ramps			
☒ Curb and Gutter	☐ Curb Only			
☒ Sidwalk Width=	☐ Bikeway Width=			
☐ Parking Lane Width=	☐ Detours			
☐ Landscaping requirements (description):				

Median (Type): ☐ Depressed ☐ Painted ☐ Raised ☐ None

☐ Traffic Control Signals	☐ Striping		
☐ Left-Turn Slots	☐ Continuous	Width=	
☒ Right-Turn Slots	☐ Continuous	Width=	
Signing	☐ Construction	☐ Permanent	
☒ Other (description): Signal Replacement			

2 Right of Way

	Yes/No	Est. #
ROW &/or Perm. Easement Required	No	
Relocation Required	No	
Temporary Easement Required:	No	
Changes in Access:	No	
Changes to Connecting Roads:	No	

3 Utilities (list names of known utility companies)

4 Railroad Crossings # of Crossings:

Recommendations :

5 Environmental	Type:	Approved On:	Project Code # Cleared Under:	Project # Cleared Under:
	None	/ /		

Comments:

6 Coordination

☐ Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office — Irrigation Ditch Name:

☐ New Traffic Ordinance Required ☐ Modify Schedule of Existing Ordinance — Muncipality: Loveland

Other:

7 Construction Method	Advertised By:	NoAd Reason:	Entity / Agency Contact Name:	Phone #:
	Local		Derek Schuler	970-962-2647

8 Safety Considerations — Project Under:

Guardrail meets current standards: No

☐ Variance in Minimum Design Standards Required
- ☐ Justification Attached
- ☐ Request to be Submitted
- ☐ Bridge(see item 12)
- ☐ See Remarks

☐ Safety project not all standards addressed

Comments:

☐ Stage Construction (explain in remarks)

3R projects

Safety Evaluation Complete (date):

Page 2 of 3	Project Code #(SA#): 19061	Project #: SHO M830-063	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	☐ Industrial ☐ Commercial ☐ Residential ☐ Other	☐ Industrial ☐ Commercial ☐ Residential ☐ Other	☐ Industrial ☐ Commercial ☐ Residential ☐ Other	☐ Industrial ☐ Commercial ☐ Residential ☐ Other	☐ Industrial ☐ Commercial ☐ Residential ☐ Other
10	**Roadway Class**					
	Route	034A				
	Refpt	94.500				
	Endrefpt	95.000				
	Functional Classification	P				
	Facility type	F				
	Rural Code	2				

	11 Design Standards	A Standard	A Existing	A Proposed	A Ultimate	B Standard	B Existing	B Proposed	B Ultimate	C Standard	C Existing	C Proposed	C Ultimate	D Standard	D Existing	D Proposed	D Ultimate	E Standard	E Existing	E Proposed	E Ultimate
	Design Variance Required (substandard items are identified with an * in 1st column & clarify as design variance with CDOT Form #464)																				
	Width of Travel Lanes																				
	Shoulder width lt/outside																				
	Shoulder width rt/outside																				
	Design Speed																				
	Cross Slope																				
	Max.superelevation rate																				
	Min. Radius																				
	Min. Horizontal SSD																				
	Min. Vertical SSD																				
	Max Grade																				
	Design Decision Letter Required (substandard items are indentified with an * in 1st column & clarify with decision letter)																				
	Typical Section Type																				
	# of Travel Lanes																				
	Side Slope Dist. ("z")																				
	Median Width																				
	Posted Speed																				

Exhibit A - Page 2 of 3

Exhibit A

P . 215

Exhibit A

Page 3 of 3	Project Code #(SA#): 19061	Project #: SHO M830-063	Revise Date:	

12 Major Structures S= to stay, R= to be removed, P= proposed new structure

Structure ID#	▼	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built

Proposed Treament of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):

13 Remarks

US 34 & Boyd Lake Ave. # Traffic Signal Rebuild
& Right Turn Lane/Pedestrian Improvements
Scope of Work (Aug. 2012)

The Colorado Department of Transportation (CDOT) will oversee the City of Loveland (city) when the city designs and constructs an upgraded traffic signal and other improvements at the intersection of US 34 and Boyd Lake Avenue in Loveland, CO. The existing signal is located roughly mid-way between the I-25/Centerra shopping area and the more established main part of Loveland. This work may contain the following features: removal/installation of traffic signal equipment, construction of channelized right turn lanes, and minor pedestrian enhancements (sidewalks, ADA ramps, countdown pedestrian heads).

Federal Hazard Elimination funds have been awarded to this project for both design and construction. CDOT and the city believe it will be beneficial to perform this work because of documented vehicular crash patterns that could be mitigated with the proposed improvements. Roadside development is low density with some businesses on the north side and Mountain View High School near the SW corner (school buses, student vehicles, and pedestrians use the NB approach to access US 34).

This work will conform to CDOT#s Specifications for Road and Bridge Construction, American with Disabilities Act and the Larimer County Urban Area Street Standards. The design phase of this work will begin as soon as reasonably possible after the execution of this agreement. The design phase will identify more exact requirements and will result in the production of detailed plans and specifications. The construction phase of the contract is planned for the fall of 2013 or spring 2014 and is anticipated to take approximately 2-3 months.

Exhibit B

LOCAL AGENCY ORDINANCE or RESOLUTION

Exhibit C

Certification for Federal-Aid Contracts

The contractor certifies, by signing this contract, to the best of its knowledge and belief, that:

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

2. 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, grant, 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 subrecipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

Exhibit D

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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 contractor 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 contractor (subrecipient) 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 contractor 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

Exhibit E

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)
NOTE: This option is limited to the specific contract scenarios listed below
AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing # Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts(*a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.*).

Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally do both 1 and 2 (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS. All option letters shall contain the appropriate provisions as follows:

Option A (*Insert the following language for use with the Option A*):
In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to add a phase that will include (*describe which phase will be added and include all that apply– Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber funds for the phase based changes in funding availability and authorization. The total encumbrance is now (*select one: increased and/or decreased*) by (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for **Exhibit C** shall be labled as follows: **C-2**, **C-3**, **C-4**, etc.*).

Option B (*Insert the following language for use with Option B*):
In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2**, **C-3**, **C-4**, etc.*).

Option C (*Insert the following language for use with Option C):*

Exhibit E

In accordance with the terms of the original Agreement (*insert CMS routing # of original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here),* the State hereby exercises the option to 1) add a phase that will include (*describe which phase will be added and include all that apply– Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*); 2) to encumber funds for the phase based on changes from federal, state, and/or local match; and 3) to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2**, **C-3**, **C-4**, etc.*).

(The following language must be included on ALL options):
The total encumberance as a result of this option and all previous options and/or amendments is now (*insert total encumberance amount*), as referenced in **Exhibit** (***C-1**, **C-2**, etc., as appropriate*). The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: (*indicate total budgeted funds*) as referenced in **Exhibit** (***C-1**, **C-2**, etc., as appropriate*) of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:
John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
David J. McDermott, CPA

By: _____

Date: _____

Form Updated: June 12, 2008

Exhibit F

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code	Region
SHO M830-063	SR46666.050	19061	04

Project Location	Date
City of Loveland	10/29/2012

Project Description
US34 & Boyd Lake Ave Signal Replacement

Local Agency	Local Agency Project Manager
City of Loveland	Derek Schuler
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

Exhibit F

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Long Nguyen — 10/29/2012 CDOT Resident Engineer(Signature on File) — Date		X
6-3	Set On-the-Job Training Goals. Goal is zero if total construction is less than $1 million (CDOT Region EEO/Civil Rights Specialist)		X
6-4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7-1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7-2	Advertise for Bids	X	
7-3	Distribute "Advertisement Set" of Plans and Specifications	X	
7-4	Review Worksite and Plan Details with Prospective Bidders While Project is Under Advertisement	X	
7-5	Open Bids	X	
7-6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7-7	Concurrence from CDOT to Award		X
7-8	Approve Rejection of Low Bidder		X
7-9	Award Contract	X	
7-10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8-1	Issue Notice to Proceed to the Contractor	X	
8-2	Project Safety	X	#
8-3	Conduct Conferences:		
	Pre-construction Conference (Appendix B)	X	
	Presurvey • Construction staking • Monumentation	X X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual*)	X	
	Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual*)	X	
	HMA Pre-Paving (Agenda is In *CDOT Construction Manual*)	X	
8-4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8-5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Derek Schuler — 970-962-2647 Local Agency Professional Engineer or CDOT Resident Engineer — Phone number	X	

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Previous editions are obsolete and may not be used

Exhibit F

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 Provide the name and phone number of the person authorized for this task. Derek Schuler — 970-962-2647 Local Agency Representative — Phone number	X	
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. Long Nguyen — 970-350-2126 CDOT Resident Engineer — Phone number		X
MATERIALS			
9-1	Conduct Materials Preconstruction Meeting	X	
9-2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	 X X	X
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures ☒ CDOT Procedures ☒ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	 X X	X
9-8	Approve Mix Designs • Concrete • Hot Mix Asphalt	 X X	
9-9	Check Final Materials Documentation	X	
9-10	Complete and Distribute Final Materials Documentation	X	

Exhibit F

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 Contactor 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

Exhibit G

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 Colorado Revised Statute (C.R.S.) 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 ten percent (10%) for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.

5. The analysis and selection of the consultants should be done in accordance with C.R.S. 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 project,
   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,

Exhibit G

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 reimbursement 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 (6) to fifteen (15) percent of the total direct and indirect costs.

7. A qualified local agency employee shall be responsible and in charge of the project 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 project, 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 (3) years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three (3) years after the case has been settled.

The C.R.S. 24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the eight (8) steps just discussed.

Exhibit H

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

Exhibit H

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 1210t et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

Exhibit H

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit H

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

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VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

2. **Instructions for Certification - Lower Tier Participants:**

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

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

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

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

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

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

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

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

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

I. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

Exhibit H

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion–Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

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

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

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

Exhibit H

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

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

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

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

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

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

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

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

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

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

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

FEDERAL REQUIREMENTS

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

A. The "Uniform Administrative Requirements for Grants 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:

1. the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);
2. 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;
3. the Local Agency/Contractor shall comply with section 18.37 concerning any subgrants;
4. 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 subgrant procedures, as applicable;
5. 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 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 grantees and their contractors or subgrantees).

C. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

D. 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 grantees and subgrantees when required by Federal grant 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. 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 grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

F. 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 subgrants of amounts in excess of $100,000).

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

I. 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. 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. 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. 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 this contract.)

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

N. 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, concerning "Administration of Engineering and Design Related Contracts".

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

Q. 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. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

1. 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 contract.

2. 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.

3. 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 contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

4. 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.

5. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, 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.

6. Incorporation of Provisions. 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.

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:

   7.1.1 Subrecipient DUNS Number;
   7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
   7.1.3 Subrecipient Parent DUNS Number;
   7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
   7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
   7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

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

   7.2.1 Subrecipient's DUNS Number as registered in CCR.
   7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. **Exemptions.**

   8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

   8.2 A Contractor with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

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FIRST READING February 5, 2013

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR SIGNAL REPLACEMENT AND OTHER IMPROVEMENTS AT THE INTERSECTION OF US 34 AND BOYD LAKE AVENUE

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; 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 2013, 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 $445,500 from a Federal grant and $49,500 in a State grant in the Transportation Fund 211 are available for appropriation. Revenues in the total amount of $495,000 are hereby appropriated for signal replacement and other improvements at the Boyd Lake Avenue and U.S. 34 intersection 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
Transportation Fund 211

Revenues		
211-23-232-1701-32000-EN1302	Federal Grant	445,500
211-23-232-1701-32100-EN1302	State Grant	49,500
Total Revenue		**495,000**
Appropriations		495,000
211-23-232-1701-49360-EN1302	Construction	
Total Appropriations		**495,000**

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. 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 February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
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AGENDA ITEM: **11**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Dave Klockeman, City Engineer, Public Works Department
PRESENTER: Dave Klockeman, City Engineer

TITLE:

1. 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 repair of the Burlington Northern Santa Fe Railroad crossing at U.S. 287 in Loveland, Colorado
2. Public Hearing for an ordinance on first reading enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for railroad crossing repairs on U.S. 287

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and approve the resolution and 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 an administrative action. The east/west railway crossings on Lincoln and Cleveland Avenues are in need of repairs. To accomplish these repairs Public Works Engineering (PWE) has worked out agreements with the stake holders to these railway crossings. The stake holders are the Burlington Northern Santa Fe Railway (BNSF), the Colorado Department of Transportation (CDOT) and the Great Western Railway Company (GW). Lincoln and Cleveland Avenues are part of US Highway 287; the crossings are owned by the BNSF; and these tracks also are the main connection for the transfer of rolling stock between the BNSF and GW.

As is required by the Public Utilities Commission the owner of the street is responsible for the costs for the crossing material which is estimated as $84,457 included in the CDOT agreement. PWE has agreed to pay the cost of the crossing materials to the BNSF, coordinate the street closures, and furnish City forces to repair the street connections. Once the project is complete CDOT will reimburse the City for the BNSF material costs. PWE will utilize budgeted funds from the annual Street Rehabilitation Program to pay for the associated costs of the railway crossings

replacements. Once these funds are reimbursed by CDOT they will be utilized for street maintenance.

BUDGET IMPACT:

☒ Positive

☐ Negative

☐ Neutral or negligible

CDOT will provide federal and state funds to the City of Loveland to reimburse it for the costs, up to $84,457, for the installation of railway crossing material at locations on US 287 (Lincoln & Cleveland Avenues).

SUMMARY:

CDOT will provide federal and state funds to the City of Loveland to reimburse it for the costs, up to $84,457, for the installation of railway crossing material at locations on US 287 (Lincoln & Cleveland Avenues) . The reimbursement will be federal funds in the amount of Sixty-nine Thousand, Nine Hundred and Twenty-two Dollars ($69,922); and state funds in the amount of Fourteen Thousand, Five Hundred and Thirty-five Dollars ($14,535). Construction is planned for mid-2013.

An Intergovernmental Agreement will be signed by the City Manager after approval of the ordinance on second reading.

An ordinance is required to appropriate the funds for this project from the Street Rehabilitation Budget.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. Ordinance
3. Map

RESOLUTION #R-10-2013

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 REPAIR OF THE BURLINGTON NORTHERN SANTA FE RAILROAD CROSSING AT U.S. 287 IN LOVELAND, COLORADO

WHEREAS, the City of Loveland desires to participate with the State of Colorado, acting by and through the Colorado Department of Transportation ("CDOT"), in the repair of the Burlington Northern Santa Fe ("BNSF") railroad crossing at U.S. 287 in Loveland, Colorado (the "Project"), which is to be funded by federal funds administered and made available through CDOT and state matching funds administered and made available through CDOT; and

WHEREAS, federal funds are available to fund 82.79% of the participating costs of the Project in the amount of Sixty-nine Thousand, Nine Hundred and Twenty-two Dollars ($69,922); and

WHEREAS, state matching funds are available to fund 17.21% of the participating costs of the Project in the amount of Fourteen Thousand, Five Hundred and Thirty-five Dollars ($14,535); 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.

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 5th day of February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Shawn L. Gates
Assistant City Attorney

(FMLAWRK)
PROJECT # STA 2873-166 (19091)
REGION #4 (PCO)

Rev 7/8/09
Routing # 13 HA4 47461
SAP PO# 271001764

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.

Federal Authority

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

State Authority

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

B. Consideration

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

C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA. The Local Agency will enter into a contract with Burlington Northern Santa Fe Railway Company (BNSF). BNSF Railway Company will repair the rail road crossing at US 287 Northbound and Southbound (Cleveland and Lincoln Avenues) in the City of Loveland.

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** (Civil Rights Exhibit), **Exhibit H** (Local Agency Procedures), **Exhibit I** (Federal-Aid Contract Provisions), **Exhibit J** (Federal Requirements) and **Exhibit K** (Supplemental Federal Provisions).

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

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

I. **Party or Parties**
"Party" means the State or the Local Agency and "Parties" means both the State and the Local Agency

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

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

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

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

5. TERM and EARLY TERMINATION.
The Parties' respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after five (5) years of state controllers signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

6. SCOPE OF WORK

A. **Completion**
The Local Agency shall complete the Work and other obligations as described herein in **Exhibit A.** Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

B. **Goods and Services**

The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

C. **Employees**

All persons employed hereunder by the Local Agency, or any Consultants or Contractors shall be considered the Local Agency's, Consultants' or Contractors' employee(s) for all purposes and shall not be employees of the State for any purpose.

D. **State and Local Agency Commitments**

i. Design

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Local Agency shall comply with and be responsible for satisfying the following requirements:

a) Perform or provide the Plans to the extent required by the nature of the Work.

b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.

c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.

d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.

e) Stamp the Plans produced by a Colorado Registered Professional Engineer.

f) Provide final assembly of Plans and all other necessary documents.

g) Be responsible for the Plans' accuracy and completeness.

h) Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

ii. Local Agency Work

a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".

b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.

c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If the Local Agency enters into a contract with a Consultant for the Work:

(1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.

(2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.

(3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

(4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.

(5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b)and (d).

(6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

(b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

(c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

Construction

a) If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

b) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

c) The Local Agency shall be responsible for the following:

(1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.

(2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23

C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefor, as required by 23 C.F.R. 633.102(e).

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

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

(3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.

(4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.

(a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.R.F. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

(b) An alternative to the preceeding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.

(c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's 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.

State's Commitments

a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**,

ROW and Acquistion/Relocation

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

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

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

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

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

Utilities

If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.

Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:

a) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
b) Obtain the railroad's detailed estimate of the cost of the Work.
c) Establish future maintenance responsibilities for the proposed installation.
d) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
e) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

Maintenance Obligations

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

7. OPTION LETTER MODIFICATION

Option Letters may be used to extend Agreement terms, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. These options are limited to the specific scenarios listed below. The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Following are the applications for the individual options under the Option Letter form:

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

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

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

B. **Option 2 – Option to add overlapping phase without increasing contract dollars.** The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

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

8. PAYMENTS

The State shall, in accordance with the provisions of this **§8**, pay the Local Agency in the amounts and using the methods set forth below:

A. **Maximum Amount**

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Contract set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

B. **Payment**

i. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner, approved by the State.

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.

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.

Erroneous Payments

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

C. **Use of Funds**

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

D. **Matching Funds**

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

E. **Reimbursement of Local Agency Costs**

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

i. Reasonable and Necessary

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

ii. Net Cost

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

9. ACCOUNTING

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

A. **Local Agency Performing the Work**

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

B. **Local Agency-Checks or Draws**

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

C. **State-Administrative Services**

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

D. **Local Agency-Invoices**

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

E. **Invoicing Within 60 Days**

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

F. **Reimbursement of State Costs**

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

10. REPORTING - NOTIFICATION

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

A. **Performance, Progress, Personnel, and Funds**

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

B. **Litigation Reporting**

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

C. **Noncompliance**

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

D. **Documents**

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

11. LOCAL AGENCY RECORDS

A. **Maintenance**

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

B. **Inspection**

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

C. **Monitoring**

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

D. **Final Audit Report**

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

12. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. **Confidentiality**

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

B. **Notification**

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

C. **Use, Security, and Retention**

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

D. **Disclosure-Liability**

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

13. CONFLICT OF INTEREST

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

14. REPRESENTATIONS AND WARRANTIES

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

A. **Standard and Manner of Performance**

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

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

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the

State, the Local Agency shall provide the State with proof of the Local Agency's authority to enter into this Agreement within 15 days of receiving such request.

C. **Licenses, Permits, Etc.**

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

15. INSURANCE

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

A. **The Local Agency**

i. Public Entities

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

ii. Non-Public Entities

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

B. **Contractors**

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

i. Worker's Compensation

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

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket liability, personal injury, and advertising liability with minimum limits as follows: **(a)** $1,000,000 each occurrence; **(b)** $1,000,000 general aggregate; **(c)** $1,000,000 products and completed operations aggregate; and **(d)** $50,000

any one fire. If any aggregate limit is reduced below $1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

iii. Automobile Liability

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

iv. Additional Insured

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

v. Primacy of Coverage

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

vi. Cancellation

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

vii. Subrogation Waiver

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

C. **Certificates**

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

16. DEFAULT-BREACH

A. **Defined**

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

B. **Notice and Cure Period**

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

17. REMEDIES

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this **§17** in addition to all other remedies set forth in other sections of this Agreement following the

notice and cure period set forth in **§16(B)**. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. **Termination for Cause and/or Breach**

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

1. Obligations and Rights

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

2. Payments

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

3. Damages and Witholding

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

B. **Early Termination in the Public Interest**

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by **§17(A)** or as otherwise specifically provided for herein.

i. Method and Content

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

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)**.

Payments

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

C. **Remedies Not Involving Termination**

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

i. Suspend Performance

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

Withold Payment

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

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.

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.

Intellectual Property

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

18. NOTICES and REPRESENTATIVES

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

A. **State:**

Long Nguyen, P.E.
CDOT –Traffic
Region 4
1420 Second Street
Greeley, CO 80631
(970)350-2126

B. **Local Agency:**

Dave DeBaere
Project Manager
City of Loveland
Public Works Engineering
410 East 5th Street
Loveland, CO 80537
(970)962-2510

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agencys's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

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

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

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado

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

22. FEDERAL REQUIREMENTS

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

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State- approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

25. GENERAL PROVISIONS

A. Assignment

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior written consent of the State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§25(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. **Entire Understanding**

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

F. **Indemnification - General**

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

G. **Jurisdction and Venue**

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

H. **Limitations of Liability**

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

I. **Modification**

i. By the Parties

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

By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

J. **Order of Precedence**

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Colorado Special Provisions,

The provisions of the main body of this Agreement,
Exhibit A (Scope of Work),
Exhibit B (Local Agency Resolution),
Exhibit C (Funding Provisions),
Exhibit D (Option Letter),
Exhibit E (Local Agency Contract Administration Checklist),
Other exhibits in descending order of their attachment.

K. **Severability**

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. **Survival of Certain Agreement Terms**

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. **Taxes**

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them.

N. **Third Party Beneficiaries**

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. **Waiver**

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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26. COLORADO SPECIAL PROVISIONS

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

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

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

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

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

3. GOVERNMENTAL IMMUNITY.

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

4. INDEPENDENT CONTRACTOR

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

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

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

7. BINDING ARBITRATION PROHIBITED.

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

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

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

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree

with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

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

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

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

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

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

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

SPs Effective 1/1/09

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27. SIGNATURE PAGE

Agreement Routing Number **13 HA4 47461**

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.**

Sign Here

THE LOCAL AGENCY
City of Loveland

By: _____
Name of Authorized Individual

Title: _____
Official Title of Authorized Individual

_____
*Signature

Date: _____

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Colorado Department of Transportation
Donald E. Hunt, Executive Director

_____
By: Timothy J. Harris, Chief Engineer

Date: _____

2nd The Local Agency Signature if Needed

By: _____
Name of Authorized Individual

Title: _____
Official Title of Authorized Individual

_____
*Signature

Date: _____

LEGAL REVIEW
John W. Suthers, Attorney General

By: _____
Signature - Assistant Attorney General

Date: _____

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
David J. McDermott, CPA

By: _____
Colorado Department of Transportation

Date: _____

28. EXHIBIT A – SCOPE OF WORK

Scope of Work

The Colorado Department of Transportation ("CDOT") will oversee the BNSF Railway Company when they repair the crossing at US 287 Northbound and Southbound (also identified as Cleveland and Lincoln Avenues) in Loveland, Colorado (hereinafter referred to as the "Work"). CDOT and the City of Loveland believe it will be beneficial to perform this Work because the crossings have degraded significantly and present a public hazard.

The Work will be located in public right-of-way. The Work will contain the following features:

- New surface, track, ballast, ties and miscellaneous materials for the US 287 NB & SB railway crossings in Loveland,
- Asphalt paving at crossings, and
- Concrete crossing ramps.

The Work will conform to the parameters articulated in the following:

- BNSF Railway Company FHPM Estimate for CDOT.

The Work will be conducted by the BNSF Railway Company and begin as soon as reasonably practical after the execution of this agreement. The material costs estimated for construction of the contract will be reimbursed to the City of Loveland by CDOT. City of Loveland will provide traffic control services during the construction. In addition, the City of Loveland will perform the asphalt paving and/or concrete work. The duration of the Work is anticipated to be eight weeks.

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY ORDINANCE or RESOLUTION

30. EXHIBIT C – FUNDING PROVISIONS

A. **Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be $84,457.00 which is to be funded as follows:

1	**BUDGETED FUNDS**		
a.	Federal Funds (82.79% of Participating Costs)		$69,922.00
b.	State Matching Funds (17.21% of Participating Costs)		$14,535.00
	TOTAL BUDGETED FUNDS		$84,457.00
2	**ESTIMATED CDOT-INCURRED COSTS**		
a.	Federal Share (__ of Participating Costs)		$0.00
b.	Local Agency		
	Local Agency Share of Participating Costs	$0.00	
	Non-Participating Costs (Including Non-Participating Indirects)	$0.00	
	Estimated to be Billed to Local Agency		$0.00
	TOTAL ESTIMATED CDOT-INCURRED COSTS		$0.00
3	**ESTIMATED PAYMENT TO LOCAL AGENCY**		
a.	Federal Funds Budgeted (1a)		$69,922.00
b.	State Matching Funds (2b)		$14,535.00
	TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		$84,457.00
	FOR CDOT ENCUMBRANCE PURPOSES		
	Total Encumbrance Amount ($0.00 divided **by** __%)		$0.00
	Less ROW Acquisition 3111 and/or ROW Relocation 3109		$0.00
	Net to be encumbered as follows:		$84,457.00

WBS Element ____.__.__	Design	3020	$0.00
WBS Element 19091.20.10_	Const	3301	$84,457.00

B. **Matching Funds**

The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20.205) to 17.21% State funds, it being understood that such ratio applies only to the $69,922.00 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 $69,922.00, and additional federal funds are made available for the Work, the Local Agency shall pay 0% 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 $69,922.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein.

C. **Maximum Amount Payable**

The maximum amount payable to the Local Agency under this Agreement shall be $84,457.00 (For CDOT accounting purposes, the federal funds of $69,922.00 and the State matching funds of $14,535.00 will be encumbered for a total encumbrance of $84,457.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. **Single Audit Act Amendment**

All state and local government and non-profit organizations receiving more than $500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than $500,000

If the Local Agency expends less than $500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure exceeding than $500,000-Highway Funds Only

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

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

If the Local Agency expends more than $500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)
NOTE: This option is limited to the specific contract scenarios listed below
AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	CLIN Routing #
Original Contract CMS # Original Contract SAP #		Option Letter CMS # Option Letter SAP #	

Vendor name: _____

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

1. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
2. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
3. Option to update funding (a new Exhibit C must be attached with the option letter and shall be labeled C-1 (future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.)

B. REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

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

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

(Insert the following language for use with Option #3):
In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here),* the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The Agreement is now (*select one: increased and/or decreased)* by (*insert dollars here*) specified in Paragraph/-Section/-Provision/Exhibit _____ of the original Agreement. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. (The following is a NOTE only so please delete when

using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)

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

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

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

APPROVALS:

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

_____

By: _____
Print Name of Authorized Individual

Signature: _____
Date: _____

Title: Official Title of Authorized Individual

_____

State of Colorado:
John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
David J. McDermott, CPA

By: _____

Date: _____

Form Updated: June 12, 2008

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

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

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

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code	Region
STA 2873-166	SR46667	19091	04

Project Location	Date
SH 287 NB & SB (Cleveland and Lincoln Avenue) in City of Loveland	July 19, 2012

Project Description
Upgrade Railroad Crossing Surfaces

Local Agency	Local Agency Project Manager
City of Loveland	Dave DeBaere
CDOT Resident Engineer	**CDOT Project Manager**
Long Nguyen	Nicole Hahn

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
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct Consultant Selection/Execute Consultant Agreement	NA	NA
5-4	Conduct Design Scoping Review meeting	NA	NA
5-5	Conduct Public Involvement	X	
5-6	Conduct Field Inspection Review (FIR)	NA	NA
5-7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	NA	NA
5-8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	NA	NA
5-9	Obtain Utility and Railroad Agreements	X	
5-10	Conduct Final Office Review (FOR)	NA	NA
5-11	Justify Force Account Work by the Local Agency	X	#
5-12	Justify Proprietary, Sole Source, or Local Agency Furnished items		
5-13	Document Design Exceptions - CDOT Form 464	NA	NA
5-14	Prepare Plans, Specifications and Construction Cost Estimates	N/A	
5-15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine Applicability of Davis-Bacon Act This project ☐ is X is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Long Nguyen _____ July 19, 2012 CDOT Resident Engineer(Signature on File) Date	NA	NA
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)	NA	NA
6-4	Title VI Assurances	NA	
	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)	NA	NA
ADVERTISE, BID AND AWARD			
7-1	Obtain Approval for Advertisement Period of Less Than Three Weeks	NA	
7-2	Advertise for Bids	NA	
7-3	Distribute "Advertisement Set" of Plans and Specifications	NA	
7-4	Review Worksite and Plan Details with Prospective Bidders While Project is Under Advertisement	NA	
7-5	Open Bids	NA	
7-6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals	NA	
	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	NA	
	Submit required documentation for CDOT award concurrence	NA	
7-7	Concurrence from CDOT to Award	NA	
7-8	Approve Rejection of Low Bidder	NA	
7-9	Award Contract	NA	
7-10	Provide "Award" and "Record" Sets of Plans and Specifications	NA	
CONSTRUCTION MANAGEMENT			
8-1	Issue Notice to Proceed to the Contractor	NA	
8-2	Project Safety	X	#
8-3	Conduct Conferences:		
	Pre-construction Conference (Appendix B)	X	
	Presurvey • Construction staking • Monumentation	X NA	
	Partnering (Optional)	X	X
	Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual)*	NA	
	Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual)*	NA	
	HMA Pre-Paving (Agenda is in *CDOT Construction Manual)*	X	
8-4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8-5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." _____ _____ Local Agency Professional Engineer or CDOT Resident Engineer Phone number	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8-6	Approve Shop Drawings	NA	
8-7	Perform Traffic Control Inspections	X	X
8-8	Perform Construction Surveying	X	
8-9	Monument Right-of-Way	NA	
8-10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. Local Agency Representative — Phone number: 970 962 2515 ~~720-564-2658~~	X	
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	
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. Long Nguyen — CDOT Resident Engineer — Phone number: 970-350-2126		X
MATERIALS			
9-1	Conduct Materials Preconstruction Meeting	X	
9-2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	 X X	X
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures ☐ CDOT Procedures ☐ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	 NA	
9-8	Approve Mix Designs • Concrete • Hot Mix Asphalt	 X X	
9-9	Check Final Materials Documentation	X	
9-10	Complete and Distribute Final Materials Documentation	X	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10-1	Fulfill Project Bulletin Board and Pre-construction Packet Requirements		
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		
10-3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280		
10-4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" requirements		
10-5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire		
10-6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)		
10-7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report		
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 Contactor and submit to the Resident Engineer		
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		
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
11-13	Retain Final Version of Local Agency Contract Administration Checklist		X

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

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

Required by 23 CFR 635.112

CIVIL RIGHTS EXHIBIT

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:

A. 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 contract.

B. Nondiscrimination. The Contractor, with regard to the work performed by it after ward 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.

C. 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 Contractors' obligations under this contract and the Regulations relative to nondiscrimination of the ground of race, color, sex, mental or physical handicap or national origin.

D. 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.

E. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(1) Withholding of payments to the Contractor under the contract until the Contractor complies, and/or;

(2) Cancellation, termination or suspension of the contract, in whole or in part.

F. Incorporation of Provisions. 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 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 Subcontactor of supplier as a result of such direction, the Contractor may request the State to enter such litigation to protect the interests of the State and, in addition, the Contractor may request FHWA to enter into such litigation to protect the interest of the United States.

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

   The short-list is based on the following evaluation factors:

   a. Qualifications,

   b. Approach to the Work,

   c. Ability to furnish professional services.

   d. Anticipated design concepts, and

   e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

a. Abilities of their personnel,

b. Past performance,

c. Willingness to meet the time and budget requirement,

d. Location,

e. Current and projected work load,

f. Volume of previously awarded contracts, and

g. Involvement of minority consultants.

6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than $50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.

8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the 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

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ATTACHMENTS

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

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

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

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

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

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

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

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

II. NONDISCRIMINATION

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

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this Agreement. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this Agreement. In the execution of this Agreement, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal

Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementations of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this Agreement, will attempt to resolve such complaints, and will take appropriate corrective action within a. reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. **Training and Promotion:**

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

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

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

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

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

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

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

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

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

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

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

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to

be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

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

2. Classification:

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

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

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

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

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

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

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

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

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

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed

pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

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

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees:

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

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

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

c. Helpers:

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

5. **Apprentices and Trainees (Programs of the U.S. DOT):**

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

6. **Withholding:**

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

7. **Overtime Requirements:**

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

8. **Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

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

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

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

2. **Payrolls and Payroll Records:**

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

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

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

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

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

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

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

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

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

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise

disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

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

2. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. **Instructions for Certification - Primary Covered Transactions:**

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

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

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

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

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

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

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

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

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

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

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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.

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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.

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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.

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XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of

any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

37. EXHIBIT J – FEDERAL REQUIREMENTS

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

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

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

the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);

the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30;

the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements;

to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable;

the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. **Executive Order 11246**

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

C. **Copeland "Anti-Kickback" Act**

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

D. **Davis-Bacon Act**

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by the Local Agencys and sub-the Local Agencys when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. **Contract Work Hours and Safety Standards Act**

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

F. **Clear Air Act**

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of $100,000).

G. **Energy Policy and Conservation Act**

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

H. **OMB Circulars**

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

I. **Hatch Act**

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

J. **Nondiscrimination**

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

K. **ADA**

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. **Uniform Relocation Assistance and Real Property Acquisition Policies Act**

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

M. **Drug-Free Workplace Act**

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

N. **Age Discrimination Act of 1975**

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. **23 C.F.R. Part 172**

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

P. **23 C.F.R Part 633**

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

Q. **23 C.F.R. Part 635**

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

R. **Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973**

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. **Nondiscrimination Provisions:**

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical

handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

Sanctions for Noncompliance.

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

T. **Incorporation of Provisions§22**

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

38. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
As of 10-15-10

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

   1.1. **"Award"** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

   - **1.1.1.** Grants;
   - **1.1.2.** Contracts;
   - **1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
   - **1.1.4.** Loans;
   - **1.1.5.** Loan Guarantees;
   - **1.1.6.** Subsidies;
   - **1.1.7.** Insurance;
   - **1.1.8.** Food commodities;
   - **1.1.9.** Direct appropriations;
   - **1.1.10.** Assessed and voluntary contributions; and
   - **1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

   Award ***does not*** include:

   - **1.1.12.** Technical assistance, which provides services in lieu of money;
   - **1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
   - **1.1.14.** Any award classified for security purposes; or
   - **1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

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

   1.3. **"Contract"** means the contract to which these Supplemental Provisions are attached and includes all Award types in **§1.1.1** through **1.1.11** above.

   1.4. **"Contractor"** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

   1.5. **"Data Universal Numbering System (DUNS) Number"** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: http://fedgov.dnb.com/webform.

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

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

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

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

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

1.9. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."

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

1.11. **"Subaward"** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient's support in the performance of all or any portion of the substantive project or program for which the Award was granted.

1.12. **"Subrecipient"** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee.

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

1.14. **"Supplemental Provisions"** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.

1.15. **"Total Compensation"** means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:

1.15.1. Salary and bonus;
1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
1.15.4. Change in present value of defined benefit and actuarial pension plans;
1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

1.16. "**Transparency Act**" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

1.17 **"Vendor"** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any

revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

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

   3.1. CCR. Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update the CCR information at least annually after the initial registration, and more frequently if required by changes in its information.

   3.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

4. **Total Compensation.** Contractor shall include Total Compensation in CCR for each of its five most highly compensated Executives for the preceding fiscal year if:

   4.1. The total Federal funding authorized to date under the Award is $25,000 or more; and

   4.2. In the preceding fiscal year, Contractor received:

      4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

      4.2.2. $25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

   4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

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

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

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

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

   39. 7.1.1 Subrecipient DUNS Number;

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

   41. 7.1.3 Subrecipient Parent DUNS Number;

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

43. **7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

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

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

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

8. Exemptions.

46. **8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

47. **8.2** A Contractor with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

9. Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

FIRST READING February 5, 2013

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR RAILROAD CROSSING REPAIRS ON U.S. 287

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; 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 2013, 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 $69,920 from Federal grants and $14,540 from State grants in the Transportation Fund 211 are available for appropriation. Revenues in the total amount of $84,460 are hereby appropriated for railroad crossing repairs on U.S. 287 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
Transportation Fund 211

Revenues		
211-23-232-1700-32000-ENSR015	Federal Grant	69,920
211-23-232-1700-32100-ENSR015	State Grant	14,540
Total Revenue		**84,460**
Appropriations		
211-23-232-1700-49360-ENSR015	Construction	84,460
Total Appropriations		**84,460**

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 February, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

N
W
E
S
LAKE LOVELAND
Legend:
R
Railroad Improvement
Lincoln/ Cleveland Railway Crossings
R
R
R
E 23RD ST
E 22ND ST
22ND PL
E 20TH ST
MAPLE DR
N GARFIELD AVE
JACKSON AVE
CRESCENT DR
GREGG DR
E 16TH ST
GRANDVIEW DR
LAKE DR
ARTHUR DR
MARMAC DR
E 15TH ST
US 34 (EISENHOWER BLVD.)
N ADAMS AVE
MONROE ELEMENTARY
N ARTHUR AVE
N JEFFERSON AVE
E 13TH ST
W 13TH ST
GOROM AVE
W 12TH ST
MCKINLEY AVE
N HARRISON AVE
N GRANT AVE
N ROOSEVELT AVE
N MONROE AVE
HIGHLAND DR
WINONA CIR
LYNX AVE
BARNES PL
ERNEST PL
E 11TH ST
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E 9TH ST
BIRKLEY CT
W 9TH ST
W 8TH ST
E 8TH ST
FRANKLIN AVE
N COLORADO AVE
N GRANT AVE
GARFIELD AVENUE
N LINCOLN AVE
N JEFFERSON AVE
N WASHINGTON AVE
N PIERCE AVE
N DOUGLAS AVE
W 7TH ST
E 7TH ST
GARFIELD ELEMENTARY
SHERIDAN AVE
N ROOSEVELT AVE
MCKINLEY AVE
N CALIFORNIA AVE
W 6TH ST
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TRUSCOTT ELEMENTARY
W 5TH ST
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N CLEVELAND AVE
N CUSTER AVE
LOGAN AVE
W 4TH ST
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N RAILROAD AVE
W 3RD ST
E 3RD ST
BILL REED
W 2ND ST
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JESSEN DR
W 1ST ST
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2ND ST SE

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: **12**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Lindsey Bashline, Water and Power Department
PRESENTER: Lindsey Bashline, Water and Power Department

TITLE: A Resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado and Larimer County, Colorado for efficiency audits and training provided through the Larimer Conservation Corps Water and Energy Program

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 to approve a resolution for an Intergovernmental Agreement (IGA) between the City of Loveland and Larimer County in the amount of $35,500 for the Larimer County Conservation Corps, Water and Energy Program Efficiency Audits and Training.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible
The funds are available in the approved 2013 City of Loveland budget for Water and Power.

SUMMARY:

For three years, Loveland Water and Power has partnered with the Larimer County Conservation Corps on the Low-Income Energy Assessment program. The program focuses on workforce development for young adults in the area of conservation and offers low-income targeted residents free energy and water assessments in the municipalities of Loveland and Fort Collins.

The resolution seeks approval of an IGA between the City of Loveland and Larimer County in the amount of $35,500. The program is funded from the Loveland Water and Power, Customer Relations residential energy efficiency budget. The program was part of the Residential Energy Efficiency Program Portfolio that was presented to City Council in July of 2010. Per City Code, this IGA requires City Council approval.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. IGA (Exhibit A to the Resolution)

RESOLUTION #R-11-2013

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND LARIMER COUNTY, COLORADO FOR EFFICIENCY AUDITS AND TRAINING PROVIDED THROUGH THE LARIMER COUNTY CONSERVATION CORPS WATER AND ENERGY PROGRAM

WHEREAS, the City of Loveland desires to promote the development of job skills in the utility industry for young adults in Larimer County while increasing the availability of water and energy efficiency measures and education to the City's low-income water and/or electric customers; and

WHEREAS, Larimer County desires to expand its established Conservation Corps program to provide job skills and opportunities in the utility industry for young adults in Larimer County through the Larimer County Conservation Corps ("LCCC") Water and Energy Program; and

WHEREAS, the City and Larimer County desire to work with one another to achieve the above-stated goals in an efficient and cost-effective manner that minimizes overhead expenditures for administration and program creation; and

WHEREAS, as governmental entities in Colorado, the City and Larimer County 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 "Agreement for Services, LCCC Water & Energy Program – Efficiency Audits and Training," 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 5th day of February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

EXHIBIT A

AGREEMENT FOR SERVICES
LCCC Water & Energy Program – Efficiency Audits and Training

This Agreement is made this _____ day of _____, 2013, *nunc pro tunc* January 1, 2013, by and between the City of Loveland, Colorado, a municipal corporation (the "**City**"), and Larimer County, Colorado (the "**County**"), for the use and benefit of the Larimer County Workforce Center, Conservation Corps, 200 West Oak Street, Suite 5000, Fort Collins, Colorado 80521 (the "**Provider**").

WITNESSETH

WHEREAS, the City wishes to promote the development of job skills in the utility industry for young adults in Larimer County while increasing the availability of efficiency measures and education to the City's low-income water and/or electric customers; and

WHEREAS, the Provider wishes to expand its established Conservation Corps program in order to provides such opportunities through the Larimer County Conservation Corps ("**LCCC**") Water & Energy Program; and

WHEREAS, it is in the best interests of the City and its ratepayers, and the County and its taxpayers, to provide services efficiently and cost-effectively, and to minimize overhead expenditures for administration and program creation; and

WHEREAS, as governmental entities in Colorado, the City and the County 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, in consideration of the mutual covenants herein, the parties agree as follows:

1. Services. The Provider agrees to provide services generally described as providing efficiency audits and water and energy savings product installations for 115 to 215 low-income water and/or electric utility customers of the City, and to provide related water and energy efficiency education, assistance, and promotion of the City's home energy rebate programs, as more fully described in **Exhibit A**, consisting of two pages and incorporated herein by this reference (the "**Services**").

2. Term; Renewal. This Agreement shall be effective from January 2, 2013 through December 31, 2013. This Agreement may be renewed by written agreement of the parties for successive one-year terms beginning January 1 and ending December 31 of the then-current calendar year.

3. Compensation. In consideration for the Provider's Services, the City agrees to pay the Provider an amount not to exceed Thirty-five Thousand, Five Hundred Dollars ($35,500) in accordance with the schedule set forth in **Exhibit B**, consisting of one page and incorporated herein by this reference.

4. No Joint Employer Relationship. All persons employed by the Provider to deliver Services to the City hereunder shall remain at all times subject to the sole and exclusive control, supervision, and direction of the Provider. The Provider shall have sole and exclusive control over the selection, hiring, discipline, firing, and assignment of such employees. The Provider shall also have the sole and exclusive authority to determine the method, means, and manner of performance of such employees, and to establish their wages, hours, and working conditions. The Provider shall be the sole employer of all employees providing services pursuant to this Agreement. This Agreement shall not be construed as creating a "joint-employer" relationship between the Provider and the City. As the sole employer of all persons providing Services pursuant to this Agreement, the Provider agrees that the City shall have no obligation or liability in connection with: (i) the selection, hiring, discipline, firing, or assignment of such employees; (ii) the method, means, or manner of performance of such employees; (iii) the wages, hours, or working conditions of such employees; (iv) negligent conduct, intentional conduct, and criminal conduct, including commissions and omissions, of such employees; and (v) the employment relationship between the Provider and such employees.

5. Payroll Processing. The Provider agrees to perform all necessary payroll processing and personnel administration with respect to employees hired or retained pursuant to this Agreement in compliance with all applicable federal and state laws and local ordinances, including but not limited to the maintenance of all employment-related records, the issuance of payroll checks, and the withholding of FICA and applicable federal and state taxes. The City agrees not to provide anything of value to any employee of the Provider performing services under this Agreement, whether in the form of a gift or compensation, without prior written approval from the Provider.

6. Workers' Compensation. The Provider agrees to provide workers' compensation coverage for employees pursuant to this Agreement. It is the intent of the Provider and the City that the Provider's workers' compensation insurance carrier shall be liable for any benefits awarded to any injured employee under the terms of this Agreement.

7. Hold Harmless. Each party hereto agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the extent required by law. No term or condition of this Agreement shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits or protections available to any party under the Colorado Governmental Immunity Act.

8. Additional Provider Obligations.

a. No person with responsibilities in the provision of services or the operation of any program referred to in this Agreement will unlawfully discriminate with respect to any program participant or any applicant for participation on the basis of race, color, national origin, age, sex, religion, handicap, political affiliation, or beliefs.

b. No services provided under this Agreement shall involve political activities, and no funds made available under this Agreement shall be used for lobbying activities.

c. No person with responsibilities in the provision of the services or the operation of any program referred to in this Agreement will use his or her position for his or her own private gain or for the gain of any person with whom (s)he has a relationship by blood or marriage or a close business, political, or personal association.

d. The Provider agrees to complete background checks reasonably satisfactory to the City on all employees of the Provider prior to participation in the Program, and to limit participation to persons shown through said checks to be reliable and reasonably suited for work in the homes of City utility customers. Any such checks shall be completed in accordance with applicable laws.

9. Confidential Information.

a. To perform the Services, the Provider may require access to the City's confidential information, including without limitation the names, address, telephone numbers, and personal financial information of the City's utility customers. The City shall notify the Provider that such information is confidential upon providing it to the Provider. The Provider shall keep all such information in confidence and shall not disclose such information to third parties except as authorized under this Agreement or in writing by the City and, if applicable, any third parties with whom the City has confidentiality or non-disclosure agreements concerning such information. Dissemination of confidential information by the Provider shall be restricted to the Provider's employees whose duties justify their need to know, and then only on the basis of an agreement between the Provider and its employees regarding their obligation to keep all such information in confidence and not disclose such information to third parties except as authorized under this Agreement. At such time as the Provider has concluded its use of the City's confidential information, the Provider shall promptly return to the City all physical manifestations of the confidential information provided by the City to the Provider, including all copies of database compilations of the confidential information, if any. In the event the Provider has compiled information in its work papers in a form that could be identified as having been derived from the City's confidential information, such work papers shall be marked "Confidential Information" and sealed in a separate envelope in the Provider's files concerning the City. The sealed material shall not be disclosed except in accordance with the terms of this Agreement. In the event any third party seeks the release of such information, whether through court proceedings, open records requests, or otherwise, the Provider shall promptly notify the City of the request before releasing such information so that the City may have an opportunity to seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement.

b. In performing the Service, the Provider may receive or obtain confidential information directly from third parties, including without limitation the names, address,

telephone numbers, and personal financial information of the City's utility customers. The Provider agrees to keep all such information confidential and shall not disclose such information except as required by law or court order.

10. Parties' Representatives. For the purposes of this Agreement, the Provider designates Maelly Oropeza, Program Coordinator (moropeza@larimer.org, 970-498-6630) as its representative. The City designates Lindsey Bashline, Customer Relations Specialist, (Lindsey.Bashline@cityofloveland.org, 970-962-3727) as its representative.

11. City Responsibilities. In addition to providing payment as set forth above, the City shall further be obligated to: (i) provide materials for direct installation into the assessed homes, including, as appropriate, compact fluorescent light bulbs, low-flow showerheads, faucet aerators, shower timers, programmable thermostats, carbon monoxide detectors, power strips, caulk, and clotheslines; (ii) assist with marketing efforts in seeking households through agency materials, community partners, online or other means; (iii) identify a liaison to the Provider's Water & Energy Coordinator to assist with Corps member development, including networking, shadowing, informational interviews, sitting on an industry panel for questions and answers, or site visits of the crew in the field; and (iv) offer written feedback upon completion of the Services.

12. Default. Each and every term and condition of this Agreement shall be deemed to be a material element of this Agreement. In the event either party shall fail or refuse to perform according to the terms of this Agreement, such party may be declared in default thereof.

13. Remedies upon Default. In the event a party has been declared in default hereof, such defaulting party shall be allowed a period of five days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to: (i) terminate the Agreement and seek damages; (ii) treat the Agreement as continuing and require specific performance; or (iii) seek any other remedy available at law or equity.

14. Entire Agreement. This Agreement and its exhibits constitute and contain the entire agreement and understanding of the parties hereto concerning the subject matters addressed herein, and supersedes and replaces all prior negotiations, agreements, understandings, warranties, promises, or otherwise between the parties hereto, whether written, spoken, or implied, concerning the subject matters hereof.

15. Severability of Invalid Provisions. In the event any covenant, condition, or provision of this Agreement, or the application thereof, is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not in any way affect any of the other covenants, conditions, or provisions of this Agreement, provided that the invalidity of any such covenant, condition, or provision does not materially prejudice either the City or the Provider in their respective rights and obligations under the valid covenants, conditions, or provisions of the Agreement.

16. Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Colorado.

17. Waiver of Breach – Effect. No waiver of any breach of any term of provision of this Agreement by the City or the Provider shall be construed to be, nor shall be, for any purpose, a waiver of any breach of any other provision hereof or of a continuing or subsequent breach of the same provision. No waiver shall be valid unless in writing and signed by the party waiving the breach.

18. Binding Effect. This Agreement shall be binding upon the parties hereto and their successors and assigns.

19. Headings. Paragraph headings contained herein are for convenience and reference, and are not intended to define or limit the scope of any provisions of this Agreement.

20. Appropriation of Funds. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the City of Loveland, 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 of Loveland shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first set forth above.

LARIMER COUNTY CONSERVATION CORPS

By: _____

Title: _____

LARIMER COUNTY WORKFORCE CENTER,
LARIMER COUNTY, COLORADO

By: _____

Title: _____

CITY OF LOVELAND, COLORADO

By: _____
William D. Cahill, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

Exhibit A: Scope of Services

BACKGROUND

The Larimer County Conservation Corps ("LCCC") has existed for nineteen years in our local community. During this tenure, LCCC has specifically focused on providing workforce development programming for young adults, focusing on conservation. Since 2008, the LCCC–Water & Energy Program has implemented a workforce development model of training young adults in the utility industry while addressing the community's low-income population's accessibility to conservation measures and education. LCCC is excited that Loveland Water and Power sees the value of this partnership with the LCCC – Water & Energy Program to meet the needs of Loveland's residents and further expose the next generation of young adult workers to careers in the utility industry in Northern Colorado. This Exhibit A addresses the objectives of the Water & Energy Program, the scope of services, training, roles and responsibilities, and benefits of this partnership.

OBJECTIVE

Implement the LCCC – Water & Energy Program within Loveland, Colorado in an effort to assess and further complete water and energy savings product installations for a minimum of 115 low-income homes through service learning opportunities for Corps member development. In addition, LCCC- Water & Energy Program will also provide water and energy conservation education, tips, and rebate opportunities to the resident's home during the assessment. The LCCC is solely responsible for program oversight and implementation of targeted goals.

SCOPE OF SERVICES

1. Community
   A. Target marketing efforts to the City's low-income water and/or electric customers and partners that serve such populations with an emphasis on the multi-family housing sector.
   B. Schedule home assessment, verifying first that homes are served by Loveland Water and Power.
   C. LCCC crews will perform assessment, installation, educate residents of water and energy conservation techniques, and promote additional comprehensive audit services if interested.
   D. Gather data from assessments to compile energy and water conservation measures installed and associated savings (e.g. kilowatt-hours, carbon, gallons).
   E. Gather demographic information from participants to align with income guidelines for County services.

2. Auditor/Staff
   A. Train 6-9 Corpsmembers in home water and energy assessment and conservation retrofitting while seeking industry-recognized certification from a third-party vendor.
   B. Encourage Corpsmember to further develop their leadership style for personal and professional growth through peer mentoring, networking within industry, or facilitating group activities.

C. Work with internal and external partners including Loveland Water and Power to help Corpsmembers better understand the utility industry and future career opportunities through networking, shadowing, informational interviews, and site visits.
D. Report back the residential assessment data outcomes to partners periodically throughout the program period.
E. Complete a final report summarizing all activities and results.
F. Upon program completion, Corpsmembers will present their findings to the Loveland Utilities Commission at a monthly meeting.

BENEFITS

When the Services are complete, Loveland will have a minimum of 115 and maximum of 215 low-income residences assessed and retrofitted with basic energy and water conservation products. Benefits will also include timely, accurate, and usable data, and a willing and able workforce that may act as a feeder program for utility opportunities in the near future to better train and employ the next generation of utility workers.

Exhibit B: Payment Schedule

PROGRAM COSTS

Program costs are summarized below. The Provider will not incur additional programs costs without the City's prior written approval.

Description	Amount	Notes
Direct Install Materials	$7,556	Efficiency products will be purchased on an as-needed basis.
2013Program Support	$27,944	
Total	$35,500	

COMPENSATION

The City shall pay the Provider in accordance with the following schedule:

Milestone	Payment	Materials*
Signing Agreement (50%)	$13,972	$0
50% of Audits/installations completed (20% of program support plus materials reimbursement)	$5,588.80	$3,778
50% of Audits/installations completed (20% of program support plus materials reimbursement)	$5,588.80	$3,778
Final Report (10% of program support plus materials reimbursement)	$2,794.4	$0
Sub-Total	$27,944	$7,556
Total (100%)	$35,500	

*Provide receipts for actual reimbursement costs. Incremental billing for materials will be pro-rated at 46% based upon contractual agreement regarding City of Loveland's share of homes to be assessed and/or retrofitted.

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: **13**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Steve Adams, Water and Power Department
PRESENTER: Greg Dewey, Civil Engineer

TITLE:
A resolution of the Loveland City Council authorizing an application to, and contract with, the Northern Colorado Water Conservancy District for beneficial use of 282 acre-feet of Colorado-Big Thompson Project Water

RECOMMENDED CITY COUNCIL ACTION:
Motion to 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 to adopt a resolution approving the conversion of 282 Colorado-Big Thompson ("C-BT") units from a Temporary Use Permit to a Permanent Section 131 Contract.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible
The units were purchased in 2012. No additional costs are associated with the conversion.

SUMMARY:
The City of Loveland currently holds 282 acre-foot units of C-BT Project water in the form of temporary use permits, or TUPs. These give the City the temporary right to use the C-BT water associated with these acre-foot units prior to obtaining a contract.

Northern Colorado Water Conservancy District (Northern Water) policy requires municipal and industrial allottees to convert the TUPs to Section 131 contracts in the year following acquisition. ("Section 131" refers to that section in the Water Conservancy Act of Colorado, Title 31, Article 43, Colorado Revised Statutes). Failure to convert the TUPs will result in Northern Water's refusal to deliver the water.

At its January 16, 2013 meeting, the Loveland Utilities Commission unanimously adopted a motion recommending that City Council adopt the Resolution.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. Application (attached to the Resolution as Exhibit A)

RESOLUTION #R-12-2013

A RESOLUTION OF THE LOVELAND CITY COUNCIL AUTHORIZING AN APPLICATION TO, AND CONTRACT WITH, THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR BENEFICIAL USE OF 282 ACRE-FEET OF COLORADO-BIG THOMPSON PROJECT WATER

WHEREAS, pursuant to the Water Conservancy Act of Colorado, Title 37, Article 45, C.R.S., the City Council of the City of Loveland, a Colorado municipal corporation, must apply to the Board of Directors of the Northern Colorado Water Conservancy District ("District") for a contract for the beneficial use of Colorado-Big Thompson Project water within the boundaries of the District on an annually-renewable basis under C.R.S. § 37-45-131 in order to obtain the perpetual right to use said water.

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

Section 1. That the City of Loveland has determined to apply for a contract providing for the beneficial use of two hundred eighty-two (282) acre-feet of Colorado-Big Thompson Project water from the District within the boundaries of the District.

Section 2. That the Director of the Department of Water and Power is hereby authorized and directed to apply to the Board of Directors of the District for a contract providing to the City the beneficial use of said water upon the terms prescribed by said Board in the manner and form attached hereto as Exhibit A and incorporated herein by reference ("Application").

Section 3. That the Director of the Department of Water and Power is hereby authorized to execute the Application and any other documents required by the District to effectuate the contract.

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

ADOPTED this 5th day of February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Shawn L. Oliver

Assistant City Attorney

EXHIBIT A

APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR ANNUALLY RENEWABLE
PERPETUAL WATER CONTRACT FOR RIGHT TO USE
COLORADO-BIG THOMPSON PROJECT WATER
UNDER C.R.S. 37-45-131

Applicant, City of Loveland, a Colorado municipal corporation acting in its governmental capacity or a water activity enterprise (circle capacity in which applicant is acting), hereby applies to Northern Water, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, for a contract for the right to beneficially use Colorado-Big Thompson Project water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is 282 acre-feet to be used so long as the Applicant fully complies with all of the terms, conditions, and obligations hereinafter set forth.

2. It is understood and agreed by the Applicant that any water provided for use under this contract by the Board of Directors of Northern Water shall be primarily for domestic, irrigation, or industrial use within or through facilities or upon lands owned or served by said Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit from the use of water (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of Northern Water.

3. Applicant agrees that an acre-foot of water as referred to herein is defined as being one-three-hundred-ten-thousandth (1/310,000) of the quantity of water annually declared by the Board of Directors of Northern Water to be available for delivery from the water supplies of Northern Water. Applicant agrees that such water shall be delivered from the works of Northern Water at such existing Northern Water delivery point or points as may be specified by the Applicant and that the water delivery obligation of Northern Water shall terminate upon release of water from said works. Further, the Applicant agrees that on November 1 of each year, any water undelivered from the annual quantity made available to the Applicant shall revert to the water supplies of Northern Water.

4. Applicant agrees to pay annually in advance for the amount of water herein provided for use under this contract by the Board of Directors of Northern Water at a price per acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment shall be made, in full, within fifteen (15) days after the date of notice from Northern Water that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each water year thereafter shall be made in advance by the Applicant on or before each October 1, 31 days prior to the start of the water year, at the rate per acre-foot

established by the Board for municipal water use in that water year. For the purpose of this water contract, the water year is defined to be from November 1 to October 31 of the following year.

If an annual payment as herein provided is not made by due date, written notice thereof, by certified mail, will be given by Northern Water to the Applicant at the following address: 200 N. Wilson Avenue, Loveland, Colorado 80537.

Water deliveries shall be suspended as of November 1 of the new water year until payment of the delinquency is made. If payment is not made within ninety (90) days after the date of mailing of said written notice, Applicant shall have no further right, title, or interest under this contract; and the right of use of water as herein made, shall be disposed of at the discretion of the Board of Directors of Northern Water. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above Northern Water's actual expense in terminating and disposing of the contract right of use.

5. This right of use shall be perpetual on an annually renewable basis. If the annual payment is made as provided in this application, the right of use shall be automatically renewed another water year without any further notice of Northern Water; if the annual payment is not timely made, as provided above, the right of use shall terminate.

6. Applicant agrees that the water allocation shall be beneficially used for the purposes and in the manner specified herein, and that this right of use is made for the exclusive benefit of the Applicant and shall not inure to the benefit of any successors or assigns of said Applicant without prior specific approval of the Board of Directors of Northern Water.

7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; the rules, regulations and policies of the Board of Directors of Northern Water as they now exist or as they exist in the future; and by the Repayment Contract of July 5, 1938, between Northern Water and the United States and all amendments thereof and supplements thereto.

8. Applicant agrees, as a condition of this contract, to enter into an "Operating Agreement" with Northern Water if and when the Board of Northern Water finds and determines that such an agreement is required by reason of additional or special services requested by the Applicant and provided by Northern Water. Said agreement may contain, but not be limited to, provision for water delivery at times or by means not provided within the terms of standard contracts of Northern Water; additional annual monetary consideration for extension of Northern Water delivery services and for additional administration, operation and maintenance costs; or for other costs to Northern Water which may arise through provision of services to the Applicant.

9. Acquisition of this annually renewable perpetual right of use water contract for the Colorado-Big Thompson Project water from Northern Water and the right to the beneficial use of water thereunder by the Applicant necessary; the continued acquisition and use of this water supply is essential for the well-being of the community and for the preservation of the public peace, health, and safety; and the adequate protection of the health of the inhabitants of the community.

10. The governing body of Applicant has duly approved this Application in accordance with all legally required procedures.

Signed this _____ day of _____, A.D., 2013.

CITY OF LOVELAND

By_____

ATTEST:

_____

(SEAL)

ORDER ON APPLICATION

Application having been made by or on behalf of all parties interested in this allocation of the right to use Colorado-Big Thompson Project water and after a Hearing by the Board, it is hereby ORDERED that the above application be granted and an allotment contract for 282 acre-feet of water is hereby made to the City of Loveland, a Colorado municipal corporation, for the beneficial uses set forth in said application upon the terms, conditions, and manner of payment as therein specified.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

By_____
President

I hereby certify that the above Order was entered by the Directors of Northern Colorado Water Conservancy District on the _____ day of _____, A.D., 2013.

ATTEST:_____
Secretary

APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR CANCELLATION OF TEMPORARY USE PERMITS

The City of Loveland, hereby applies for the cancellation of the following Temporary Use Permits:

Permits Dated	Acre-Feet
January 13, 2012	08
March 9, 2012	173
March 9, 2012	13
April 13, 2012	01
April 13, 2012	60
May 11, 2012	07
November 9, 2012	20
Total Quantity to be Released	**282**

Dated at Loveland, Colorado this _____ day of _____, 20____.

CITY OF LOVELAND

ATTEST: By_____

_____

(SEAL)

ORDER ON APPLICATION

Application having been made by the City of Loveland, for the cancellation of the above Temporary Use Permits, and Hearing having been held by the Board of Directors of Northern Colorado Water Conservancy District, it is hereby ORDERED that the above Temporary Use Permits be canceled.

Dated the _____ day of _____, _____.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

_____
President

ATTEST:

_____
Secretary

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: **14**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Steve Adams, Water and Power Department
PRESENTER: Greg Dewey, Civil Engineer

TITLE:
A resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Northern Colorado Water Conservancy District for participation in the 2012-2013 Regional Transmission and Treatment Study

RECOMMENDED CITY COUNCIL ACTION:
Motion to 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 to approve an intergovernmental agreement with the Northern Colorado Water Conservancy District for participation in the 2012-2013 regional transmission and treatment study.

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible
The funds to be committed are $11,818 and have been appropriated and are available in the 2013 Water & Power budget.

SUMMARY:
The Northern Colorado Water Conservancy District (Northern Water) has a long-standing history of coordinating projects among many participants with regional benefits. Several treated water providers approached Northern Water and asked its staff to consider coordinating a

regional water transmission and treatment plant study. The results of the study will provide the City of Loveland and the other participants with useful information to better determine the feasibility of making such an effort.

The City of Loveland will be one of 11 participants in funding a $200,000 study. The City of Loveland's portion to contribute will be $11,818.

At its January 16, 2013 meeting, the Loveland Utilities Commission unanimously adopted a motion recommending that the City Council approve the intergovernmental agreement and participate in the study.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. Agreement (attached to the Resolution as Exhibit A)

RESOLUTION #R-13-2013

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR PARTICIPATION IN THE 2012-2013 REGIONAL TRANSMISSION AND TREATMENT STUDY

WHEREAS, the Northern Colorado Water Conservancy District ("Northern Water") is coordinating a study to explore the feasibility of a future joint water transmission and water treatment system to serve northern Colorado municipalities; and

WHEREAS, the City of Loveland desires to participate in the study and share in the cost of the study equally with the other participating municipalities; and

WHEREAS, as governmental entities in Colorado, the City and Northern Water 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 "Agreement with the Northern Colorado Water Conservancy District for Participation in the 2012-2013 Regional Transmission and Treatment Study," 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 5th day of February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT A

AGREEMENT WITH THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR PARTICIPATION IN THE 2012-2013 REGIONAL TRANSMISSION AND TREATMENT STUDY

This Agreement is made and entered into as of _____, 2012, by and between the Northern Colorado Water Conservancy District (a quasi-municipal entity and political subdivision of the State of Colorado), whose address is 220 Water Avenue, Berthoud, Colorado 80513 ("Northern Water"), and _____, whose address is _____ ("Participant").

Recitals

A. The scope and purpose of the 2012-2013 Regional Transmission and Treatment Study ("Study") are described in Exhibit A attached hereto.

B. Overall Study costs, which are estimated to total $200,000, will be shared between Participant, other participants which enter into this Agreement, and Northern Water. Approximately $130,000 of Study costs will be divided equally among the participants in the Study as described in Exhibit B attached hereto. Each Participant will contribute $11,818 to the Study. Northern Water is not a participant in the Study as such term is used in this Agreement. Northern Water will contribute its own funds to the Study in an amount approximately equal to $70,000.

C. Any participant which joins the Study as a participant after this Agreement is executed and is not listed in Exhibit B will be charged the same cost to participate in the Study as all other participants.

D. Any unspent participant contributions to the Study will be refunded to the participant entities based upon the participant entities' contributions to the Study.

Agreement

1. Participant agrees to participate in the 2012-2013 Regional Transmission and Treatment Study. A description of the scope and purpose of the Study is attached hereto as Exhibit A.

2. For the purpose of cost allocation in the Study, Participant agrees to share the cost of the Study equally with all other participants. Attached hereto as Exhibit B is a table showing the equal share of the costs of the Study for each participant.

3. Participant agrees to provide to Northern Water funds for its equal share of the costs necessary to complete the Study. Northern Water estimates that Participant's pro rata share of the costs of the Study is $11,818. Participant will pay Northern Water its equal share of the Study's costs on or before Dec. 18, 2012. These estimated costs will not be

increased or exceeded without the prior written approval of Participant. However, if the Study cannot be completed within these estimated costs, Northern Water is not obligated to complete the Study for the benefit of Participant unless sufficient additional funds as determined by Northern Water are provided by Participant.

4. Participant funds that are not expended to complete the Study will be rebated back to each participant in equal shares based upon each participant's contribution of funds to the Study.

5. In the event that Participant fails to make the payment set forth above at the specified time, Northern Water shall have the right to terminate this Agreement and cease all work on the Study for the benefit of Participant. Northern Water shall give Participant thirty (30) days' advance written notice of its intention to terminate this Agreement and cease work on the Study for Participant's benefit under this paragraph. Participant shall have until the end of said 30-day period in which to make all past due payments in full in order to cure its default hereunder. Participant shall in any event be responsible for its equal share of costs of the Study actually incurred by Northern Water up to the date of termination of this Agreement.

6. Northern Water agrees to diligently pursue completion of the Study in good faith to the extent that funds therefor are provided by the Participant under this Agreement and by other participants under similar agreements. By entering into this Agreement and accepting payments from Participant, Northern Water does not obligate itself to, nor does Northern Water warrant, that it will proceed with any subsequent studies or implementation efforts beyond the Study.

7. In the event of termination of the Study, Participant shall not be entitled to any return of funds paid to Northern Water for the Study, unless payments by participants exceed Northern Water's costs, in which case a pro rata refund will be made.

8. In the event that this Agreement is terminated for any reason, Northern Water shall have no further obligations to Participant, except as provided in Paragraphs 4 and 7 above for those participants who have not been terminated under paragraph 5 above.

9. Notwithstanding any other provision of this Agreement to the contrary, the Participant's maximum financial obligation under this Agreement shall be the payment of $11,818 set forth in paragraph 3 above. The Participant shall have the right to terminate this Agreement at any time. In the event of such termination, each of the parties hereto shall be immediately released from all obligations recited herein as if this Agreement had not been entered into, except that Participant shall be entitled to a return of funds paid to Northern Water as provided in paragraph 8 above.

10. This Agreement is the entire agreement between Northern Water and Participant regarding participation in the Study and shall be modified by the parties only by a duly executed written instrument approved by Participant and Northern Water's Board of Directors.

11. This Agreement is subject to approval by Northern Water's Board of Directors and shall become binding on Northern Water only upon such approval.

PARTICIPANT	NORTHERN COLORADO WATER CONSERVANCY DISTRICT
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____

Exhibit A

2012-2013 REGIONAL TRANSMISSION AND TREATMENT STUDY

SCOPE AND PURPOSE

A number of northern Colorado towns and cities have expressed interest in exploring the feasibility of a future joint water transmission and water treatment system. While all of these entities are able to provide for their present demands, the need for future additional water conveyance and treatment capacity is certain given the planned growth within the region. A study group has formed to begin this process. Northern Water has taken a coordination role to help facilitate this process.

An engineering consultant will be retained to perform a pre-feasibility evaluation of alternatives to meet the needs of the interested entities. The general project scope is as follows:

1. The study will evaluate the needs of the interested participants.

2. The study will determine existing transmission capacity both from Horsetooth Reservoir and Carter Lake Reservoir.

3. The study will provide a planning level budget of potentially feasible options; a preferred project will not be identified.

Exhibit B
Regional Transmission and Treatment Study
2012-2013

Northern Colorado Water Conservancy District
Regional Transmission and Treatment Study, 2012-2013

Participant	Percent of Participant Share of Project*	2012-2013 Participant Share of Cost
Town of Windsor	9.09%	$ 11,818
Town of Severance	9.09%	$ 11,818
Town of Eaton	9.09%	$ 11,818
City of Evans	9.09%	$ 11,818
Town of Milliken	9.09%	$ 11,818
City of Loveland	9.09%	$ 11,818
Town of Firestone	9.09%	$ 11,818
Town of Frederick	9.09%	$ 11,818
Little Thompson Water District	9.09%	$ 11,818
Central Weld County Water District	9.09%	$ 11,818
Fort Collins – Loveland Water District	9.09%	$ 11,818
	100.00%	$ 130,000

*Not including the additional share which will be contributed by Northern Colorado Water Conservancy District out of its own funds.

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: **15**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Karl Barton, Community & Strategic Planning

TITLE: A resolution of the Loveland City Council amending the future Land Use Plan set forth in Section 4.7 of the City of Loveland 2005 Comprehensive Master Plan

RECOMMENDED CITY COUNCIL ACTION: Conduct a public hearing and approve the resolution as submitted.

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 and a legislative action to consider a resolution amending the City of Loveland Future Land Use Plan by changing the future land use designation on approximately 815 acres from DR- Development Reserve to a combination of RAC – Regional Activity Center and E – Employment. The area subject to the amendment is located west of I-25: extending to County Road 7 and north from State Highway 60 one and a half miles. This amendment is proposed by City staff.

BUDGET IMPACT:

☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY: The Development Reserve (DR) designation was placed on this property when the Land Use Plan was adopted on November 5, 2002. The DR designation was intended to recognize that development in this area was likely beyond 15–20 years, but that the market may drive development of a portion of these lands sooner. City staff has been working with Johnstown staff on strategies to reconcile conflicts in our Growth Management Area (GMA) boundaries along the I-25 corridor. The area proposed for this amendment is also contained

within Johnstown's Growth Management Area. The first step in our strategy with Johnstown is to align the land use designations on our Land Use Plan with those on Johnstown's Land Use Plan. The proposed amendment would accomplish this first step.

The RAC and E land use designations envision a wide variety of urban intensity development, including residential, commercial, retail, and employment. These land use designations appear elsewhere on Loveland's land use plan in areas similarly located adjacent to interstate frontages and interchanges (i.e. the I-25/Highway 34 interchange). These land use designations are an indication to property owners that a local government is planning to provide utility services necessary to support urban level development when market conditions dictate.

Please see the attached Planning Commission staff report for a complete description of the amendment.

Two open houses were held to gather input from property owners in the proposed amendment area. The open houses were attended by approximately 30 people in total. No major objections were voiced regarding the proposed amendment.

The Planning Commission held a public hearing to consider the Land Use Plan amendment on January 14, 2013 and unanimously approved the resolution recommending approval. All property owners located within the area proposed for amendment were invited to the Planning Commission hearing. Two property owners attended but elected not to speak. Planning Commission members spoke positively about City efforts to be prepared for future growth and cooperation with Johnstown.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

A. City Council resolution
B. Planning Commission staff report, including attachments
C. Staff power point presentation
D. Draft Planning Commission minutes dated January 14, 2013

RESOLUTION #R-14-2013

A RESOLUTION OF THE LOVELAND CITY COUNCIL AMENDING THE FUTURE LAND USE PLAN SET FORTH IN SECTION 4.7 OF THE CITY OF LOVELAND 2005 COMPREHENSIVE MASTER PLAN

WHEREAS, the City of Loveland "2005 Comprehensive Plan" was recommended by the Loveland Planning Commission for approval in February, 2007 and approved by Resolution #R-21-2007 on March, 6, 2007 by the Loveland City Council ("Council"); and

WHEREAS, pursuant to §6.0(A) of the 2005 Comprehensive Plan, the Plan may be amended by City Council, after a recommendation is received from the Planning Commission and a duly noted public hearing is held; and

WHEREAS, the City of Loveland has, through the Planning Commission and citizens of Loveland, considered a staff initiated application to amend Section 4.7, Land Use Plan Map in the 2005 Comprehensive Plan, to change the land use designation for property located on the west side of I-25, extending west to County Road 7 and extending north from State Highway 60 approximately one and one half (1.5) miles from DR – Development Reserve as follows:

- **Approximately 314 acres to be designated E - Employment;** and
- **Approximately 501 acres to be designated RAC – Regional Activity Center**

WHEREAS, the Planning Commission held a duly noticed public hearing on January 14, 2013 and adopted Commission Resolution No. 13-01 attached hereto as **Exhibit A** recommending the proposed amendment; and

WHEREAS, Council has reviewed the proposed amendment to determine whether it is an appropriate amendment in accordance with the criteria set forth in §6 of the 2005 Comprehensive Plan; and

WHEREAS, Council finds that this amendment implements, furthers or is otherwise consistent with one or more of the philosophies, goals, policies and strategies of the 2005 Comprehensive Plan, including emphasizing flexibility, developing regional employment and multi-use activity centers along I-25, providing for sufficient industrial lands along I-25, providing appropriate areas within the GMA for a full range of urban level services, and enhancing areas of urban development through cooperation with surrounding municipalities; and

WHEREAS, Council finds that this amendment will not interfere with existing, emerging, proposed or future land use patterns and densities of the surrounding neighborhood as depicted on the Land Use Plan Map contained within the 2005 Comprehensive Plan. The Development Reserve land use designation was intended to be a "holding' designation to be used until further definition could be given to the land use plan. This amendment provides that further definition; and

WHEREAS, Council finds that this amendment will not interfere with or prevent, the provision of the area's existing planned, or previously committed services or proposals for community facilities or other specific public or private actions contemplated within the 2005 Comprehensive Plan; and

WHEREAS, Council finds that this amendment will not interfere with or prevent the provision of any existing or planned transportation system services in the area as contemplated by the 2035 Transportation Plan. The transportation demand model used in the creation of the 2035 Transportation Plan accounted for development in this area. Future development will be required to fund any expansions to the area's existing or planned transportation system; and

WHEREAS, Council held a duly noticed public hearing on this amendment to the 2005 Comprehensive Master Plan on February 5, 2013.

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

Section 1. That the Loveland City Council hereby makes the findings set forth in this Resolution.

Section 2. That the Loveland City Council hereby approves amendment of the 2005 Loveland Comprehensive Master Plan by the substitution of the Section 4.7 Future Land Use Plan Map, attached hereto and incorporated herein as **Exhibit B**, in lieu of the prior Land Use Map.

Section 3. That this Resolution shall take effect as of the date of its adoption.

Signed this 5th day of February, 2013.

CITY OF LOVELAND, COLORADO

By: _____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

EXHIBIT A

RESOLUTION NO. 13-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOVELAND RECOMMENDING AMENDMENT OF THE LAND USE MAP SET FORTH IN SECTION 4.7 OF THE CITY OF LOVELAND 2005 COMPREHENSIVE MASTER PLAN

WHEREAS, the City of Loveland "2005 Comprehensive Plan" was recommended for approval in February, 2007 by the Loveland Planning Commission and approved by Resolution #R-21-2007 on March, 6, 2007 by the Loveland City Council; and

WHEREAS, pursuant to §6.0(A) of the 2005 Comprehensive Plan, the Plan may be amended by City Council, after a duly noted public hearing is held and a recommendation is received from the Planning Commission; and

WHEREAS, the City of Loveland has, through the Planning Commission and citizens of Loveland, considered an application to amend Section 4.7, Land Use Plan Map in the 2005 Comprehensive Plan, to change the land use designation for property located on the west side of I-25, extending west to County Road 7 and extending north from State Highway 60 approximately one and a half miles from DR – Development Reserve as follows:

- **Approximately 314 acres to be designated E - Employment;** and
- **Approximately 501 acres to be designated RAC – Regional Activity Center**

WHEREAS, the Planning Commission has reviewed the proposed amendment to determine whether it is an appropriate amendment in accordance with the criteria set forth in §6 of the 2005 Comprehensive Plan; and

WHEREAS, the Planning Commission finds that this amendment implements, furthers or is otherwise consistent with one or more of the philosophies, goals, policies and strategies of the 2005 Comprehensive Plan, including emphasizing flexibility, developing regional employment and multi-use activity centers along I-25, providing for sufficient industrial lands along I-25, providing appropriate areas within the GMA for a full range of urban level services, and enhancing areas of urban development through cooperation with surrounding municipalities; and

WHEREAS, the Planning Commission finds that this amendment will not interfere with existing, emerging, proposed or future land use patterns and densities of the surrounding neighborhood as depicted on the Land Use Plan Map contained within the 2005 Comprehensive Plan. The Development Reserve land use designation was intended to be a "holding' designation to be used until further definition could be given to the land use plan. This amendment provides that further definition; and

WHEREAS, the Planning Commission finds that this amendment will not interfere with or prevent, the provision of the area's existing planned, or previously committed services or proposals

for community facilities or other specific public or private actions contemplated within the 2005 Comprehensive Plan.

WHEREAS, , the Planning Commission finds that this amendment will not interfere with or prevent the provision of any existing or planned transportation system services in the area as contemplated by the 2035 Transportation Plan. The transportation demand model used in the creation of the 2035 Transportation Plan accounted for development in this area. Future development will be required to fund any expansions to the area's existing or planned transportation system; and

WHEREAS, the Planning Commission held a duly noticed public hearing on this amendment to the 2005 Comprehensive Master Plan on January 14, 2013.

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF LOVELAND THAT:

Section 1. That the Loveland Planning Commission hereby makes the findings set forth in this Resolution.

Section 2. That the Loveland Planning Commission hereby recommends that the Loveland City Council amend the 2005 Loveland Comprehensive Master Plan by the substitution of the Section 4.7 Land Use Plan Map, attached hereto and incorporated herein as **Exhibit A**, in lieu of the prior Land Use Map.

Section 3. That this Resolution shall take effect as of the date of its adoption.

Signed this 14th day of January, 2013.

LOVELAND PLANNING COMMISSION

Planning Commission Vice Chair

ATTEST:

Planning Commission Secretary

APPROVED AS TO FORM:

Deputy City Attorney

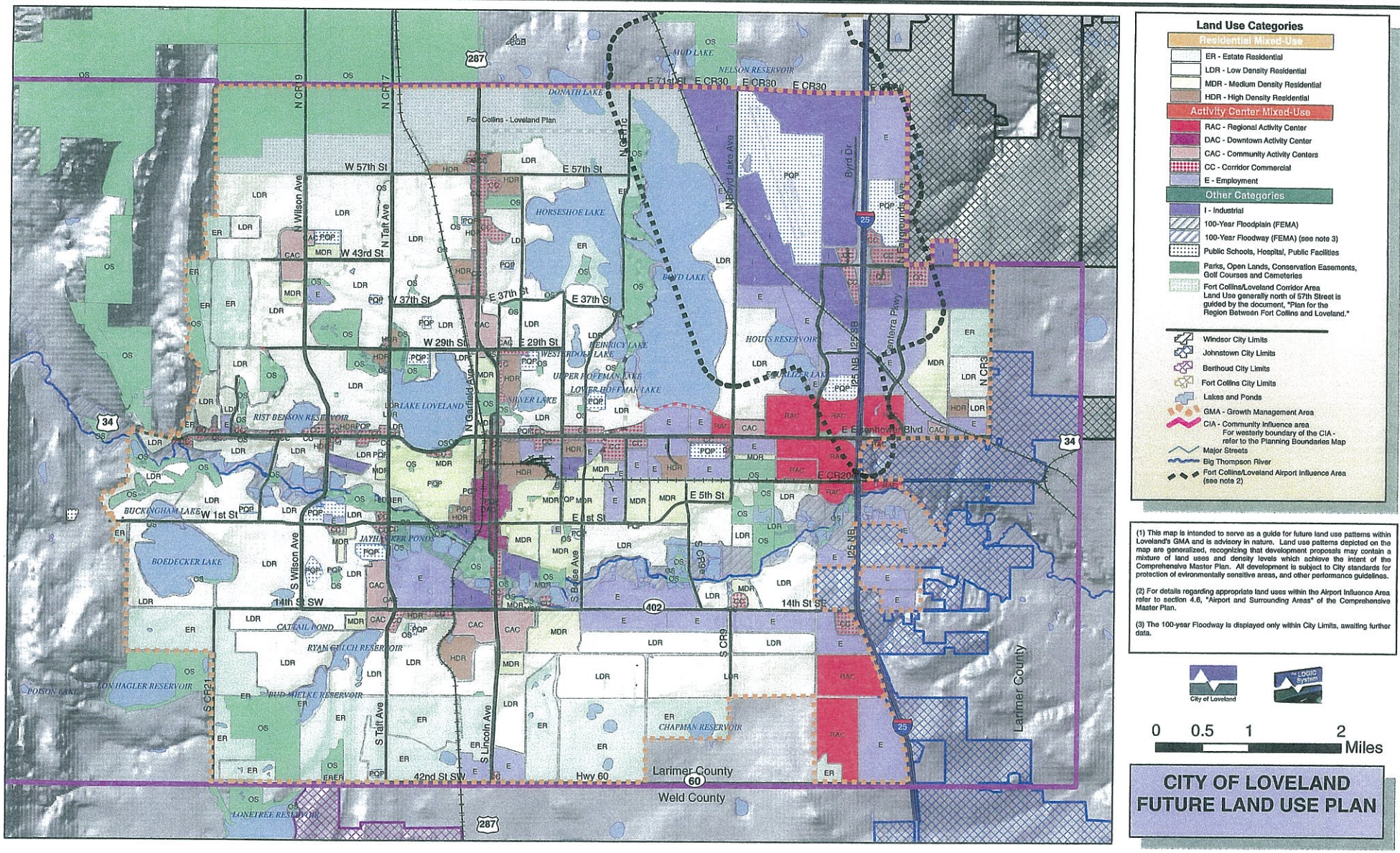
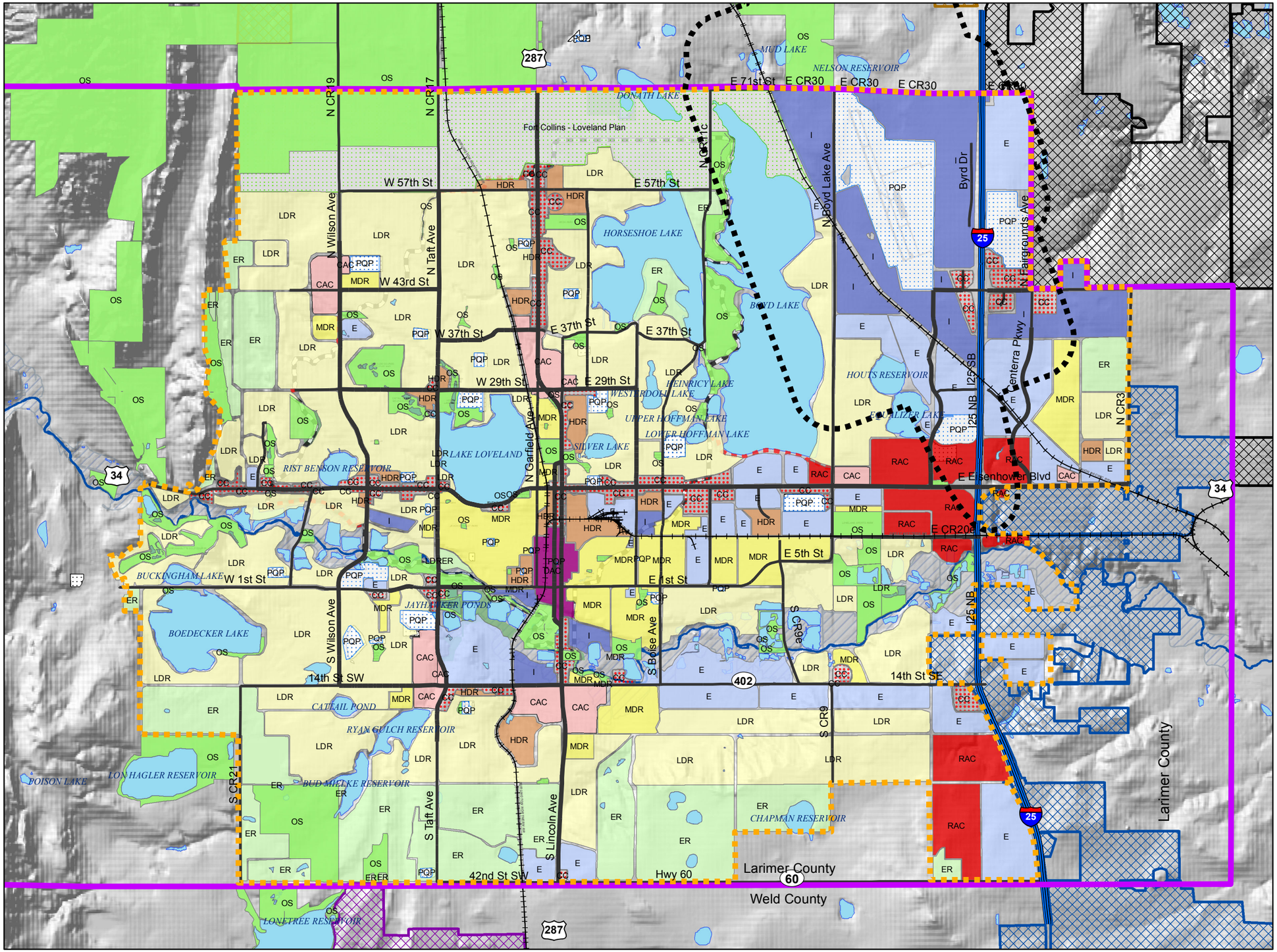

Land Use Categories
Residential Mixed-Use
ER - Estate Residential
LDR - Low Density Residential
MDR - Medium Density Residential
HDR - High Density Residential
Activity Center Mixed-Use
RAC - Regional Activity Center
DAC - Downtown Activity Center
CAC - Community Activity Centers
CC - Corridor Commercial
E - Employment
Other Categories
I - Industrial
100-Year Floodplain (FEMA)
100-Year Floodway (FEMA) (see note 3)
Public Schools, Hospital, Public Facilities
Parks, Open Lands, Conservation Easements, Golf Courses and Cemeteries
Fort Collins/Loveland Corridor Area
Land Use generally north of 57th Street is guided by the document, "Plan for the Region Between Fort Collins and Loveland."
Windsor City Limits
Johnstown City Limits
Berthoud City Limits
Fort Collins City Limits
Lakes and Ponds
GMA - Growth Management Area
CIA - Community Influence area
For westerly boundary of the CIA - refer to the Planning Boundaries Map
Major Streets
Big Thompson River
Fort Collins/Loveland Airport Influence Area (see note 2)
(1) This map is intended to serve as a guide for future land use patterns within Loveland's GMA and is advisory in nature. Land use patterns depicted on the map are generalized, recognizing that development proposals may contain a mixture of land uses and density levels which achieve the intent of the Comprehensive Master Plan. All development is subject to City standards for protection of evironmentally sensitive areas, and other performance guidelines.
(2) For details regarding appropriate land uses within the Airport Influence Area refer to section 4.6, "Airport and Surrounding Areas" of the Comprehensive Master Plan.
(3) The 100-year Floodway is displayed only within City Limits, awaiting further data.
City of Loveland
0 0.5 1 2 Miles
CITY OF LOVELAND
FUTURE LAND USE PLAN
Fort Collins - Loveland Plan
Larimer County
Weld County
Hwy 60
W 57th St
E 57th St
W 43rd St
W 37th St
E 37th St
W 29th St
E 29th St
W 1st St
E 1st St
E 5th St
14th St SW
14th St SE
42nd St SW
E Eisenhower Blvd
E CR20
E CR30
E 71st St
N CR9
N CR7
N Wilson Ave
N Taft Ave
N Garfield Ave
N Boyd Lake Ave
N Fairgrounds Ave
Byrd Dr
Centerra Pkwy
I25 SB
I25 NB
N CR3
S CR9
S CR21
S Wilson Ave
S Taft Ave
S Lincoln Ave
S Boise Ave
S CR29
LAKE LOVELAND
HORSESHOE LAKE
BOYD LAKE
DONATH LAKE
MUD LAKE
NELSON RESERVOIR
HOUTS RESERVOIR
HEINRICY LAKE
WEST ROBERTS LAKE
UPPER HOFFMAN LAKE
LOWER HOFFMAN LAKE
SILVER LAKE
RIST BENSON RESERVOIR
BUCKINGHAM LAKE
BOEDECKER LAKE
JAYHAWKER PONDS
CATTAIL POND
RYAN GULCH RESERVOIR
LON HAGLER RESERVOIR
BUD MIELKE RESERVOIR
POISON LAKE
CHAPMAN RESERVOIR
LONETREE RESERVOIR
287
34
402
60
25

EXHIBIT A



Land Use Categories

Residential Mixed-Use

- ER - Estate Residential
- LDR - Low Density Residential
- MDR - Medium Density Residential
- HDR - High Density Residential

Activity Center Mixed-Use

- RAC - Regional Activity Center
- DAC - Downtown Activity Center
- CAC - Community Activity Centers
- CC - Corridor Commercial
- E - Employment

Other Categories

- I - Industrial
- 100-Year Floodplain (FEMA)
- 100-Year Floodway (FEMA) (see note 3)
- Public Schools, Hospital, Public Facilities
- Parks, Open Lands, Conservation Easements, Golf Courses and Cemeteries
- Fort Collins/Loveland Corridor Area
  Land Use generally north of 57th Street is guided by the document, "Plan for the Region Between Fort Collins and Loveland."

- Windsor City Limits
- Johnstown City Limits
- Berthoud City Limits
- Fort Collins City Limits
- Lakes and Ponds
- GMA - Growth Management Area
- CIA - Community Influence area
  For westerly boundary of the CIA - refer to the Planning Boundaries Map
- Major Streets
- Big Thompson River
- Fort Collins/Loveland Airport Influence Area (see note 2)

(1) This map is intended to serve as a guide for future land use patterns within Loveland's GMA and is advisory in nature. Land use patterns depicted on the map are generalized, recognizing that development proposals may contain a mixture of land uses and density levels which achieve the intent of the Comprehensive Master Plan. All development is subject to City standards for protection of evironmentally sensitive areas, and other performance guidelines.

(2) For details regarding appropriate land uses within the Airport Influence Area refer to section 4.6, "Airport and Surrounding Areas" of the Comprehensive Master Plan.

(3) The 100-year Floodway is displayed only within City Limits, awaiting further data.

City of Loveland

0 0.5 1 2 Miles

CITY OF LOVELAND FUTURE LAND USE PLAN

EXHIBIT B

City of Loveland

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

January 14, 2013

Agenda #: Regular Agenda - 1

Title: Comprehensive Plan Future Land Use Plan Amendment

Applicant: City of Loveland

Request: City of Loveland Future Land Use Plan Amendment

Location: West side of I-25 to Larimer County Road 7, extending north from State Highway 60 one and a half miles

Future Land Use Map Designations:
Existing: DR - Development Reserve
Proposed: E - Employment and RAC – Regional Activity Center

Staff Planner: Karl Barton

Staff Recommendation: Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

Recommended Motions: Move to make the findings listed in Section VII of this Planning Commission staff report dated January 14, 2013 and, based on those findings, adopt A RESOLUTION REGARDING AMENDMENTS TO THE CITY OF LOVELAND "2005 COMPREHENSIVE PLAN" BY THE AMENDMENT OF SECTION 4.7 – FUTURE LAND USE PLAN MAP.

Summary of Analysis

This is a public hearing to consider an amendment to the City of Loveland Future Land Use Plan. The amendment proposes to change the land use designation of the property shown in **Figure 1**, on the following page. Currently, the land use designation for this property on the Future Land Use Plan is of DR – Development Reserve. This designation was placed on the property, as a "holding" designation until further definition regarding appropriate future land uses could be established for this area.

This amendment proposes to change the DR designation to a combination of RAC – Regional Activity Center and E - Employment as shown in **Figure 2**. These proposed land use designations foresee a mix of commercial, employment and residential uses typical for an area located adjacent to I-25. The land area subject to the proposed amendment is currently within both the Town of Johnstown and City of Loveland Growth Management Areas. This amendment is being proposed by City staff as part of a larger strategy to resolve GMA conflicts between the Town of Johnstown and City of Loveland. The proposed land use designations for the City of Loveland Future Land Use Plan would align with those currently shown on the Town of Johnstown Comprehensive Plan.

ATTACHMENT B

Figure 1

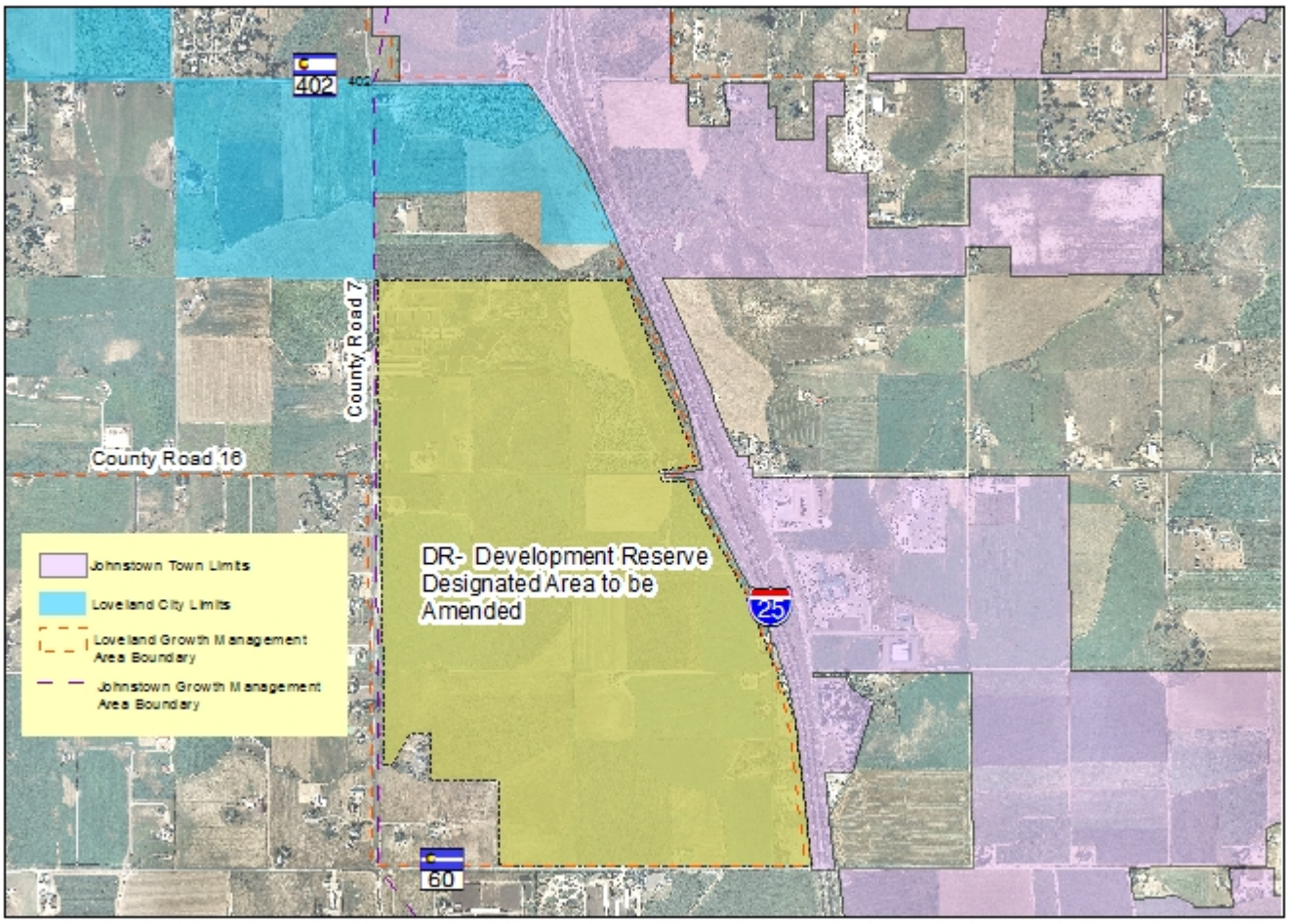
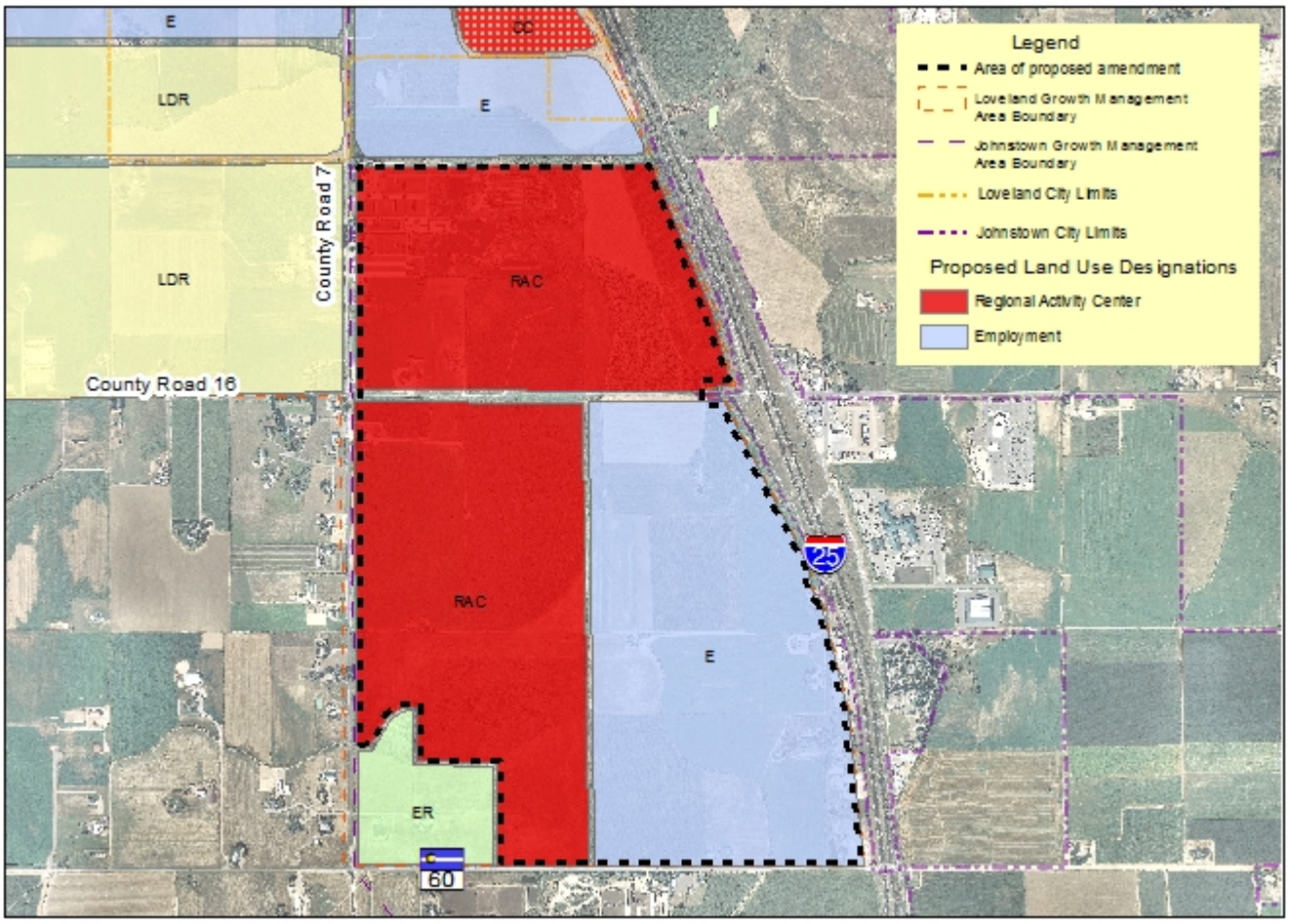

402
County Road 7
County Road 16
DR- Development Reserve
Designated Area to be
Amended
25
60
Johnstown Town Limits
Loveland City Limits
Loveland Growth Management
Area Boundary
Johnstown Growth Management
Area Boundary

Figure 2



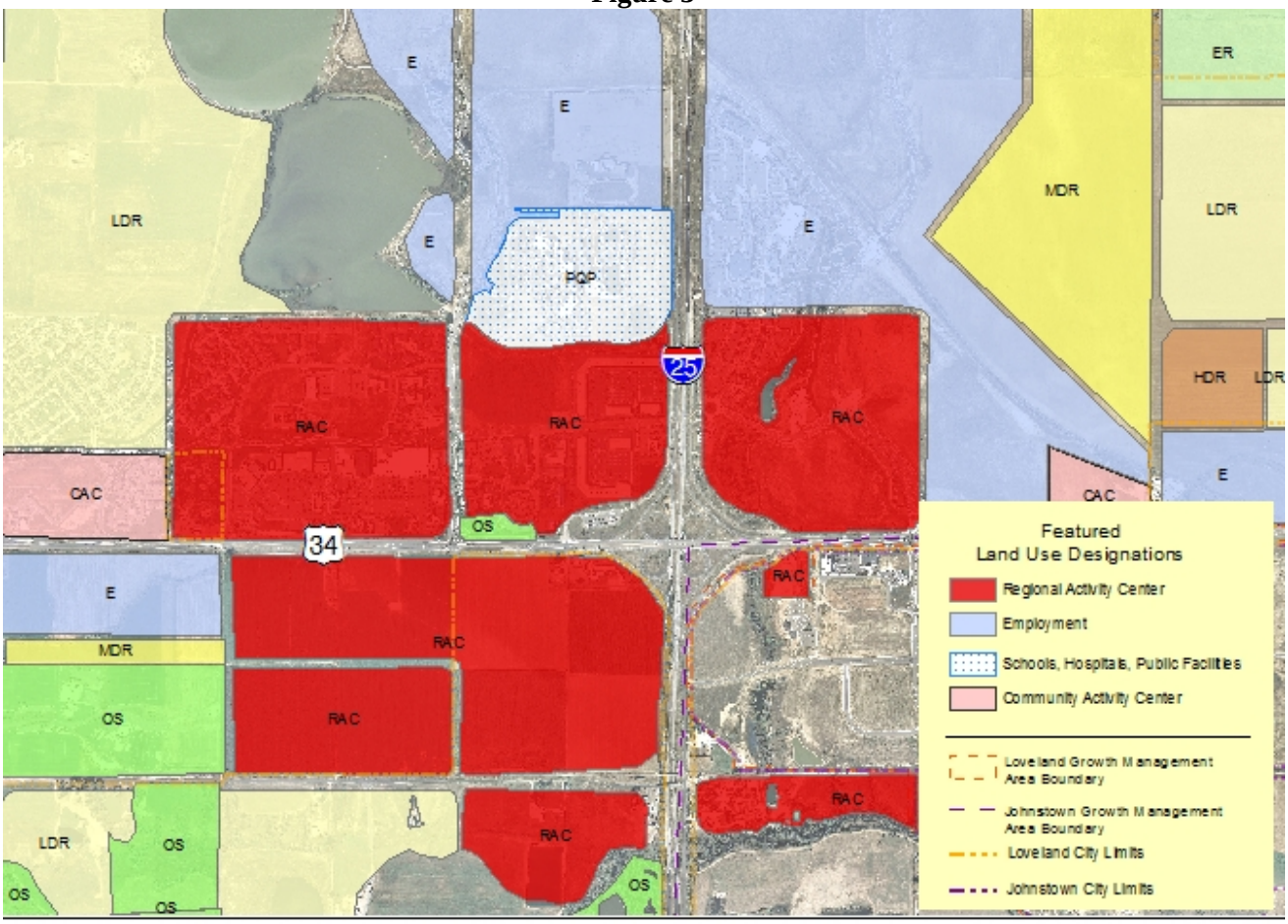
I. SUMMARY

The purpose of the E – Employment Land Use Designation is to create a campus-type setting for employment and related commercial uses. A campus type setting means unified building design, open space and viewshed protection. The uses envisioned in these areas would include a mix of medium to low-rise office, light industrial, retail, lodging and other complementary uses. When property with the E – Employment Land Use Designation is ready to be developed it is typically zoned E – Employment, but other zoning districts maybe also be appropriate, such as B – Developing Business, I – Industrial and Planned Unit Development.

The purpose of the RAC – Regional Activity Center Designation is to serve regional commercial, service and employment needs. Uses envisioned for these areas include: medium to high-rise office, hotels, major cultural and entertainment, regional and corporate offices, retail and service, technology and light manufacturing, higher education and major public and quasi-public uses. A significant portion of land designated RAC can be developed as residential uses, making this designation a good buffer to the existing rural residential uses located to the west of this area. Areas with this designation are typically zoned MAC – Mixed Use Activity Center, B – Developing Business, or Planned Unit Development.

Both the E – Employment and RAC – Regional Activity Center land use designations are commonly seen along major arterial roadways and interstate highway frontages. Figure 3 shows an excerpt of Loveland's land use plan in the area around Hwy 34 and I-25, showing areas of E and RAC designation.

Figure 3



Attachment 1 is the complete, current Loveland Future Land Use Plan while **Attachment 2** is the complete Future Land Use Plan with the proposed amendment included.

II. ATTACHMENTS

1. City of Loveland Future Land Use Plan
2. City of Loveland Future Land Use Plan showing proposed amendment

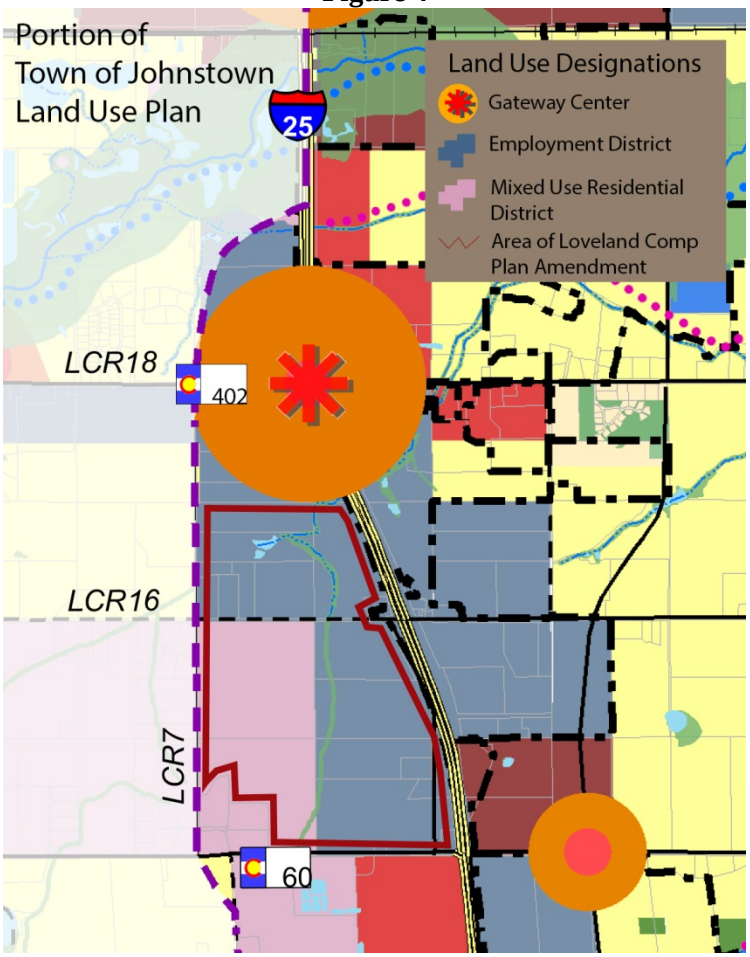
III. PURPOSE FOR AMENDMENT

The future land use designations are being proposed for the following reasons.

1. **Consistent with Town of Johnstown Comprehensive Plan:** One of the reasons for the proposed amendment is to make the future land use designations on the City of Loveland Future Land Use Plan

consistent with future land use classifications shown for this area in the Town of Johnstown Comprehensive Plan (see **Figure 4**).

Figure 4



In this area, where the Loveland and Johnstown GMAs overlap, Johnstown has designated the area as Gateway Center, Employment and Mixed Use Residential. These designations allow for retail, office, commercial and residential uses. Although the titles of the Loveland and Johnstown designations are different, the designations proposed for the Loveland Future Land Use Plan match up well with those of Johnstown.

2. **Urban level development pressures in the future:** Given this area's location adjacent to I-25, it can be expected that there will be interest in urban level development in the future. Additionally, the North I-25 Environmental Impact Statement has indicated that in the future there will be a full interchange at I-25 and County Road 16. These land use designations allow for the type of development that is appropriate for, and common around, interstate interchanges and along interstate frontages. This pattern is seen elsewhere in Loveland's Land Use Plan as demonstrated in Figure 3.

3. **Provide the flexibility necessary to respond to future market trends and demands, benefit property owners and provide appropriate transitions to existing land uses in the vicinity:** By its very nature, the future land use plan is very flexible. It is meant to provide a roadmap for future development, providing guidance, but not specifics, on the nature and location of land uses. Because development in this area is

still some time in the future, it is appropriate to the land use designations allow for a wide variety of uses so that future development can respond to market trends and needs. By having their property located within a growth management area, property owners benefit by knowing that an adjacent city intends to annex their property in the future and provide public utility services. In the meantime, property owners retain the option to remain in Larimer County and use their property under County zoning. Both of the proposed designations allow a mix of uses, including residential, but the RAC designation envisions a land use pattern that contains more residential than the E designation. This difference would allow a better land use transition in the RAC area to the rural land uses on the property located to the west in Larimer County.

IV. KEY ISSUES

City staff believes that all key issues have been addressed in the amendment proposal.

V. BACKGROUND

The Loveland Future Land Use Plan was adopted as part of the 2005 Comprehensive Plan. At the time of its adoption, the area proposed for amendment was designated DR – Development Reserve because urban level development in this area was believed to be far off in the future.

A portion of Loveland's GMA overlaps with a portion of Johnstown's GMA in the area of the proposed amendment. Currently, Loveland and Johnstown are cooperating on a multi-phased strategy to address growth management issues, specifically in the area where the GMAs of the two communities overlap, but also generally where the two communities are adjacent. Components of this strategy include, in the future, an intergovernmental agreement between the two municipalities to establish procedures for annexing land within the overlap area and to pursue other cooperative planning opportunities. This strategy would then lay the ground work for the two municipalities to collaborate in the development of a corridor plan for State Highway 402.

The intergovernmental agreement is likely the next component that will come forward for public hearings and decisions by the Planning Commission and City Council. The agreement is currently being drafted by City of Loveland and Town of Johnstown staff.

The Boyd Lake Avenue Extension project is being undertaken by Public Works to determine an alignment for an extension of Boyd Lake Avenue from the Big Thompson River to Weld County Road 7. The public outreach phase of this project is currently in process, but one of the conceptual alignments traverses the DR designated area being proposed for amendment. If an alignment is chosen that goes through this area, having a land use plan that provides a vision for future development is important to reduce uncertainty.

VI. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

1. **Notification:** All owners of property within the area of the proposed land use amendment were notified by letter sent on December 27, 2012 of this public hearing and a notice was published in the Reporter Herald on December 29, 2012.

2. **Neighborhood Outreach:** Two public open houses were held with property owners to present the proposed land use amendment. Both open houses were hosted by staff from both Loveland and Johnstown and both were held at the Johnson's Corner Restaurant. All property owners within the area of the proposed amendment were invited to both open houses.

The first open house was held September 27th and was attended by 8 property owners. Staff gave a presentation on the background of the land use plan, its meaning and the opportunities it creates for property owners. Staff emphasized that the timing for annexation was entirely up to the property owner and that being within a growth management area provides development options to property owners. The primary purpose of the first open house was to hear for the property owners what their plans, short and long term, were for their property. Some owners stated that they wished to continue to farm their property while others mentioned that they may want to develop their property in the future. No actual proposal was presented regarding the proposed amendment at the first open house.

The second open house was held on November 28th and was attended by over 20 property owners. This open house also started with a presentation from staff. Some background information was given and the points regarding property owner choice to annex and the preservation of development options were re-iterated. The presentation also included a description of the proposed land use designations. There were no real objections to the proposed amendment.

These two open houses were not required by Chapter 6.0 - Amendment Process of the Comprehensive Plan. City staff felt they were necessary to adequately informing property owners of the proposal and getting their feedback.

VII. FINDINGS AND ANALYSIS

This section contains information as the basis for making the findings required under Chapter 6 of the 2005 Comprehensive Plan to approve the proposed amendment.

1. **Does the amendment request implement, or further, one or more of the philosophies, goals, policies, and strategies of the 2005 Comprehensive Plan?** The following Goals and Objectives relate specifically to the proposed amendment:

   a. ***Land Use 1: Emphasize flexibility within the Land Use Plan while building on the existing land use pattern.***
   This proposal emphasizes flexibility within the Land Use Plan by applying land use designations that allow for a wide variety of uses such as office, retail, educational, hospitality, light manufacturing, employment and residential of various types and densities. The proposal builds on the existing land use pattern by allowing property located along the I-25 corridor and near interstate interchanges to be zoned in the future to allow an appropriate mix of urban land uses.

   b. ***Land Use 3: Include development of multi-use activity centers at the regional, community and neighborhood level of the land Use Plan.***
   This proposal allows for the development of a regional activity center along I-25. Development in this area could include land uses to support an even more intense regional activity center at the I-25 and State Highway 402 interchange.

   c. ***Land Use 5: Encourage the development of multi-use, high quality employment districts where campus type settings are appropriate, particularly along the transportation corridors I-25, US 34, and the south side of SH 402.***
   Through the use of the E – Employment land use designation, this proposal allows for the development of an employment district with a campus type setting along the I-25 frontage.

d. ***Land Use 6: Provide sufficient lands for industry in the Fort-Collins – Loveland Airport area and along the I-25 corridor.***
Because light industrial uses are allowed in the E – Employment zoning district, which is typically assigned to properties within the E land use designation, this proposal preserves land for industrial activities along the I-25 corridor.

e. ***Growth Management 2: Continually monitor, and revise as necessary, the Growth Management Plan to ensure that it is accomplishing the community's vision through managed growth while giving particular attention to the future community character, open space, financial, and natural resources aspects of the community.***
The amendment being proposed is a revision to Loveland's Land Use Plan that has resulted from the process of monitoring the land use plan and the City's growth. Therefore, it fulfills this philosophy by addressing and accommodating anticipated change while accomplishing the community vision.

f. ***Growth Management 3: Provide appropriate areas within the GMA with a full range of urban level services within a 20 year time frame by meeting the goals and objectives of Loveland's Growth Management Plan and associated Comprehensive Master Plan philosophies (policies) and principles.***
The area of this proposed amendment is located directly adjacent to and nearby I-25. CDOT plans propose a full movement interchange at the County Road 16 and I-25 intersection. Therefore, it is likely that this area will experience pressure for urban level development. This amendment allows for an appropriate a mix of development types based on future development anticipated for this area.

g. ***Growth Management 5: Engage in joint strategic planning efforts as appropriate, in identified Cooperative Planning Areas (CPA) with residents, landowners, adjoining municipalities and Larimer County.***
Although the area of this proposed amendment is not located within a CPA, planners and other officials from the City of Loveland and the Town of Johnstown have been engaged for close to a year in a collaboration process to agree on a common GMA boundary between to the municipalities. A basic strategy has been agreed upon, of which this proposed amendment to the Loveland Land Use Plan is but the first step. Two open houses have been conducted jointly by the two municipalities for the owners of property within the proposed amendment area. Later steps in the strategy will involve collaboration with Larimer County and broader public outreach.

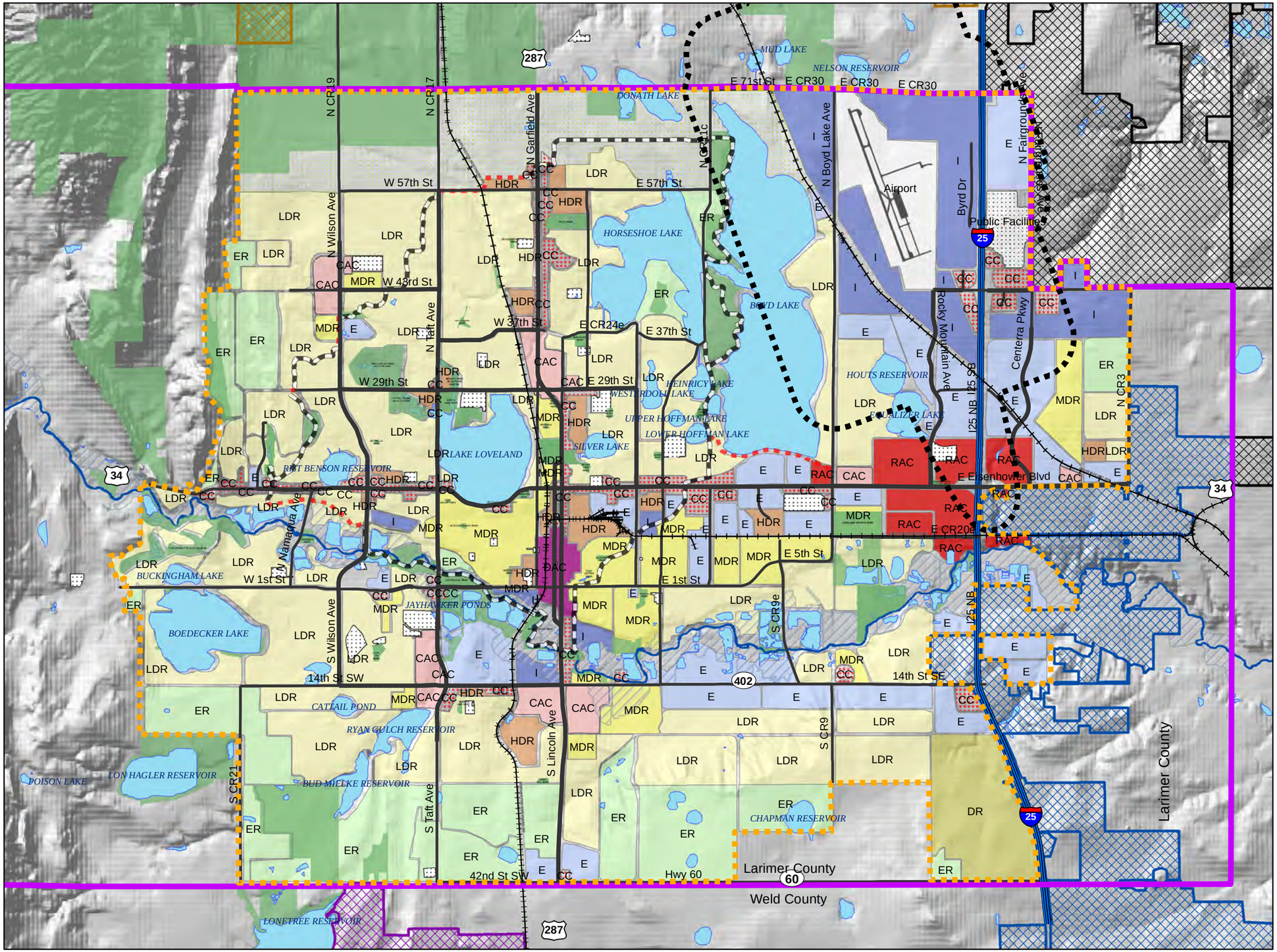
h. ***Intergovernmental Agreement 2: Maintain and enhance areas of urban development in a thoughtful and deliberate way through cooperation in land use and transportation planning, implementation of growth management policies, and the identification and preservation of open lands and natural areas.***
This proposed amendment is the first step in a strategy to promote a cooperative planning effort between the City of Loveland and the Town of Johnstown regarding land use planning, annexation, and growth management. This strategy will result in a more thoughtful, efficient and deliberate urban growth pattern.

i. ***Intergovernmental Agreement 3: Concentrate urban development in areas designated for such development.***
By providing more definition of anticipated land uses in the City of Loveland and promoting a cooperative planning effort with the Town of Johnstown, this amendment will help to concentrate anticipated urban development in an appropriate area.

2. **Will the amendment request interfere with the existing, emerging, proposed or future land use patterns and / or densities / intensities of the surrounding neighborhood as depicted on the Land Use Plan Map and as contained within the 2005 Comprehensive Plan.**
   The amendment request will not interfere with the existing, emerging, proposed or future land use patterns. The proposed land use designations are flexible enough to allow future development to respond to and be sensitive of existing development. The proposed designations allow for a variety of development types that are appropriate for this areas location near I-25 and will support nearby areas that also have allowances for commercial, mixed-use, and residential development. Actual development consistent with the proposed land use designations will not occur until land owners in this area decide to annex into either the City of Loveland or the Town of Johnstown and there is a market for such development.

3. **Will the amendment request interfere with, prevent, or implement the provision of any of the area's existing, planned, or previously committed services or proposals for community facilities, or other specific public or private actions contemplated within the 2005 Comprehensive Plan?**
   This amendment will not interfere with the provision of any services or community facilities. The DR – Development Reserve designation, while it is not specific, does anticipate that this area will be developed at urban level intensities. As such, this amendment will promote efficiency in planning for urban infrastructure necessary to provide services to this area in the future.

4. **Will the amendment request interfere with, prevent, or implement the provision of any of the area's existing or planned transportation system services as contemplated by the 2030 Transportation Plan?**
   The amendment would allow development consistent with the 2035 Transportation Plan. That plan includes a conceptual roadway alignment for Boyd Lake Avenue through the amendment area. The model used in development of the 2035 Transportation Plan anticipated urban level development in this area.



Land Use Categories

Residential Mixed-Use

- ER - Estate Residential
- LDR - Low Density Residential
- MDR - Medium Density Residential
- HDR - High Density Residential

Activity Center Mixed-Use

- RAC - Regional Activity Center
- DAC - Downtown Activity Center
- CAC - Community Activity Centers
- CC - Corridor Commercial
- E - Employment

Other Categories

- I - Industrial
- 100-Year Floodplain (FEMA)
- 100-Year Floodway (FEMA) (see note 3)
- Public Schools, Hospital, Public Facilities
- DR - Development Reserve
- Parks, Open Lands, Conservation Easements, Golf Courses and Cemeteries
- Fort Collins/Loveland Corridor Area
  Land Use generally north of 57th Street is guided by the document, "Plan for the Region Between Fort Collins and Loveland."

- Windsor City Limits
- Johnstown City Limits
- Berthoud City Limits
- Fort Collins City Limits
- Lakes and Ponds
- GMA - Growth Management Area
- CIA - Community Influence area
  For westerly boundary of the CIA - refer to the Planning Boundaries Map
- Major Streets
- Big Thompson River
- Fort Collins/Loveland Airport Influence Area (see note 2)

(1) This map is intended to serve as a guide for future land use patterns within Loveland's GMA and is advisory in nature. Land use patterns depicted on the map are generalized, recognizing that development proposals may contain a mixture of land uses and density levels which achieve the intent of the Comprehensive Master Plan. All development is subject to City standards for protection of evironmentally sensitive areas, and other performance guidelines.

(2) For details regarding appropriate land uses within the Airport Influence Area refer to section 4.6, "Airport and Surrounding Areas" of the Comprehensive Master Plan.

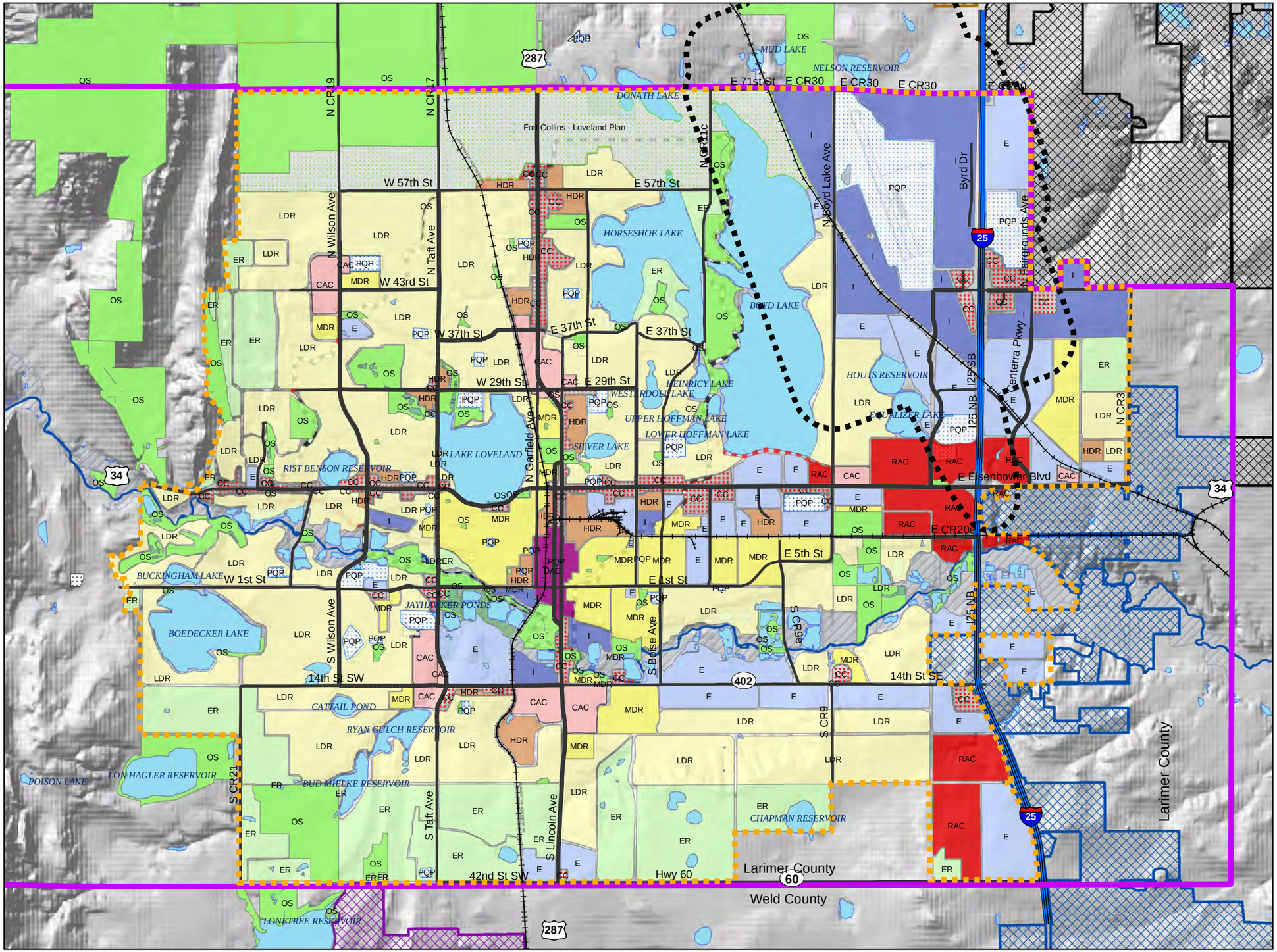
(3) The 100-year Floodway is displayed only within City Limits, awaiting further data.

City of Loveland

The LOGIC System

0 0.5 1 2 Miles

CITY OF LOVELAND FUTURE LAND USE PLAN



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City of Loveland

0 0.5 1 2 Miles

CITY OF LOVELAND FUTURE LAND USE PLAN

FUTURE LAND USE PLAN AMENDMENT

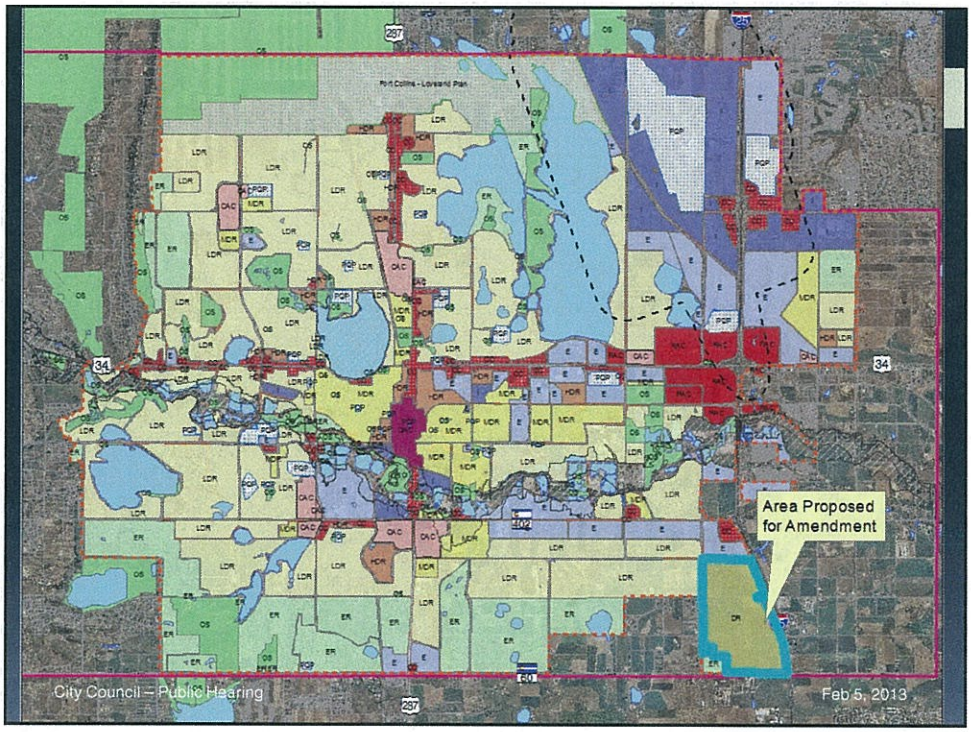
City Council

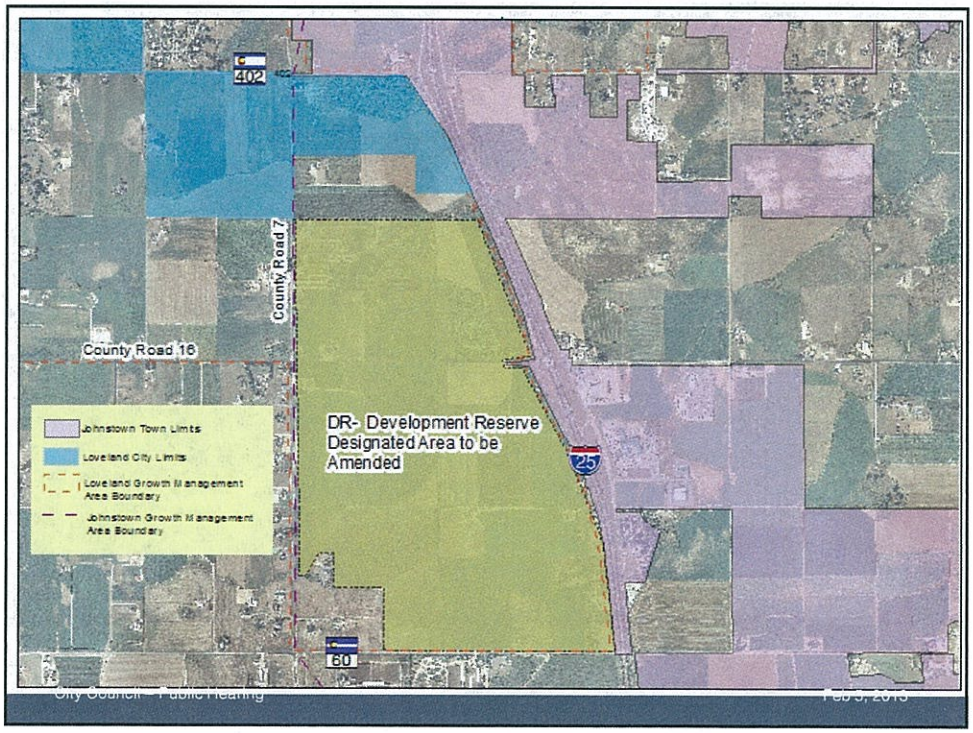
February 5, 2013

Agenda

- Background
- Cooperation with Johnstown
- Description of proposed amendment
- Public outreach / Planning Commission
- Questions

ATTACHMENT C

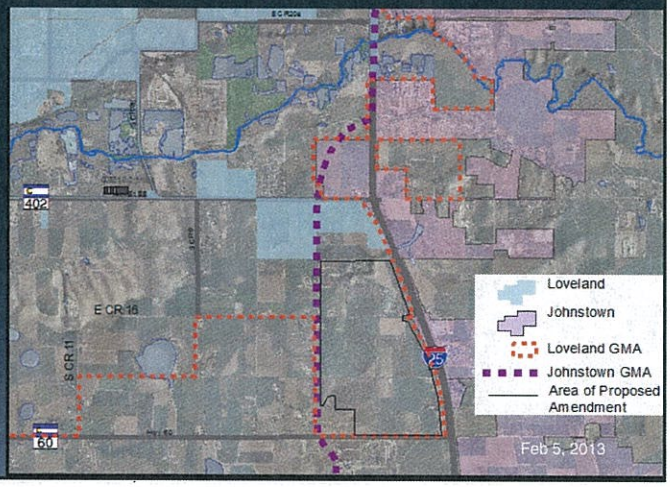




ATTACHMENT C

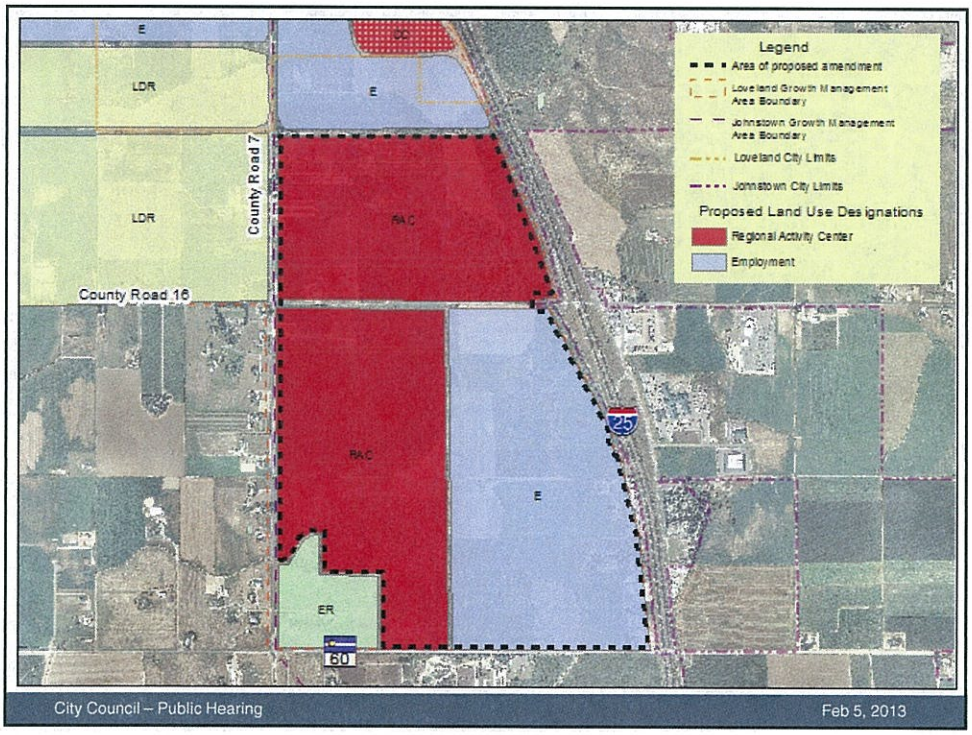
Cooperation

- Comp Plan Amendment
- Intergovernmental Agreement
- SH 402 Corridor Plan



City Council – Public Hearing

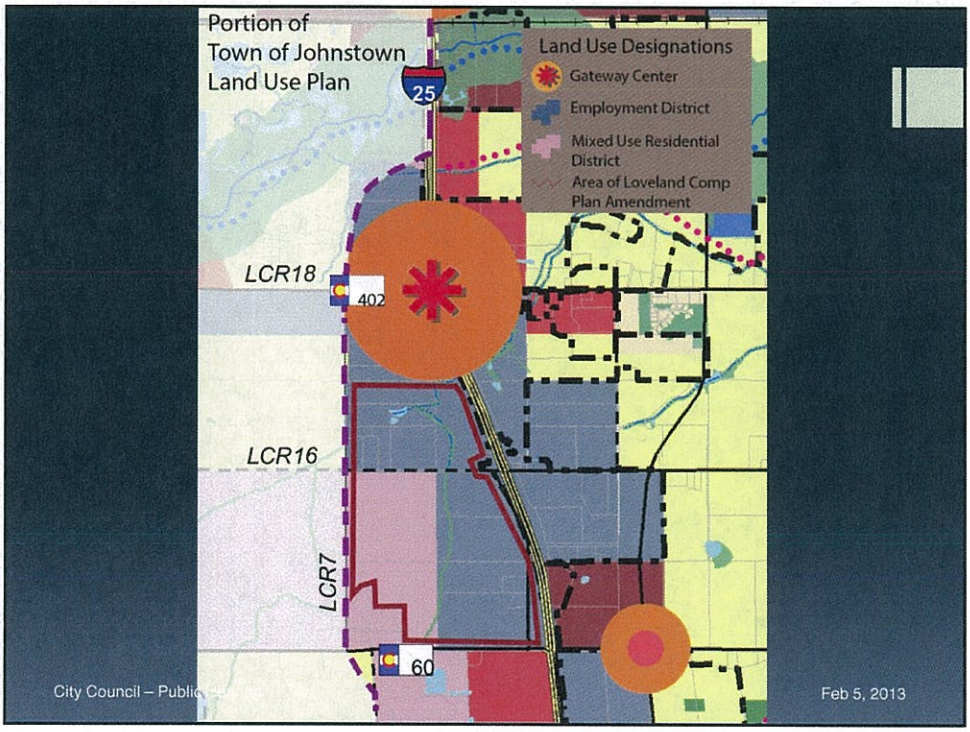
Feb 5, 2013

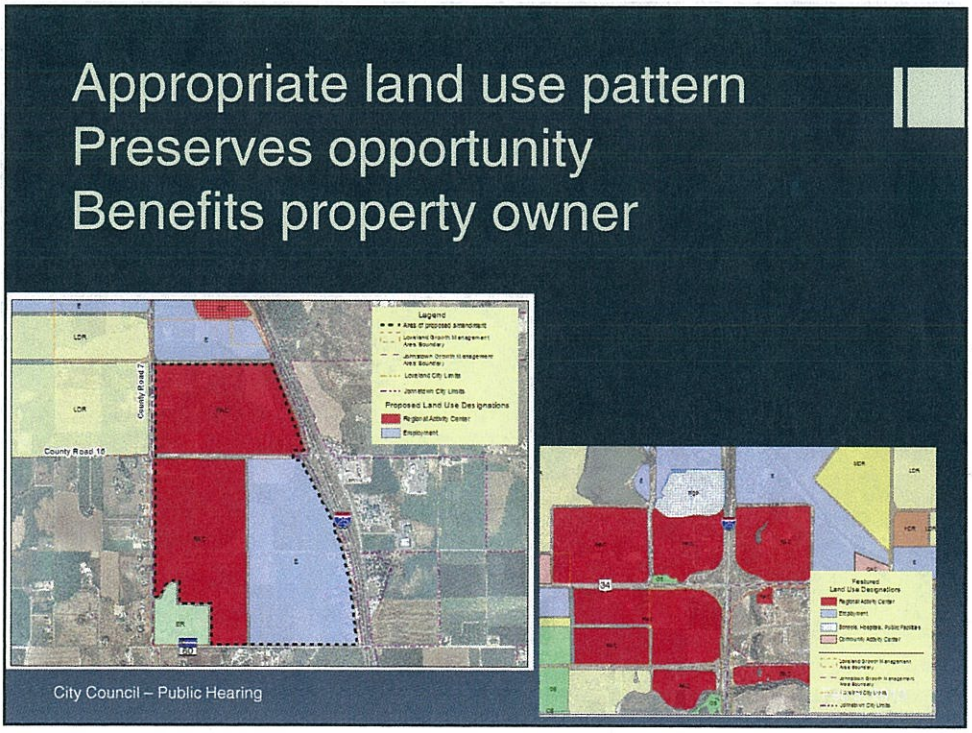


City Council – Public Hearing

Feb 5, 2013

ATTACHMENT C





ATTACHMENT C

Public Outreach

- Two open houses held at Johnson's Corner
- Approximately 30 property owners attended
- Main points
  - Annexation and development is at property owners choice
    - Land use plan only impacts a property owner when they choose to annex
  - Being within GMA preserves options
- Unanimous Planning Commission support

City Council – Public Hearing Feb 5, 2013

Questions?

City Council – Public Hearing Feb 5, 2013

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CITY OF LOVELAND
PLANNING COMMISSION MINUTES
January 14, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on January 14, 2013 at 6:30 p.m. Members present: Vice Chairman Middleton; and Commissioners Molloy, Ray, Dowding, Crescibene, Krenning and Prior. Commissioners absent: Chairman Meyers. City Staff present: Karl Barton, Community and Strategic Planning; Greg George, Director Development Services; Robert Paulsen, Current Planning Manager; 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.

STAFF MATTERS

Robert Paulsen, Current Planning Manager, introduced Adam Prior as the newest member of the Planning Commission. He reported the annual Holiday Dinner for the Planning Commission would be held on February 11th prior to the meeting and that more details would be coming soon. He stated at the next meeting the Commission would hold the Election of Officers.

Mr. Paulsen noted that Chip Leadbetter, past Planning Commission member, was in the audience and invited him to the podium. Mr. Leadbetter spoke to staff and the Commission thanking them for the time they shared together and for all that he learned during his tenure. **Vice Chairman Middleton** thanked Mr. Leadbetter for his past service on the Planning Commission and presented him with a plaque for his years of service.

CITIZEN REPORTS

There were no citizen reports.

COMMITTEE REPORTS

There were no committee reports.

COMMISSIONER COMMENTS

Vice Chairman Middleton wished everyone a happy new year and thanked staff for displaying the 2012 City of Loveland's accomplishments.

DRAFT

REGULAR AGENDA

1. Process for adoption of zoning regulations for oil and gas development.

This is an informational item about the process for review and adoption of new regulations on oil and gas development in the City. A Planning Commission public hearing on this matter is scheduled for January 28th.

Greg George, Director of Development Services, introduced the item and noted that the Planning Commission is not being asked to make a recommendation at this time and his presentation would be informational in nature.

Mr. George provided an overview of the approach being taken by the City in the development of oil and gas regulations and the effort being made to monitor new rule-making by the state Oil and Gas Commission. He emphasized that the state Commission had not completed their rule-making process. He further explained that City staff is developing a regulatory approach that would provide oil and gas developers two options for pursuing a permit from the City for oil and gas development; the options were summarized as follows: .

- **Baseline Standards** are designed to specifically avoid preemption by State law and legal challenges by oil and gas companies. This procedure would require a neighborhood meeting and approval by the Planning Commission at a fully noticed public hearing, at which time the Planning Commission could approve the permit, approve the permit with conditions or deny the permit. The decision of the Planning Commission could be appealed to City Council by "any party of interest", defined as the applicant, the Development Services Department Director, two or more City Council members, any person receiving mailed notice of the public hearing or any person who provided written or verbal testimony at the Planning Commission public hearing.

- **Enhanced Standards** would involve an optional process designed to achieve higher standards that might include greater setbacks from occupied buildings and other sensitive features such as natural areas, parks, rivers, streams and wetlands; bufferyards; mitigation of air quality impacts; water well and groundwater monitoring; the location of pipelines; and noise mitigation.

  He explained that compliance with these standards would be voluntary and that the purpose is to create an incentive for an applicant to agree to comply with certain higher standards than currently being applied by the Colorado Oil and Gas Conservation Commission (the "Commission"). Mr. George stated that this option represents the more desired procedure and that it would be considered a more expedited process.

Mr. George presented a map outlining potential areas for future oil and gas wellhead locations ~~and commented~~and commented the map will be updated due to the most recent setback ruling.

Commissioner Ray asked if the general content of the regulations would change after the study session and questioned if there would be voluntary air quality monitoring and if that would create an issue with the potential operators.

Mr. George stated that depending on what is heard at the public hearing, the content of the regulations may change. He stated that he believed that the voluntary air quality monitoring may be an issue and commented staff has been collaborating with Anadarko Oil Company's legal department to discuss and review the City's enhanced regulations. He further stated that the enhanced regulations will only work if an oil company will agree to follow them.

Commissioner Ray questioned how funding for personnel and/or equipment would be managed.

Mr. George stated that costs may be funded under Capital Expansion fees and it would depend on what regulations were adopted and of how inspections on air quality issues might be handled. He stated that setback requirements are very complicated and that he was not prepared to discuss setback requirements at this time. He spoke of open pit drilling stating there are very few locations that might be available for that type of drilling but none of those would be in the City limits.

Mr. George concluded his remarks, thanking the Planning Commission for their interest and indicating that he would be presenting a complete proposal for the regulation of oil and gas development within the City a the January 28th Planning Commission hearing. He indicated that the staff report would be provided to the Commission a week prior to the hearing due to the complexity of the matter.

2. Comprehensive Plan Future Land Use Plan Amendment.

This is a public hearing to consider an amendment to the City of Loveland Future Land Use Plan. The amendment proposes to change the land use designation of the property west of I-25, east of County Road 60, and north of County Road 7. Currently, the land use designation for this property on the Future Land Use Plan is DR – Development Reserve. This amendment proposes to change the DR designation to a combination of RAC – Regional Activity Center and E – Employment. These proposed land use designations foresee a mix of commercial, employment and residential uses typical for an area located adjacent to I-25. The land area subject to the proposed amendment is currently within both the Town of Johnstown and City of Loveland

Growth Management Areas. This amendment is being proposed by City staff as part of a larger strategy to resolve GMA conflicts between the Town of Johnstown and City of Loveland. The proposed land use designations for the City of Loveland Future Land Use Plan would align with those currently shown on the Town of Johnstown Comprehensive Plan.

Karl Barton, Community and Strategic Planning, gave a staff presentation on the future land use plan amendment and outlined the location of the proposed amendment in the southeast portion of the City's growth management area. He reported that the City of Loveland and the Town of Johnstown have been working cooperatively over the past year on the issues of annexation and growth management, specifically in the areas where their growth management areas overlap.

Mr. Barton stated part of the strategy is to craft a future intergovernmental agreement between the two municipalities establishing procedures for annexing land within the overlap area and pursuing other cooperative planning opportunities. He stated this strategy would then lay the ground work for the two municipalities to collaborate in the development of a corridor plan for State Highway 402. He stated that property owners would benefit from being located in a growth management area.

Mr. Barton responded to questions and clarified the RAC land use designation in that area around the Hwy. 402 and I-25 interchange is being proposed because of its flexibility and believed that is was appropriate for the location. He stated this land use designation pattern is similar to the pattern seen in the area that has developed as the Centerra commercial area.

Commissioner Dowding made a motion to adopt Resolution 13-01 of the Planning Commission of The City of Loveland Recommending Amendment of The Land Use Map Set Forth in Section 4.7 of The City of Loveland 2005 Comprehensive Master Plan. Upon a second by Commissioner Ray the motion was unanimously adopted.

DRAFT

ADJOURNMENT

Commissioner Ray made motion to adjourn. Upon a second by Commissioner Crescibene the motion was unanimously adopted.

_____
Rich Middleton, Vice Chair

_____
Vicki Mesa, Secretary

DRAFT

~~ADJOURNMENT~~

~~The meeting was adjourned.~~

_____

~~Rich Middleton, Vice Chair~~

_____

~~Vicki Mesa, Secretary~~

DRAFT

CITY OF LOVELAND
PARKS & RECREATION DEPARTMENT
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2903 • TDD (970) 962-2620

AGENDA ITEM: **16**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Gary Havener, Parks and Recreation Department
PRESENTER: Janet Meisel-Burns, Project Manger

TITLE: Contract Amendment - Mehaffey Park Design and Engineering Fee

RECOMMENDED CITY COUNCIL ACTION:
Motion to approve an amendment to the service contract with Logan Simpson Design, Inc., to increase the fees for Mehaffey Park design and engineering services from a not to exceed amount of $489,859 to a not to exceed amount of $714,000 and to authorize the City Manager to execute the contract amendment on behalf of the City.

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 to authorize the City Manager to enter into a contract amendment with Logan Simpson Design, Inc. for additional design and engineering services for the Mehaffey Park project not to exceed $714,000. The fee increase is desired to 1) expanded design services for a 29th Street access, 2) provide additional design required for the master planning and engineering for the 9.36 acres purchased to expand the park, and 3) complete additional design services to meet requirements for Special Review Plans and required Site Development Plans needed for approval of the entire 69 acre park through the City's development review process.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible
Funding for the additional design services will be absorbed within the 2012 and 2013 approved Mehaffey Park project budget.

SUMMARY:

After completing the public review process for design and determining facility needs within the park, the scope of the project has expanded to include additional facilities, 9.63 acres of park land as well as access to 29th Street all of which were not included in the original park master plan or budget. In order to complete the needed design and required documents to secure Master Plan approval, the design firm must prepare 100% complete public improvement construction plans and site development plans for the entire 69 acre park. This requirement significantly increases design fees.

Staff believes it's important to complete the design and secure City development approval of the entire master plan and incorporate the new 9.36 acre parcel and the 29th Street access into the park at this time. The current contract with Logan Simpson Design is $489,859 and the proposed amendment would increase the contract amount to $714,000 which includes fees to prepare a complete set of bid documents including options for bid alternates for phased project construction based on actual bids.

The project and phasing options were reviewed by Loveland Parks and Recreation Commission on January 10, 2013. Their recommendation was to complete the master plan design and construction documents for all park facilities and elements and proceed with full construction provided funding is available. Staff will continue to evaluate the construction budget and options for phasing with Logan Simpson Design and Environmental Concerns (Construction Manager/General Contractor) through the actual bidding quotes. Staff feels construction of as much of the park at this time will be advantageous for the City due to a competitive bidding climate and lower construction prices. This could eliminate the need to phase park construction and the City could open the entire facility to the public in the fall of 2014 as scheduled.

REVIEWED BY CITY MANAGER: William D. Cahill

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: 17
MEETING DATE: 2/5/2013
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Bethany Clark, Community & Strategic Planning

TITLE:
An ordinance designating as a historic landmark the Loveland Elks Lodge/Lovelander Hotel located at 103 East 4th Street in Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and move to adopt 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:
A public hearing to consider a legislative action to adopt an ordinance on first reading designating as a Historic Landmark the "Elks Lodge/Lovelander" at 103 East 4th Street, per Chapter 15.56 of the Municipal Code dealing with Historic Preservation. The application is owner-initiated and staff reviewed the benefits and obligations of historic designation with the property owner.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
The Historic Preservation Commission on January 21, 2013, found the Elks Lodge/Lovelander Hotel to be eligible for designation as detailed in the attached staff report, and is forwarding this recommendation to City Council. Draft minutes from the January 21st meeting, attached, include the Commission's motion to recommend approval of the designation. It is anticipated that the minutes will be adopted at the February 18, 2013 meeting.

The Elks Lodge/Lovelander Hotel is significant for its long historical association with the fraternal organization, the Loveland BPO Elks, and its contribution to the social history of Loveland. It is also architecturally significant as an example of Early Twentieth Century Commercial Architecture, a Special Use Property Type defined by the Colorado Historical Society's Office of Archaeology and Historic Preservation.

To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance as identified in Loveland Municipal Code 15.56.100. The Elks Lodge/Lovelander Hotel meets the age requirement and additional criteria required for designation. Specific criteria for nomination are contained in the staff report.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

A. Ordinance
B. Staff Report
C. January 21, 2013 HPC Minutes

FIRST READING: February 5, 2013

SECOND READING: _____

ORDINANCE NO. ___

AN ORDINANCE DESIGNATING AS A HISTORIC LANDMARK THE LOVELAND ELKS LODGE/LOVELANDER HOTEL LOCATED AT 103 EAST 4TH STREET IN LOVELAND, COLORADO

WHEREAS, Chapter 15.56 of the Loveland Municipal Code ("Code") provides that the City Council may designate as a historic landmark an individual structure, site, or other feature or an integrated group of structures and features on a single lot or site having a special historical or architectural value; and

WHEREAS, Code Section 15.56.100 further provides that landmarks must be at least fifty (50) years old and meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance; and

WHEREAS, the owner of that real property known as the Loveland Elks Lodge/Lovelander Hotel more particularly described on **Exhibit A** attached hereto and incorporated herein by reference ("Property"), located at 103 East 4th Street, Loveland, Colorado, filed an application for designation of the structures located thereon as historic landmarks under Code Chapter 15.56; and

WHEREAS, upon designation of the site and the structure on the Property as a historic landmark, the Property shall be subject to the provisions of Chapter 15.56 of the Loveland Municipal Code, as it may be amended from time to time by action of the City Council, which currently include, among other provisions, requirements for maintenance, requirements for prior approval of alteration, relocation, or demolition, and remedies for violation which are binding upon the owner and subsequent purchasers of the Property; and

WHEREAS, on January 21, 2013, the Historic Preservation Commission ("Commission") held a duly noticed public hearing ("Commission Hearing") at which it evaluated the application for designation of the Property as a historic landmark, considered the criteria for designation required in Code Section 15.56.100, and received and duly considered any public comments and testimony; and

WHEREAS, at the conclusion of the Commission Hearing, the Commission recommended to the City Council approval of the designation of the Loveland Elks Lodge/Lovelander Hotel located on the Property as a historic landmark; and

WHEREAS, as required by Code Section 15.56.030.D, the Commission has forwarded its written recommendation to City Council that the Loveland Elks Lodge/Lovelander Hotel be designated as a historic landmark; and

WHEREAS, City Council held a duly noticed public hearing on the designation application on February 5, 2013, at which it reviewed the application for conformance with the criteria for designation in and the with the purposes of Code Chapter 15.56, and considered the written view of owners of affected property, if any.

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

Section 1. That the preceding recitals contained in this Ordinance are hereby adopted and incorporated by reference as findings of fact of the City Council.

Section 2. That the City Council finds that the Loveland Elks Lodge/Lovelander Hotel, located on the Property at 103 East 4th Street in Loveland, Colorado satisfies the age requirement and meets the following significant criteria for designation as a landmark to the Loveland Historic Register:

a.) Architectural
   1. Exemplifies specific elements of an architectural style or period.
   2. Represents a built environment of a group of people in an era of history.

b.) Social/Cultural
   1. Exemplifies the cultural, political, economic or social heritage of the community.

c.) Geographic/Environmental
   1. Enhances sense of identity of the community.

d.) Physical Integrity
   1. Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state or nation.
   2. Retains original design features, materials, and/or character.
   3. Retains its original location.

Section 3. The Loveland Elks Lodge/Lovelander Hotel located on the Property is hereby designated as a historic landmark to the Loveland Historic Register.

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 the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Signed this _____ day of _____, 2013

_____
Cecil A. Gutierrez, Mayor

Attest:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

Exhibit A

LOTS THIRTEEN (13) AND FOURTEEN (14), BLOCK FOURTEEN (14), ORIGINAL TOWN (NOW CITY) OF LOVELAND, WITH ALL RIGHTS AND PRIVILEGES UNDER PARTY-WALL AGREEMENT; TOGETHER WITH EASEMENT ON WEST THREE FEET OF LOT FIFTEEN (15); ALL ACCORDING TO SUBDIVISION PLAT FILED SEPTEMBER 18, 1878, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

City of Loveland

COMMUNITY & STRATEGIC PLANNING
Civic Center • 500 East Third Street • Loveland, Colorado 80537
(970) 962-2577 FAX (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

To: Loveland City Council
From: Bethany Clark, Development Services
Meeting Date: February 5, 2013
Re: Application for Historic Landmark Property Designation, 103 E 4th Street.

SITE DATA

Address: 103 E 4th Street
Loveland, CO 80537

Request: Application for Historic Landmark Property Designation

Historic Name: Lovelander Hotel / BPO Elks Lodge

Architectural Style: Early 20th Century Commercial

Current Building Sq. Ft.: 16,610 square feet
(Source: Larimer Co. Assessor Property Information)

Construction Date: 1912-1913

Legal Description: Lots Thirteen (13) and Fourteen (14), Block Fourteen (14), Original Town (now City) of Loveland, with all rights and privileges under party-wall agreement; together with easement on West three feet of Lot Fifteen (15); all according to Subdivision plat filed September 18, 1878.

Owner(s): Benevolent and Protective Order of Elks Loveland Lodge #1051

Applicant(s): Benevolent and Protective Order of Elks Loveland Lodge #1051

Application Summary:

On October 23, 2012 staff attended an Elks Lodge meeting with A-E Design Associates to serve on a panel answering questions about the recently completed Historic Structural Assessment completed through a SHF grant, the obligations and benefits of historic landmark designation, as well as the process for applying for landmark designation. On November 26th, 2012, Loveland Elks Lodge members voted unanimously to move forward with obtaining the local Historic Landmark Designation from the City of Loveland and on December 28th staff received a nomination application for landmark designation of the property at 103 E 4th Street. The owner and applicant of 103 E 4th Street is familiar with the requirements for designation and the responsibilities as a Loveland Historic Landmark.

On January 21, 2013, the Historic Preservation Commission held a Public Hearing and unanimously recommended that the nomination of the Elks Lodge/Lovelander Hotel be approved by City Council. Staff mailed a notification letter announcing the date of the public hearing to the property owner of 103 E 4th Street as required by ordinance. The Community and Strategic Planning Division also published notice of the public hearing for consideration of designation as a landmark property in the *Loveland Reporter-Herald*.

Larimer County Assessor records identify the property by the following address: 103 E 4th Street, Loveland, Colorado.

History:
Excerpt from the Historic Structural Assessment prepared by A-E Design Associates through a State Historic Fund Grant, 2012.

In 1878, Harriett Hopkins, a widower from "back east," constructed an inn located across Railroad Avenue from the Colorado Central Railroad (CCRR) passenger depot on East Fourth Street. The Loveland House was a two-story wood frame building that had thirty-five guest rooms and two parlors, providing convenient accommodations to the passengers on the new rail line. Hopkins operated the hotel for a decade before Oscar Riker assumed ownership in 1888. Riker's son, J.D., took over management of the hotel in 1904.

The construction of a sugar factory in 1901 profoundly affected Loveland's socioeconomic development. In the latter half of the nineteenth century, wheat and other cereal grains were the main crops produced by farmers in the Big Thompson Valley. Sugar beet cultivation was introduced into the plains of Colorado in the 1870s and by 1890 this root crop was included among the agricultural products grown in the region. In the 1890s, a tariff on imported sugar gave rise to a large scale development of the domestic sugar beet processing industry and the first factory in the state was built at Grand Junction in 1899. Built two years later, the Great Western Sugar Company facility in Loveland provided a reliable market for farmers in the region as well as employment for Loveland residents. Over the next several years the sugar company's subsidiary, the Great Western Railway, built branch lines from the Loveland sugar plant to Longmont and Windsor. The sugar beet industry was partially responsible for a more than 300 percent increase in Loveland's population between 1900 and 1910. By 1910, Loveland boasted 3,651 residents and the city had been transformed by a building boom that included both the downtown business district as well as residential areas on either side of the railroad tracks.[1]

In 1912, a group of Loveland businessmen raised $40,000 to replace the thirty-four year old Loveland House. The frame building was leveled and a new, three story brick hotel was opened on July 10, 1913. Re-named the Lovelander Hotel, the impressive building had commercial space available for rent on the

1 Carl and Karen McWilliams, "Loveland Residences Cultural Resource Survey," (Loveland, CO: City of Loveland Strategic Planning Department, 2010), p. 14.

first floor and forty-two guest rooms on the upper levels.2 Approximately half of the rooms had private baths and all had a hot and cold water sink.

Overall, Loveland's growth slowed during the 1920s. Post World War I, the rise of automobiles and the establishment of tourist camps, courts, and cottages along U.S. Highway 34 (the route leading to Rocky Mountain National Park, established in 1915) resulted in a decline in those seeking lodging at the Lovelander Hotel. Sanborn maps indicate that sometime between 1918 and 1927, the building was doubled in size by a three-story addition to the east on lots 15 and 16. However in 1927, financial pressures led the hotel's owners to sell the original portion of the building to Loveland Lodge #1051 of the Benevolent and Protective Order of Elks. The building addition was never owned by the Elks, but rather continued in use as a hotel and later as residential apartments (Plaza Apartments). Although the buildings were once physically connected on the interior, ownership of the two sections remained separate.

The Benevolent and Protective Order of Elks was established in 1868 as a fraternal organization dedicated to promoting charitable causes. Like most fraternal organizations, the Elks were also a social group with the lodge building functioning as a social center. In 1906, a group of prominent Loveland businessmen applied for an Elks charter. After the charter was granted in July 1907, Elks Lodge #1051's seventy-two charter members began renting space on the second floor of the Association Building on Cleveland Avenue. By 1914, there were 279 members. As membership grew and finances increased correspondingly, the Elks began to search for new lodge headquarters.

In 1927, the Elks purchased the original Lovelander Hotel building. They soon began a remodeling program to suit their needs, including the conversion of a large portion of the second floor into a grand lodge room (see Construction History section for more information). The Lodge's charitable work focused on causes supporting veterans and children. In 1950, they donated $50,000 to fund construction of the Loveland Memorial Hospital. In 1951 the Elks Lodge hosted the ceremony to lay the cornerstone of the new building. By the 1970s, membership in the Loveland Elks Lodge peaked at 1,700.

The Elks Lodge/Lovelander Hotel building contributes to the significance of Loveland's downtown, initially for its use as a hotel and commercial building, and later for its association with Loveland's major fraternal organization, Loveland Lodge #1051 of the Benevolent and Protective Order of Elks. The building has been in continual use since its construction almost a century ago and has remained a center of social activity in the city. In 1999, the building (along with the adjacent Plaza Apartment Building) was deemed eligible for inclusion in the National and State Registers, both individually and as a contributing anchor to a proposed Loveland Downtown Commercial Historic District.

Architectural Description:
Excerpt from the Historic Structural Assessment prepared by A-E Design Associates through a State Historic Fund Grant, 2012.

The Elks Lodge/Lovelander Hotel is a three-story, rectangular plan building located on the northeast corner of East Fourth Street and Railroad Avenue in downtown Loveland. Constructed of buff-colored brick in a running bond, the building has a flat roof with parapets on the south and west sides highlighted by a projecting sheet metal box cornice with integral gutter system.

The original south, or main, storefront elevation was altered in the 1950 and exhibits Art Moderne design elements. Clad with light brown and marbled black glass tile and brown tone tile mosaic, the recessed entry to the Elks Lodge is framed by a wide, glass tile surround and contains a double leaf, glazed door flanked by frosted, corrugated glass sidelights and transom. Glass tiles with Moderne style lettering (BPOE) are located above the lodge entry. On either side of the main entrance, fixed aluminum frame

2 Jeffrey and Cindy Feneis, *Exploring Loveland's Hidden Past: The People and Places of Early Loveland, Colorado* (Loveland, CO: Loveland Historical Society, 2007).

windows are topped by a fluted aluminum cornice with fixed transom windows above. Black glass tile bands are located above the transoms. Brown tone mosaic tile is located beneath the windows.
The second and third stories of the south elevation each have seven wood-frame, double hung, one-over-one windows in the original 1913 fenestration pattern. Windows have dressed sandstone lugsills. The five central windows on each story are framed by a decorative border of projecting brick, with window openings separated by brick pilasters.

Facing Railroad Avenue, the west elevation was the original main entrance to the Lovelander Hotel and featured three distinct three-story sections separated by recessed bay light wells.

This elevation was modified after the Elks purchased the building in 1927. The southern third of the west elevation retains its original fenestration pattern on the first and second stories. Each story has five wood-frame, double hung, one-over-one windows with dressed sandstone lugsills. The windows are framed by a decorative border of projecting brick, with window openings separated by brick pilasters. The original storefront windows on this elevation have been infilled with brick and contain two glass block windows. Original decorative brickwork border remains. Just north of this section, the remaining original recessed bay has wood-frame, double hung windows on the second and third stories. A metal fire escape ladder with balcony extends from a west-facing window. Windows openings on all three stories of the west elevation immediately north of the recessed area are glass block.

Shortly after the Elks purchased the building in 1927, exact date unknown, the northerly light well was removed and the space separating the north two sections of the building was infilled with brick. Also at this time, the fenestration of the second and third floors on the west elevation was significantly altered due to the creation of a large lodge meeting room on the second floor, and four tall window openings were created to replace the second and third floor windows. These openings contain paired, mulled windows, each with two wood-frame, double hung, one-over-one widows with transom above. The window openings on the west elevation at the central stair were filled with glass block. Above the upper windows and beneath the box cornice are five decorative, rectangular terra cotta plaques. Each plaque depicts a clock dial, set at 11:00, flanked by the letters “BP” and “OE.” The clock references the fraternal organization’s traditional 11 O’Clock Toast given in honor of departed Elks: “…It is the golden hour of recollection, the homecoming of those who wander, the mystic roll call of those who will come no more…”3 The entrance to the lodge on this west elevation has a canvas canopy over a single leaf door with sidelights.

Circa 1950, a major remodeling project included many significant alterations to the structure. As part of that remodeling, a 55’ x 10’, four-story addition (three above grade and a basement) was added to the rear of the building. The remaining first floor west windows were infilled with glass block, and the first floor of the primary elevation facing 3rd Street received its Art Moderne architrave and “storefront” finishes. The west entry was also similarly altered, receiving the aluminum surround that exists to today. There were many alterations on the interior of the first and second floor, mostly removing walls to create larger spaces to better accommodate its use as a meeting place for a large fraternal organization, along with offices, coat rooms, and other ancillary spaces. Many of the ceilings had acoustical tile applied over the existing plaster, and this project also included installing a new electrical system, complete with replacement distribution wiring, outlets, and lighting. Please refer to copies of the 1950 drawings and specifications by Roland L. Linder in the appendices.

Walls of the north elevation of the addition are an orange-colored, common bond brick. Three metal downspouts extend from the gutter at roofline to the alley behind the building. Two single leaf metal doors access the interior. Originally, the west wall of this room had six arched openings leading to under-sidewalk light well vaults. There were also glass kicks in the walls above to bathe the basement in natural light. The structural glass was replaced with concrete and the arches and glass kicks infilled sometime after 1937. The arches in the west basement wall were infilled and carpet wainscoting installed in the mid

3 Loveland Lodge #1051, “The First 100 Years, 1906-2006, A Historical Review” (Loveland, CO: Lodge #1051, 2006).

1980's. One of the openings beneath the sidewalk still exists in the form of a storage closet near the south end of the west wall, and the arch infill includes a door at that location.

Another partial interior remodeling of the first floor spaces of the northern half of the building occurred in 1963, revamping what are now the club room and range room, with the first floor kitchen running along the north end, and moving the now diagonal bar to the northeast corner between the kitchen and range room. This configuration was altered again in 1981, moving the bar to the north end of the club room and incorporating the prior bar space into the kitchen, serving, and dishwashing area. The first floor conference room received new finishes later in the 1980's. The evaporative cooling system was reportedly taken offline just prior to the new millennium. Please refer to copies of the 1963 and 1981 plans, specifications, and building permit application in the appendices.

The three-story Plaza Apartment building abuts the east wall of the Elks Lodge building.

Significance:

The 1913 Elks Lodge/Lovelander Hotel Building is an example of Early Twentieth Century Commercial Architecture, a Special Use Property Type defined by the Colorado Historical Society's Office of Archaeology and Historic Preservation. Common elements of this type that are present on the Elks Lodge/Lovelander Hotel Building include: a slightly pitched roof with parapet, box cornice, decorative brickwork, and scant additional ornamentation.4

Although the building was altered substantially between 1927 and 1951, all changes occurred as a result of the Elks' acquisition of the property. The building's primary significance is its association with the fraternal organization and its contribution to the social history of Loveland. Therefore, the alterations do not diminish the building's overall significance. The property is considered eligible for local landmark designation by the City of Loveland.

4 Colorado Historical Society, *Field Guide to Colorado's Historic Architecture and Engineering* (Denver: Colorado Historical Society, 2008).

Photographs:

Figure 1: Southwest Corner

Figure 2: Northwest Corner

Figure 3: South (Front) Elevation

Figure 4: Storefront as Viewed from Southwest Corner

Figure 5: North (Rear) Elevation

Figure 6: Historic Photo, prior to 1927 Elks Purchase

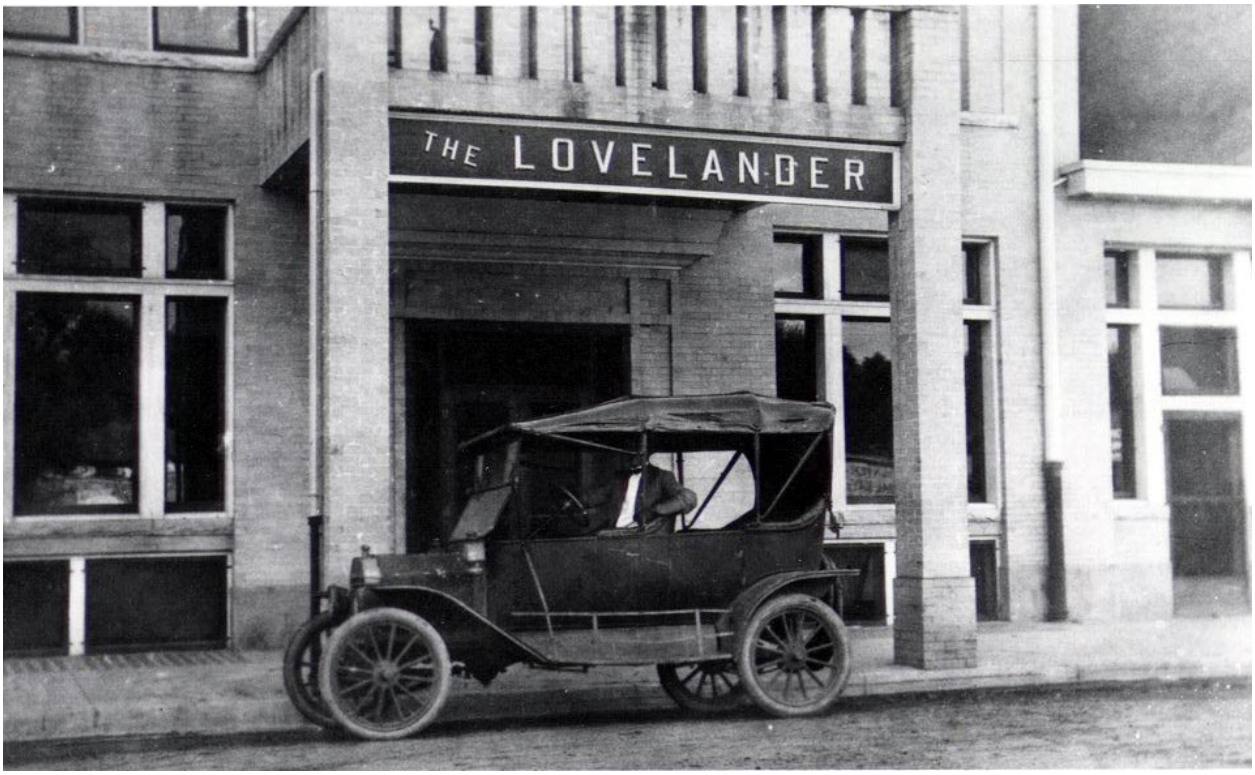


Figure 7: The Lovelander Hotel

Determination of Significance and Integrity

Significance should be used as the starting point in determining eligibility for placement on a historic register. Significance has two distinct attributes – the "area of significance" which answers the question of context, or **what** is significant about a resource in terms of its association to agriculture, architecture, commerce and industry, education, politics and government, and transportation. The Elks Lodge/Lovelander Hotel is significant for its association with the fraternal organization of the BPO Elks and its contribution to the social history of Loveland. The building is also a good example of Early Twentieth Century Commercial Architecture.

The second attribute of the *significance* of a structure is its "period of significance" which places the resource on a historic timeline and answers the question of **when** a resource was significant. As noted, the Elks Lodge/Lovelander Hotel was built in 1912-1913, making it greater than 50 years old.

Integrity refers to the ability of a structure to convey its original design or some later period of significance through the intactness of its historic form, original or historic use of materials, setting and site. Integrity has seven (7) particular aspects: location, setting, feeling, design, materials, workmanship, and association with some attribute of historic significance.

A historic building, for example, that retains its original or historically significant setting with little or no visible modifications that diminish the ability to relate its historic association demonstrates greater integrity than a building that has lost many of physical historical elements. A building with high physical integrity retains the following original or historically significant elements: massing; architectural detail; surface treatment; and windows and doors.

According to the Historic Structural Assessment prepared by A-E Design Associates in 2012, the Elks Lodge/Lovelander Hotel has maintained a good amount of its integrity. Although there has been an addition and several modifications, these were all made as a result of the Elks Lodge acquisition of the property and were made more than 50 years ago. Therefore, the alterations themselves do not diminish the integrity of the property. The building also retains its original location and the surrounding neighborhood has maintained its historic character.

Staff Recommendation

To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social cultural, or geographic/environmental significance as identified in Loveland Municipal Code 15.56.090. The Elks Lodge/Lovelander Hotel satisfies the age requirement and meets the following criteria for designation as a Loveland Historic Register landmark of property:

a.) Architectural
   1. Exemplifies specific elements of an architectural style or period.
   2. Represents a built environment of a group of people in an era of history.

b.) Social/Cultural
   1. Exemplifies the cultural, political, economic or social heritage of the community.

c.) Geographic/Environmental
   1. Enhances sense of identity of the community.

d.) Physical Integrity
   1. Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state or nation.
   2. Retains original design features, materials, and/or character.
   3. Retains its original location.

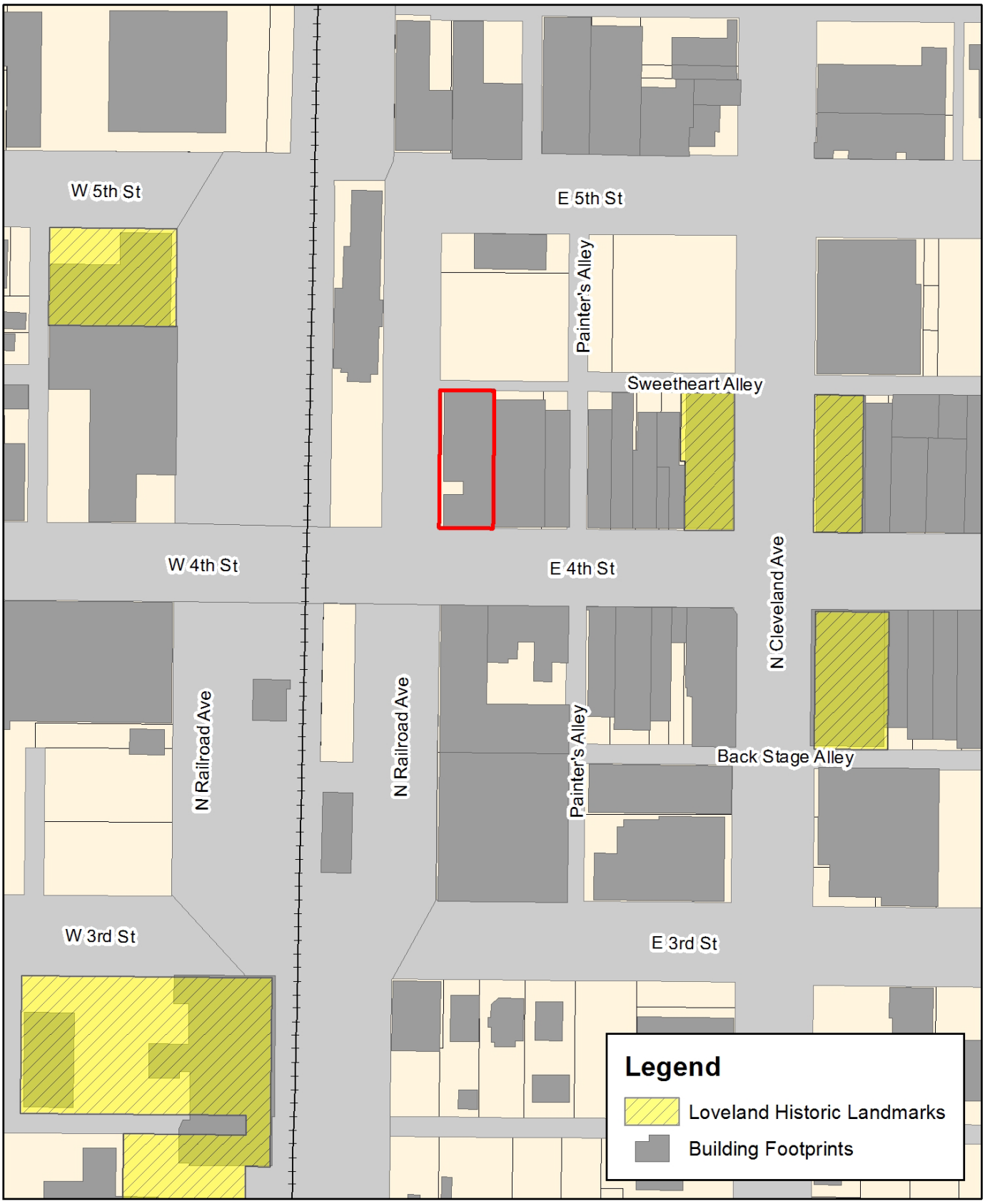
Given available information for the property at 103 E 4th Street, staff has determined that the Elks Lodge/Lovelander Hotel exhibits both adequate *integrity* and *significance* to support its eligibility for designation as a Loveland historic landmark. This determination is based on the Colorado Historical Society's recommended framework for determining landmark eligibility.

Staff proposes the Loveland City Council approve this request for designation of the Elks Lodge/Lovelander Hotel, located at 103 E 4th Street, as a Loveland Historic Register Landmark property.

Attachments:

A. Location Map
B. Nomination Application submitted by applicant

Attachment A



Loveland Historic Register

Nomination Packet

City of Loveland
500 E. Third Street
Loveland, CO 80537
Tel. 970-962-2745

This packet includes the instructions and forms necessary to nominate a building, site, or district to the Loveland Historic Register.

City of Loveland — Page 1 - Applicant and General Property Information

FORM A
Application for Designation of a Historic Landmark

Please Type or Print Legibly

One property only per Application Form.
If more than one Applicant, please attach additional sheet.

APPLICANT(S) INFORMATION	
Owner of Proposed Landmark Property:	Loveland Elks Home Inc NKA Loveland Elks Lodge BPOE 1051
Applicant:	☒ Property Owner ☐ City Council (attach meeting minutes initiating action) ☐ Commission Designees (pursuant to 15.56.169) ☐ Historic Preservation Commission (attach meeting minutes initiating action) ***Please check one.***
Address:	103 E 4th St, Loveland, CO 80537
Telephone:	970 669 6330

PROPOSED LANDMARK INFORMATION	
Property Name:	Loveland Elks Lodge BPOE 1051 FKA The Loveland Hotel Cc
Address:	103 E 4th St, Loveland, CO 80537
Historic Use:	As a hotel until 1927 when purchased by the Loveland Elks which has been used as their Fraternal Service Club Lodge
Current and Proposed Use	Loveland Elks Lodge Fraternal Club
Legal Description	*Please attach copy of officially recorded document containing a legal description.* Lots 13 & 14, Block 14, City of Loveland, Larimer County
Brief Description of Historical Qualities relating to Property	*Please attach additional sheets if necessary.* The Elks Lodge/Lovelander Hotel building contributes to the significance of Loveland's downtown, initially for its use as a hotel and commercial building, and later for its association with Loveland's major fraternal organization. (con't)

FORM A
Application for Designation of a Historic Landmark

DETAILED PROPERTY INFORMATION	
Historic Property Name:	Loveland Elks Lodge BPOE 1051 fka The Loveland Hotel Co
Current Property Name:	Loveland Elks Lodge BPOE 1051
Address:	103 E 4th St, Loveland, CO 80537
Legal Description	*Please attach copy of officially recorded document containing a legal description.* Lots 13 & 14, Block 14, City of Loveland, Larimer County
Owner Name & Address:	Loveland Elks Lodge BPOE 1051
Style:	Early 20th Century commercial / circa 1950 Art Moderne
Building Materials:	Brick / Steel
Additions to main structure(s), and year(s) built.	Year built 1913. The Elks added on to the North of building in approx 1945-1950, also remodeled to add the 'ball room' in the North section at that time as well.
Is the structure(s) on its original site?	Yes [✓] No [ ] If No, Date Moved_____
What is the historic use of the property?	As a hotel until 1927 when purchased by the Loveland Elks which has been used as their Fraternal Service Club Lodge.
What is the present use of the property?	Loveland Elks Lodge / Fraternal Community Service Organization
What is the date of construction?	Estimated:_____ Actual: 7/1913 Original: 1913 Source:

FORM A
Application for Designation of a Historic Landmark

DETAILED PROPERTY INFORMATION continued	
Describe the condition of the property.	Overall condition of the property is average to below average in some areas as deferred maintenance is now necessary.
Who was the original architect?	Unknown at this time. **Source:**
Who was the original Builder/Contractor?	Unknown at this time. **Source:**
Who was the original Owner(s)?	The Loveland Hotel Company / Lovelander Hotel **Source:** Original vesting deed / Loveland Museum
Are there structures associated with the subject property not under the ownership of this applicant? Please describe.	No
Detailed description of the architectural characteristics of the property.	*Please attach additional sheets if necessary.* Please see 'historic significance section' as this is detailed in that section as well. Additionally, upon request, you may review the 200 page structural assessment report that was conducted by AE Designs, Inc for the Loveland Elks over the past two years. This is available in electronic format and Bethany Clark has a hard copy of the report. There are also 60 photos of the interior and exterior of the building in it's current condition with explanations of the existing historical characteristics of certain elements of the building, such as the original mahogany wood trim on the original hotel rooms on the third floor of the Lodge.

FORM A
Application for Designation of a Historic Landmark

The Historic Preservation Commission and City Council will consider the following criteria when reviewing nominations of properties for designation.

Landmarks must be at least fifty (50) years old and meet one (1) or more of the following criteria for architectural, social/cultural, or geographic/environmental significance. A landmark may be less than fifty (50) years old if it is found to be exceptionally important in other criteria.

Age of Site is: 99 yrs

1. Proposed Historic Landmarks. Please check all that apply:

For prehistoric or historic archaeological sites, please go to Form A Section 2, pg. 5.

A) Architectural:

- [x] 1) Exemplifies specific elements of an architectural style or period.
- [ ] 2) Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, or locally.
- [ ] 3) Demonstrates superior craftsmanship, or high artistic value.
- [ ] 4) Represents innovation in construction, materials, or design.
- [x] 5) Represents a built environment of a group of people in an era of
- [ ] 6) Exhibits a pattern or grouping of elements representing at least one of the above
- [x] 7) Is a significant historic remodel.

B) Social/Cultural

- [x] 1) Is a site of an historic event that had an effect upon society.
- [x] 2) Exemplifies the cultural, political, economic, or social heritage of the community.
- [ ] 3) Is associated with a notable person(s) or the work of notable person(s).

C) Geographical/Environmental

- [x] 1) Enhances sense of identity of the community.
- [x] 2) Is an established and familiar natural setting or visual feature of the community.

2. Prehistoric and historic archaeological sites shall meet one (1) or more of the following. Please check all that apply.

***Complete this section only if the subject property is a prehistoric or historic archaeological site.*

A) Architectural

- [x] 1) Exhibits distinctive characteristics of a type, period, or manner of construction.
- [ ] 2) Is a unique example of a structure.

B) Social/Cultural

- [x] 1) Has the potential to make an important contribution to the knowledge of the area's history or
- [x] 2) Is associated with an important event in the area's development.
- [ ] 3) Is associated with a notable person(s) or the work of notable person(s).
- [ ] 4) Is a typical example/association with a particular ethnic or other community group.
- [ ] 5) Is a unique example of an event in local history.

C) Geographical/Environmental

- [x] 1) Is geographically or regionally important.

3. Each property or site will also be evaluated based on physical integrity using the following criteria *(a property need not meet all the following criteria):*

a) Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state, or nation;

b) Retains original location or same historic context if it has been removed; or

c) Has been accurately reconstructed or restored based on documentation.

FORM A
Application for Designation of a Historic Landmark

Statement of Significance **Please provide a brief statement summarizing the applicable criteria checked on previous pages.**	*Please attach additional sheets if necessary.* The 1913 Elks Lodge/Lovelander Hotel Building is an example of Early Twentieth Century Commercial Architecture, a Special Use Property Type defined by the Colorado Historical Society's Office of Archaeology and Historic Preservation. Common elements of this type that are present on the Elks Lodge/Lovelander Hotel Building include: a slightly pitched roof with parapet, box cornice, decorative brickwork, and scant additional ornamentation. Although the building was altered substantially between 1927 and 1951, all changes occurred as a result of the Elks' acquisition of the property. The building's primary significance is its association with the fraternal organization and its contribution to the social history of Loveland. Therefore, the alterations do not diminish the building's overall significance.
Photographs of property as it appears today	*Include photos from all angles: front, rear, and side elevations.* North elevation East elevation South elevation West elevation Other Other Other Other
Please identify all references used during the research of the property. Include titles, author, publisher, publication date, ISBN# (when applicable), and location of source such as public library, etc.	*Please attach additional sheets if necessary.* Please see attached pages, which are from the original HSA report prepared from AE Designs, Inc.

City of Loveland — Page 7 – Signature Sheet

FORM A
Application for Designation of a Historic Landmark

The Property Owner, by signature below and submittal of this application, acknowledges and agrees that if the Property is designated as a historic landmark, the Property will be subject to the provisions of Chapter 15.56 of the Loveland Municipal Code, as they may be amended from time to time by action of the Loveland City Council. The provisions of Chapter 15.56 of the Loveland Municipal Code are available to the Property Owner at http://www.cityofloveland.org/index.aspx?page=68 and currently include, among other provisions:

- Requirements for maintenance of a historic landmark as set forth in Code Section 15.56.150; and
- Requirements that any proposed alteration, relocation or demolition of a designated historic landmark is subject to approval, which may include application, public notice and hearing, and decision by the Historic Preservation Commission and/or City Council, prior to undertaking such actions, as more fully set forth in Code Sections 15.56.60-.80, 15.56.110-.140 and 15.56.170; and
- Remedies for violation as set forth in Code Section 15.56.090, including but not limited to provisions that moving or demolishing a designated landmark or a structure without an approved landmark alteration certificate will result in a five-year moratorium on all moving, demolition, or building permits for the structure and for the property at the structure's original location, and that altering a designated landmark without and approved landmark alteration certificate will result in a one year moratorium on all building permits for the property.

Further, the Property Owner authorizes the recording of any Ordinance designating the Property as a historic landmark in the real property records of the Larimer County Clerk and Recorder and agrees to disclose to any purchaser of the Property the designation of the Property as a historic landmark subject to the benefits and obligations of Chapter 15.56 of the Loveland Municipal Code.

Craig Klein Leading Knight

Signature of Property/Site Owner(s): Larry Theiner EXACTOR RCCB **Date:** 12-27-12

The Property Owner has read and agrees with all that is contained in Section 15.56.090 of the Loveland Municipal Code and understands all the benefits and obligations of said code. The Property owner specifically understands and agrees that the once the property is a designated landmark any proposed alterations must receive an approved alterations certificate prior to construction. The Property owner also understands and agrees that moving or demolishing a designated landmark or a structure without an approved landmark alteration certificate will result in a five-year moratorium on all moving, demolition, or building permits for the structure and for the property at the structure's original location. Additionally, the Property owner will disclose to future owners of the property all the benefits and obligations of Section 15.56.090 of the Loveland Municipal Code.

Craig Klein Leading Knight

Signature of Property/Site Owner(s): Larry Theiner EXACTOR RCCB **Date:** 12-27-12

City of Loveland

Page 8 - Signature Sheet (cont.)

FORM A
Application for Designation of a Historic Landmark

Please type or print legibly.

FORM A completed by:

Debbie Hague Davis

Signature of Preparer:

D DAVIS, BOARD CHAIR

Date: 12/27/12

Phone No.

970 669 6330

Address:

103 E 4th St, Loveland, CO 80537

Signature of Property/Site Owner(s) if different than Preparer:

Larry Taylor SELECTED RULER

Craig Klein - LEADING KNIGHT

Date:

12-27-12

E-Mail Form

Historical Qualities (continued)

Loveland Lodge #1051 of the Benevolent and Protective Order of Elks. The building has been in continual use since its construction almost a century ago and has remained a center of social activity in the city. In 1999, the building (along with the adjacent Plaza Apartment Building) was deemed eligible for inclusion in the National and State Registers, both individually and as a contributing anchor to a proposed Loveland Downtown Commercial Historic District.

The 1913 Elks Lodge/Lovelander Hotel Building is an example of Early Twentieth Century Commercial Architecture, a Special Use Property Type defined by the Colorado Historical Society's Office of Archaeology and Historic Preservation. Common elements of this type that are present on the Elks Lodge/Lovelander Hotel Building include: a slightly pitched roof with parapet, box cornice, decorative brickwork, and scant additional ornamentation.4 The building is a contributing commercial structure to a proposed Loveland Downtown Commercial Historic District.

The Elks Lodge/Lovelander Hotel is a three-story, rectangular plan building located on the northeast corner of East Fourth Street and Railroad Avenue in downtown Loveland. Constructed of buff-colored brick in a running bond, the building has a flat roof with parapets on the south and west sides highlighted by a projecting sheet metal box cornice with integral gutter system.

Architectural Characteristic (continued)

Please see information above.

Loveland Municipal Code and understands all the benefits and obligations of said code. The
Property owner specifically understands and agrees that the once the property is a designated
landmark any proposed alterations must receive an approved alterations certificate prior to
construction. The Property owner also understands and agrees that moving or demolishing a
designated landmark or a structure without an approved landmark alteration certificate will result
in a five-year moratorium on all moving, demolition, or building permits for the structure and for
the property at the structure' s original location. Additionally, the Property owner will disclose to
future owners of the property all the benefits and obligations of Section 15.56.090 of the
Loveland Municipal Code.

Signature of Property/Site Owner(s) :_____**Date:**_____

Please type or print legibly.
FORM A completed by:
Signature of Preparer:
Date: Phone No.

_____

Address:

_____

Signature of Property/Site Owner(s) if different than Preparer:
Date:

_____

E-Mail Form

Historical Qualities (continued)
Architectural Characteristic (continued)

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The original south, or main, storefront elevation was altered in the 1950 and exhibits Art Moderne design elements. Clad with light brown and marbled black glass tile and brown tone tile mosaic, the recessed entry to the Elks Lodge is framed by a wide, glass tile surround and contains a double leaf, glazed door flanked by frosted, corrugated glass sidelights and transom. Glass tiles with Moderne style lettering (BPOE) are located above the lodge entry. On either side of the main entrance, fixed aluminum frame windows are topped by a fluted aluminum

4 Colorado Historical Society, Field Guide to Colorado's Historic Architecture and Engineering (Denver: Colorado Historical Society, 2008).

cornice with fixed transom windows above. Black glass tile bands are located above the transoms. Brown tone mosaic tile is located beneath the windows.

The second and third stories of the south elevation each have seven wood-frame, double hung, one-over-one windows in the original 1913 fenestration pattern. Windows have dressed sandstone lugsills. The five central windows on each story are framed by a decorative border of projecting brick, with window openings separated by brick pilasters.

Facing Railroad Avenue, the west elevation was the original main entrance to the Lovelander Hotel and featured three distinct three-story sections separated by recessed bay light wells (see historic photograph below).

This elevation was modified after the Elks purchased the building in 1927. The southern third of the west elevation retains its original fenestration pattern on the first and second stories. Each story has five wood-frame, double hung, one-over-one windows with dressed sandstone lugsills. The windows are framed

Please see information above.

Grant Administration (by City, as Cash Match)	$ 500
Select Project Management Assistance, Grant Management Assistance (6%) (Provided by Preservation Engineer)	$ 1,030
Contingency (12% of Construction Cost)	$ 2,060
Grant Project Total	*$ 20,750*

Grant Request (67%)	$ 13,900
Cash Match (33%)	$ 6,850

7.0 BIBLIOGRAPHY *(An asterisk next to a bibliographical entry indicates that the consulted resource contained pertinent information.)*

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Ball, Clara, Editor. *Loveland-Big Thompson Valley: 1877 Centennial 1977.* Loveland, CO: Loveland-Big Thompson Centennial Commission, Inc., 1975.*

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Feneis, Jeffrey and Cindy. *Exploring Loveland's Hidden Past: The People and Places of Early Loveland, Colorado.* Loveland, CO: Lovel and Historical Society, 2007.*

International Building Code; Whittier, CA: International Conference of Building Officials, 2003. *Uniform Code for Building Conservation.* Whittier, CA: International Conference of Building Officials, 1997.*

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Loveland Museum. Loveland's Historic Downtown: A Guide to Buildings. Loveland, CO: Loveland Museum, 2001.*

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Ringuette, Janis and Norm. Islandnet.com. "Walking Over History: Victoria's Historic Sidewalk Prisms". http://www.islandnet.com/~jar/streetscapes/prisms.htm. December 4, 2011.*

Weeks, Kay D. and Anne E. Grimmer. *The Secretary of the Interior's Standards for the Treatment of Historic Properties: With Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*; Washington, DC: U.S. Department of the Interior, 1995.*

8.0 APPENDICES (SEE SUBSEQUENT SECTION)

⌘ ⌘ ⌘

Loveland Elks Lodge #1051
November 26, 2012
Meeting Minutes

Loveland Lodge #1051 met in regular session at 7:00 PM with PER Ron Schlatter presiding. There were 42 members present.

After opening, Craig Davis was installed as Esteemed Leading Knight by PER Ron Schlatter acting as Grand Exalted Ruler, Janet Limbeck as Grand Esquire and Monica Turner as installing Officer.

Roll Call of Officers: All officers were present except for Larry Turner, Exalted Ruler

Minutes of Previous Session: Approved as read.

Sickness & Distress:
- Vern Schultz has been diagnosed with gallstones
- Dee Long fell and broke her arm.
- Pam Hauschild's father had a stroke
- Mary Pizzuti fell while decorating the Lodge Room. She was taken to the ER to see if she had a concussion but she just has a bad bump and black eyes.
- Zelda Johnson's granddaughter has been having seizures.

Social & Community Welfare:
- No report

Reports of Committees:

EXALTED RULER:

- Ron reminded everyone about the Memorial Service to be held on Sunday, December 2 and invited everyone to come and pay homage to our members who have passed away this year.
- Ron also reminded everyone about the Tom and Jerry Party to be held at the Lodge on Saturday, December 15. It is free to all members and there will be a band playing from 7-10PM.

LEADING KNIGHT:

- No Report

LOYAL KNIGHT:

- Larry Depperschmidt thanked everyone who had filled in for him during his recent absences.
- Larry also said that there will be no Wednesday night meals during December. They are possibly looking to the cook to take over Wednesdays.

LECTURING KNIGHT:

- Deborah reminded everyone of the Hoop Shoot which will be on December 15, starting at 8:30 AM

SECRETARY:

- No Report

ESQUIRE:

- No Report

TILER:

- No Report

CHAPLAIN:

- No Report

INNER GUARD:

- No Report

BOARD OF DIRECTORS / TRUSTEES:

- Debbie Davis gave a short budget report and said that from the 4 cost centers, Lodge, Bingo, Dining Room and Bar, the net income was $24,227.80. See attached for full report
- Debbie said the contract for VJC Catering, our chef had been reviewed and extended another 6 months until May 2013. The Cotter contract was also reviewed and extended for 3 months.
- Debbie asked for not more than $500 from Blood Drive Acct. 390-22 to help with the expenses of the Tom and Jerry party. Motion seconded and passed.
- Rod Johnson thanked everyone who supported the Steak Committee and said there would not be steaks in December. He said they would be back in January and he was not raising prices. He thanked Deborah Furney, Bill Kinney, Binky Geisler, Bryce Johnson and Blair Johnson for all their help.

BINGO:

- Binky proudly reported that Bingo had made a profit last week.

PER'S:

- No Report

LITTLE BRITCHES:

- No Report

OTHERS:

- Jerry Brown made a motion to take $900 from Mess Hall Acct. 390-17 for Thompson Valley Pre-School. $500 is to go to playground equipment and $400 for new cupboards. Motion seconded and passed.
- Jerry also made a motion to take $3000 from Mess Hall Acct. 390-17 for bar improvements. Motion seconded and passed.
- Binky Geisler made a motion to take $1100 from the Ladies Auxiliary Bar Bingo Acct. 780-11 to give $300 to Girls State, $100 to Santa Cops, $100 to Larimer County Food Bank, $100 to House of Neighborly Service and $500 to Thompson Valley Pre-School Scholarship Fund. Motion seconded and passed.

COMMUNICATIONS:

- Thank you card from Corporal Zachary Wolaver of the US Marines

APPLICATIONS FOR MEMBERSHIP:

Robert Porzycki, proposed by Carin Barrett
Dianne Heider, proposed by N Polly Sigmund.

INVESTIGATION COMMITTEE:

- Will meet January 2, 2012

OLD BUSINESS:

- Motion was made by Debbie Davis to accept the Historic Structure Designation project proposal to rehabilitate our building. Motion seconded and passed
- Motion made by Debbie Davis to move forward with obtaining the local Historic Structure Designation from the City of Loveland. Motion seconded and passed.
- Debbie Davis made a motion to move forward with obtaining the State Historic Structure Designation from the State of Colorado.
- Debbie Davis made a motion to apply for the Façade Enhancement Improvement Grant with the City of Loveland. Motion seconded and passed.
- Debbie Davis made a motion to apply for the State Historical Grants that are available through the State of Colorado. Motion seconded and passed.
- Debbie Davis made a motion to rename and redesignate the title of our current Building Fund to another title, which is proposed to be "Capital Improvement Fund." Motion seconded and passed.
- Debbie stated that since these all passed, we are here to stay.

NEW BUSINESS:

- None

GOOD OF THE ORDER:

- Discussion was held about donating food to the Food Bank rather than giving out individual food baskets for Christmas. Shirley was going to investigate how people were screened at the Food Bank to make sure the needy were really the recipients.

CHARITY/ ENF DRAWING:

- $116 was collected for Charity Drawing. $46 went to ENF, $20 to Sad Elk and there were 5 drawings for $10.00. Greg Welch donated his to Hoop Shoot and Larry Reisdorff and Jerry Brown donated theirs to Troop Support.

SAD ELK DRAWING:

- Bryce Giesey was not present to win $300. Next meeting the pot will be $310.

BILLS APPROVED TO BE PAID: Motion made, seconded and approved:

- LODGE: **$11,453.02** See attachment
- BINGO: **$3269.26** See attachment

TREASURER'S REPORT:

RECEIPTS OF THE SESSION:

LODGE: $

BINGO: $

BUILDING FUND: $

CHARITY/ EDUCATION TRUST FUND: $

BALANCE ON HAND:

LODGE: $

BINGO: $

BUILDING FUND: $

CHARITY / EDUCATION FUND TOTAL: $

Lodge closed in regular form in 1 hour and 10 minutes.

Respectfully Submitted,

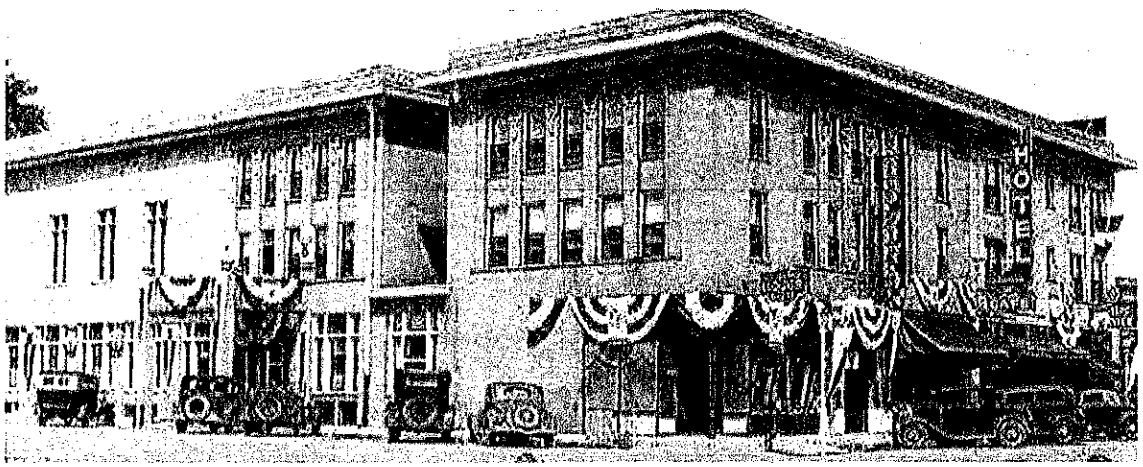
Monica J. Turner, Secretary

Lovelander Hotel

(Known as Elks Lodge and Plaza Apartments)
103 East 4th Street

4

The Lovelander Hotel was erected in 1912-13, replacing an aging wood frame hotel—The Loveland House—which had been in this location since 1878. After a $40,000 remodel in the summer of 1913, the hotel reopened to feature such modern conveniences as steam heat, telephone service, and hot and cold water piped to each of its forty-two guest rooms. Soon after World War I, the business suffered a decline and by 1926 was up for sale. Elks Lodge No. 1051 purchased the building in 1927 and remodeled the interior. Around the same time, a three-story, east side addition was constructed to continue housing the residential hotel. The name changed to the Plaza Apartments in the 1970s.



This picture is courtesy of 'Walk Historic Loveland' by the Tenfold Collective.
http://www.tenfoldcollective.com/blog/walk-historic-loveland

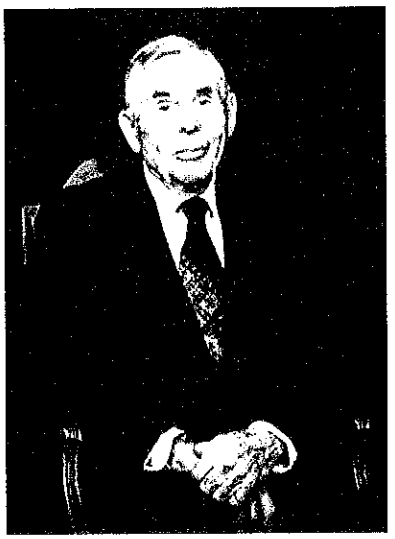
Banner Health
McKee Medical Center

About McKee Medical Center

History of McKee Medical Center

The first hospital in Loveland was Sutherland Hospital established in 1896 by W. P. Sutherland, MD, in his home on 6th and Grant. His screened-in porch was turned into an operating room. The First United Methodist Church now stands on this site. In 1917, Dr. Sutherland passed away and a group of physicians leased and maintained the hospital until 1929.

In 1929, William Gasser, MD, established a 10 to 14-bed hospital known as Loveland Hospital. This hospital was in existence until 1947. From 1947 to 1951 Loveland had no local hospital.



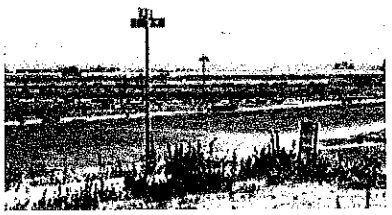
Thomas McKee

In 1945, the Loveland Elks Lodge contributed $50,000 to start a drive to raise funds to build a new hospital in Loveland. The people of Loveland approved new bonds to build a hospital. However, the Colorado State Hospital Advisory Board said a hospital in Loveland was not a high enough priority to receive funds through the Hill Burton Act, a federal program to help build hospitals in rural areas A Loveland group, including attorney Conrad Ball, gained the support of Gov. William Lee Knaus for a hearing before the State Board of Health. That hearing led to the approval of federal funds.

Discussion occurred as to who and how the hospital would be operated. Elks Lodge representatives met with the city council and proposed that the city lead efforts to develop, manage and operate the hospital as city-owned property.

After considerable discussion, the city decided against it, saying a hospital's operations should not be affected by changes in city personnel due to elections, etc. The city therefore declined the $50,000 offered by the Elks.

A committee was organized to work with the Elks Lodge and the city council to obtain a hospital. The committee called chambers of commerce in towns where other Lutheran Hospitals and Homes Society hospitals were located. Upon completion of their research, Lutheran Hospitals and Homes Society of Fargo, N.D. was selected to participate in building a new facility in Loveland. The 42-bed, 35,300-square-foot hospital was a lease arrangement, and was completed and opened Nov. 25, 1951. The location was Douglas and 8th Street. Over the next several decades, the hospital provided services to an ever-expanding population. In 1968 the Loveland Memorial Hospital District was formed to take the responsibility of the hospital from the city of Loveland and shift it to the district.



Site of the new hospital, circa 1973

During this time, local farmer Thomas McKee was a patient in the aging, crowded hospital. He recognized a need and donated 29.5 acres of his farm for a new health care facility. In 1973, Lutheran Hospitals and Homes Society agreed to build a new facility on the property donated by Tom McKee.

In 1976, McKee Medical Center opened for business. McKee opened with 80 beds at 94,355 square feet, and began operations shortly before the Big Thompson Flood. During the aftermath of the flood, McKee received hundreds of patients and the new facility faced its first disaster. The new building proved to be the town's greatest asset.

Groundbreaking, 1973

McKee has experienced a number of expansions through the years:

- 1981 - Expansion of the Boiler Room/Addition of second and third floor - C Wing
- 1982 - Expansion of Medical Imaging
- 1990 - McKee Conference and Wellness Center/Medical Imaging expansion
- 1991 - Emergency Department
- 1993 - Medical Office Building – first and second floors
- 1994 - Surgery expansion
- 1995 - MRI building
- 1998 - Surgery expansion
- 2001 - Medical Office Building – third and fourth floors
- 2002 - Cancer Center
- 2003 - Records storage
- 2005 - Legacy Phase I – OB/Telemetry/Materials Management/Surgery
- 2007 - Emergency Department/Lab/Pharmacy

In 1999, Lutheran Health Systems and Samaritan Health System merged, and created Banner Health, the largest nonprofit, non-religious affiliated, multistate health system. Based in Phoenix, Ariz., Banner Health has 23 hospitals and other facilities that offer an array of services including hospital care, home care, hospice care, nursing registries, surgery centers, laboratories, and rehabilitation centers. These facilities are located in six Western states and one Midwestern state.

As of 2011, McKee Medical Center has 132 licensed beds at 421,972 square feet, and boasts a variety of services including Cardiovascular, Level III Trauma, Emergency Services, Surgical, Robotic Surgery, Clinical Laboratory, Nutrition Services, Medical Imaging, Digital Mammography, Care Coordination, Wellness Services, Women's Services, Transitional Care, and a comprehensive Cancer Center.

Hospital begins to take shape

Legacy Project wing, circa 2005

McKee today

Look for a Banner Health facility

McKee Medical Center
2000 Boise Ave.
Loveland, CO 80538
(970) 669-4640

Follow Us:

Loveland Elks Lodge 1051

September 10, 2012

Blood Drive Report

The 911 Community Blood Drive for 2012 was Co-Chaired by Mary Thomason, John Giroux and Debbie Davis. The following members and volunteers were also on the committee: Peggie McGuire, Marge Shafer, Deborah Furney, Denise Richter, Bill and Elizabeth Markham, Craig Davis, Bill Thomason, Connie Giroux, Briand and Emily Westphal, Pam Hauschild, Rob Wright, Scott and Monica Graham and a few others.

The concept of this event is to help fill the critical need of the local blood banks, and promote the community's awareness of the Lodge, while commemorating 9/11, which is Patriot's Day. The goal of this event is to eventually raise 911+ pints of blood and make this an event that the entire community can participate in on an annual basis.

Year to date the Blood Drive has committee raised approx $3,000.00 in funds and approx $1,500 in-kind donations from various fund raisers and sponsorships The event was facilitated on September 7, 8 and 10th with approx 200 attendees, of which approximately 150 pints of blood were drawn.

Tomorrow, September 11th, we will hold the 9/11 Celebration event which will host Major Diggs Brown as our Keynote speaker, speaking on his deployment to Afghanistan shortly after the 9/11/01 terrorist attack, as well as his work with establishing the Veteran's Plaza of Northern Colorado. This event is open to the public.

Additionally, this event will include the Lodge's Loveland Chamber 'Ribbon Cutting', which is a special greeting ceremony from the Chamber into their business membership organization. By combining these events, we hope to attract additional business members into the Loveland Elks membership base and further deepen the reach in which the Elks touch and impact lives of those around us.

The event has been covered in the local newspapers, on the radio, on various websites, and on Facebook, as well as advertised with posters, flyers and word of mouth. They also received a proclamation from Loveland Mayor Cecil Gutierrez, that September 11th is the 911 Community Blood Drive Day in Loveland Colorado, which was proclaimed at City Council on 9/4/2012.

The committee's funds were applied toward paying for the expenses and supplies of hosting the entire event, which includes a free meal, cash bar, silent auction, and drawings. The funds were also used to purchase a membership with the Chamber of Commerce, purchase name tags for committee members to use while attending Chamber and Blood Drive events, and they also purchased three banners displaying the Loveland Elks – one for parades, one for beer garden and one for the Blood Drive.

Respectfully,

Debbie Davis, 911 Community Blood Drive Co-Chair

Assessor Exempt Property Information

Property Tax Year 2012

Parcel Number: 95133-33-913
Tax District: 2221

Schedule Number: R1582371
Current Mill Levy: 0.000

General Information

Owner Name & Address

BPO ELKS LOVELAND LODGE 1051
103 E 4TH ST
PO BOX 36
LOVELAND, CO 80537

Property Address

103 E 4TH ST
LOVELAND 80537-0000

Subdivision #: //20014 - LOV BLK 14

Neighborhood #: Exempt

Legal Description

LOTS 13 & 14, BLK 14, LOVELAND

Current use may not reflect current zoning. Not all parcels are buildable lots.

For questions about this information or to make corrections contact the Assessor's office:

200 W. Oak Street
Suite 2000
Fort Collins, CO 80521
Mailing address:
PO BOX 1190
Fort Collins, CO 80522
(970) 498-7050
or e-mail

City of Loveland
Historic Preservation Commission
Meeting Summary
January 21, 2013

A meeting of the Loveland Historic Preservation Commission was held Monday, January 21, 2013 at 6:00 P.M. in the City Council Chambers in the Civic Center at 500 East Third Street, Loveland, CO. Historic Preservation Commissioners in attendance were: Janelle Armentrout, David Berglund, Jim Cox, Stacee Kersley, Trudi Manuel, Matt Newman and Mike Perry. Staff members, Bethany Clark of Community & Strategic Planning and Nikki Garshelis of Development Services were also present. John Fogle, City Council Liaison, was absent.

Guests: Debbie Davis, Larry Turner, Craig Davis, Deborah Furney, Ron Schlatter, Peggie McGuire, Harlan McGuire, Janet Limbeck, Debbie Reisdorff, Bill Markham, Bob Lucy, Frank Bustos, Fran Bustos and Aaron Freimark of the Elks Lodge BPOE 1051.

CALL TO ORDER
Commission Chair Cox called the meeting to order at 6:00 p.m.

APPROVAL OF AGENDA
Commissioner Manuel made the motion to approve the agenda as is. Commissioner Armentrout seconded the motion and it passed unanimously.

APPROVAL OF MINUTES
*Commissioner Kersley made the motion to approve the minutes with a change to line 72 which says, "The intention is to **increase** review time...." The corrected line should read, "The intention is to **decrease** review time..." The motion was seconded by Commissioner Armentrout it passed unanimously.*

CITIZEN REPORTS
None

CITY COUNCIL UPDATE
With Councilor Fogle absent, *Nikki Garshelis* reported that the Council Advance was scheduled for Saturday, January 26. More details will be emailed if any of the Commissioners would like to attend, she said.

STAFF UPDATE
Bethany Clark reported that everyone had registered for the *Saving Places Conference* which is scheduled from February 6th through February 8th 2013.
Nikki Garshelis reported that the Bishop House will most likely be moved this summer since the property agreement is being finalized through the City Attorney's office. Nikki received this information from Ken Cooper, Facilities Manager, she said.

CONSIDERATION OF NEW BUSINESS

PUBLIC HEARING-NOMINATION OF 103 EAST 4TH STREET
Bethany Clark provided the HPC with an overview of the application for the Historic Landmark property designation of the Lovelander Hotel/BPO Elks Lodge. Commissioner Cox asked if the applicant would like to provide additional information. Debbie Davis, Board Chair of the ELKs Lodge BPOE 1051, provided background information on the process:

- A-E Design Associates recently completed the historic structural assessment through a SHF grant.
- The lodge members voted to move forward with obtaining landmark designation from the City of Loveland and then to apply for state historic structure designation from the State of Colorado.

- Apply for a grant to rehabilitate the structure. The lodge would match the grant funding.

Debbie also provided some historical background on the Elks Lodge organization and the building. The Commissioners asked questions about the rehabilitation plans and discussed the historical period of the 1950s. Debbie reported that the work would most likely begin in September or October of 2013 and continue over a ten year period.

The Public Hearing process was opened at 6:28p.m., there was no other public comment and the hearing was closed at 6:32p.m.

Commissioner Newman made the motion to recommend to City Council to approve the Historic Landmark property designation of the Lovelander Hotel/BPO Elks Lodge. The motion was seconded by Commissioner Armentrout and it passed unanimously.

COMP PLAN STATUS UPDATE

Bethany Clark reported that the Boards & Commissions Summit is scheduled for March 14 and prior to the Summit, Commissions are providing a status update to their respective objectives in the 2005 Comprehensive Plan-2011 Implementation Plan. She also asked for the HPC to consider who will attend the Summit. She reviewed the updated HPC Comprehensive Plan objectives and answered questions from the Commissioners. Commissioner Newman suggested a change to the plan to move the start date of *Objective 4.1IP1: Prepare and adopt an updated Historic Preservation plan and Historic inventory Survey* from 2014 to 2013/Ongoing. Since the historic downtown district designation process has begun, the buildings in the district may have to be updated and, therefore, the survey would also begin this year. The Commissioners agreed to this change.

A motion was made by Commissioner Manuel to approve the updated HPC Comp Plan with the change suggested by Commissioner Newman to change the start date of Objective 4.1IP1 to 2013/Ongoing. The motion was seconded by Commissioner Armentrout and it passed unanimously.

2013 GOAL SETTING/WORK PLAN

Commissioners chose the projects they would like to take the lead on during 2013. Results were as follows:

- Milner-Schwarz National Register Designation: Armentrout & Manuel (Assist: Perry & Cox)
- Downtown Historic District Designation: Cox, Berglund & Kersley (Assist: Newman, Manuel & Perry)
- Swartz Farmstead: Perry & Newman (Assist: Cox)
- Realtors Workshop: Armentrout & Kersley
- Historic Preservation Month Workshop /Guest Speaker: Armentrout & Manuel
- Historic Preservation Month Outreach: Berglund & Kersley
- Viestenz Smith Mountain Park State and National Designation: Newman & Berglund

CHAIR AND VICE-CHAIR ELECTIONS

Commission Chair Cox reviewed the previously agreed upon plan to elect a Chair and Vice Chair for a year's term. The idea, he explained, was to allow for new commissioners to be able to experience leading the commission. They would gain that experience by acting first as Vice Chair, similar to a Chair-elect position, he said. Other Commissioners acknowledged that they had a similar understanding of this plan.

Commission Chair Cox moved to elect Matt Newman as the new Chair of the HPC and David Berglund as Vice Chair for a term of one year. The motion was seconded by Commissioner Armentrout and it passed unanimously. The terms will begin February 2013.

COMMISSIONER COMMENTS

- *Commission Chair Cox* reported that Louise Huxtable recently passed away. Huxtable was an architecture critic and writer on architecture, he explained. She won a *Pulitzer Prize for Criticism* and is credited as a main force behind the founding of the first Landmark Commission (in New York City).

- *Commission Chair Cox* thanked the Commission as well as Councilor Fogle and Director Greg George for all their work and support while he was Chair of the HPC. The Commissioners, in turn, thanked Commission Chair Cox for his fine work on the commission.

- *Commissioner Perry* reported that the Loveland Historical Society (LHS) is weeks away from signing a 20 year lease with Great Western Railroad to allow the LHS to restore and preserve the Depot at Monroe and East 10th Street. There was a discussion about the Depot not being located in the City and, therefore, not eligible for local designation. Commissioner Perry said they believe the City is open to allowing use of the parking lot adjacent to the Depot.

Meeting adjourned at 7:38p.m.

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, Clark, Fogle, Farley, McKean, Trenary, Klassen and Shaffer. Councilor Taylor was absent. City Manager, Bill Cahill was also present.

1. CITY MANAGER

2012 Quality of Life Survey

Public Information Officer Andy Hiller presented this item to Council. The Quality of Life Survey began in 2005 and with the exception of 2007, has been administered annually to the community. The survey questionnaire seeks basic demographic information, seeks responses to 24 questions regarding satisfaction with City services and provides the opportunity for handwritten comments and suggestions. Mr. Hiller reviewed the methodology and validation procedures, displayed the demographics data and presented the 2012 results. Graphs were included this year to compare the results with prior years including trend lines for a more visual comparison. Observations were noted from the 333 written comments received. Council commended the high rate of return of the surveys sent out; the overall positive results from the survey; and the need to find a way to communicate better with different age-groups. Council thanked staff for the presentation.

2. CITY MANAGER

Review of Possible Topics for Council Goal-Setting Session on January 26, 2013

City Manager Bill Cahill presented this item to Council. This annual Goal-Setting session is intended for the Council to set major organizational goals and priorities for the coming year. To determine the items for inclusion in the year's action plan, Councilors submitted possible topics for prioritization which were categorized and listed on easels. Councilors placed ten colored stickers beside the topics of greatest interest to them for discussion at the Goal-Setting Session and to develop the year's action plan. A shortened list of high-priority topics was developed for the planning session on January 26, 2013. However, even the lower priority topics will be preserved in the record of the goal setting session.

The study session was adjourned at 8:05 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

CALL TO ORDER — Mayor Gutierrez called the Special meeting of the Loveland City Council to order on the above date at 8:05 PM.

ROLL CALL — Roll was called and the following responded: Trenary, Farley, McKean, Shaffer, Fogle, Klassen, Clark and Gutierrez. Councilor Taylor was absent.

1. CITY MANAGER

Executive session for Staff Evaluation of Municipal Judge Bill Starks

At 8:05 p.m., Councilor Shaffer moved that the City Council go into executive session as authorized in CRS Sections 24-6-402 (4)(f) and (4)(g) and in Loveland Charter Sections 4-4(c)(5) and (c)(6) for the purpose of considering a personnel matter, the annual evaluation of the Municipal Judge, and concerning that matter to create, receive, consider and discuss documents not subject to public inspection under the Colorado Open Records Act, such as work-product documents.

Councilor Farley seconded the motion and a roll call vote was held with all councilors present voting in favor thereof. Council adjourned into the executive session.

Council reconvened into the Special Meeting at 8:21 p.m.

At Mayor Gutierrez's direction to amend the motion made previously, Councilor Shaffer moved that the City Council go into executive session as authorized in CRS Sections 24-6-402(4)(b), (4)(f) and (4)(g) and in Loveland Charter Sections 4-4(c)(3), (c)(5) and (c)(6) for the purpose of considering a personnel matter, the annual evaluation of the Municipal Judge, and concerning the matter to create, receive, consider and discuss documents not subject to public inspection under the Colorado Open Records Act, such as work-product documents, and to receive legal advice from the City Attorney.

Councilor Farley seconded the motion and a roll call vote was held with all councilors present voting in favor thereof. Council adjourned into the executive session.

Council reconvened into the Special Meeting at 11:00 p.m.

Councilor Shaffer moved to direct the Human Resources Director to work with the City Attorney's Office to bring back to Council at its February 5, 2013 meeting a resolution renewing the Municipal Judge's contract with a 3.5% salary increase.

Councilor Farley seconded the motion and a roll call vote was held with all councilors present voting in favor thereof.

ADJOURNMENT — Having no further business to come before Council, the January 08, 2013 Special Meeting was adjourned at 11:02 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

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AGENDA ITEM: **19**
MEETING DATE: 2/5/2013
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill

TITLE:
Appointment to Senior Advisory Board

RECOMMENDED CITY COUNCIL ACTION:
Motion to appoint Paula Clark to the Senior Advisory Board for a term effective until December 31, 2015.

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

DESCRIPTION:
This is an administrative item recommending the appointment of a member to the Senior Advisory Board.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
Paula Clark is recommended for appointment as a regular member of the Senior Advisory Board for a term effective until December 31, 2015.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:
None

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AGENDA ITEM: **20**
MEETING DATE: 2/5/2013
TO: Mayor and City Council
FROM: Rod Wensing, Assistant City Manager
PRESENTER: Jon Lehmann, Director of Regulatory and Government Affairs Comcast Cable

TITLE:
An ordinance on first reading amending the cable television franchise agreement between the City of Loveland, Colorado and Comcast of Colorado II, LLC, to extend the term of the existing franchise.

RECOMMENDED CITY COUNCIL ACTION:
Approve the attached 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 ordinance moves the expiration of the current cable franchise from April 30, 2013 to December 31, 2013.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
As the Council is aware, City staff along with outside counsel, Ken Fellman of Kissinger & Fellman, P.C. has begun informal discussions regarding the renewal of the City's current non-exclusive franchise agreement with Comcast Cable. The grounds for this request revolve around Comcast Cable's current in-state franchise renewal commitments and the desire to maximize the most effective use of their resources in the negotiation process.

Comcast is requesting that the City consider extending the current franchise expiration of April 30, 2013 to December 31, 2013.

City staff believes that consenting to this franchise extension request is reasonable and will not negatively impact our negotiations going forward.

Please also note that the City's current and past franchise agreements have always been non-exclusive and do not limit the ability of other cable operators or other TV / communication companies to serve the Loveland market and receive equal access to City owned right-of-way and associated facilities.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:

1. An ordinance on first reading amending the cable television franchise agreement between the City of Loveland, Colorado and Comcast of Colorado II, LLC, to extend the term of the existing franchise.
2. Amendment to the cable television franchise between the City of Loveland and Comcast of Colorado II, LLC
3. Letter from Comcast Cable requesting the extension of the current franchise.

FIRST READING February 5, 2013

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CABLE FRANCHISE AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND COMCAST OF COLORADO II, LLC TO EXTEND THE TERM OF THE FRANCHISE AGREEMENT

WHEREAS, on April 3, 2007, the Loveland City Council adopted Ordinance No. 5178 approving the grant of a nonexclusive franchise to Comcast of Colorado II, LLC ("Comcast") for its construction and operation of a cable television system within the City; and

WHEREAS, pursuant to Ordinance No. 5178, the City and Comcast entered into a Cable Franchise Agreement ("Franchise Agreement") effective May 1, 2007 through April 30, 2013; and

WHEREAS, Comcast desires to renew the franchise and has preserved its right of renewal by timely filing a request with the City to activate the formal process for renewing the franchise pursuant to the provisions of the Cable Communications Policy Act of 1984; and

WHEREAS, City staff and Comcast representatives have discussed renewal of the franchise, and the parties have agreed that their respective interests will be served by a formal extension of the existing Franchise Agreement to a date certain in order to allow additional time for negotiation; and

WHEREAS, the Loveland City Council desires to extend the existing term of the Franchise Agreement to December 31, 2013.

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

Section 1. That the "First Amendment to the Cable Franchise Agreement," attached hereto as Exhibit A and incorporated herein by reference ("First Amendment"), is hereby approved.

Section 2. That the Mayor is hereby authorized, following consultation with the City Manager and the City Attorney, to modify the First Amendment in form or substance as deemed necessary to effectuate the purposes of this Ordinance or to protect the interests of the City.

Section 3. That the Mayor and the City Clerk are hereby authorized and directed to execute the First Amendment on behalf of the City.

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).

ADOPTED this ____ day of February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

Exhibit A

FIRST AMENDMENT
TO THE CABLE FRANCHISE AGREEMENT

This First Amendment to the Cable Franchise Agreement ("**First Amendment**") is made and entered into as of this _____ day of_____, 2013, by and between the **City of Loveland**, a Colorado municipal corporation ("**City**"), and **Comcast of Colorado II, LLC** ("**Comcast**").

Whereas, on April 3, 2007, the Loveland City Council adopted Ordinance No. 5178 approving the grant of a nonexclusive franchise to Comcast for its construction and operation of a cable television system within the City; and

Whereas, pursuant to Ordinance No. 5178, the City and Comcast entered into a Cable Franchise Agreement ("**Franchise Agreement**") effective May 1, 2007 through April 30, 2013; and

Whereas, Comcast desires to renew the franchise and has preserved its right of renewal by timely filing a request with the City to activate the formal process for renewing the franchise pursuant to the provisions of the Cable Communications Policy Act of 1984 ("**Cable Act**"); and

Whereas, City staff and Comcast representatives have discussed renewal of the franchise, and the parties have agreed that their respective interests will be served by a formal extension of the existing Franchise Agreement to a date certain in order to allow additional time for negotiation.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. The term of the Franchise Agreement shall be extended to December 31, 2013.

2. Except as specifically modified hereby, the Franchise Agreement shall remain in full force and effect.

3. Neither party waives any right it may have under law by execution of this First Amendment, and Comcast shall not be required to file any additional request or document in order to preserve its right of renewal under Section 626 of the Cable Act.

In Witness Whereof, the parties have executed this First Amendment as of the day and year first written above.

City of Loveland

By: _____
Cecil Gutierrez, Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
Assistant City Attorney

Comcast of Colorado II, LLC

By: _____

Title: _____

Comcast

Comcast Cable
8000 East Iliff Avenue
Denver, CO 80231

December 3, 2012

The Honorable Cecil Gutierrez
Mayor, City of Loveland
500 E. Third Street
Loveland, CO 80537

RECEIVED
DEC 04 2012
CITY MANAGER

Dear Mayor Gutierrez:

My name is Jon Lehmann and I am a Director of Government & Regulatory Affairs for Comcast covering the City of Loveland ("City"). As you may be aware, Comcast's cable television Franchise Agreement ("Franchise") expires on April 30, 2013. Comcast and the City have initiated informal discussions regarding renewal of the Franchise; however, in order to allow sufficient time to finalize a renewal, we would like for the City to consider extending the current Franchise through December 31, 2013.

We believe extending the current Franchise until December 31, 2013, will allow for the most efficient and cost effective use of resources in the negotiation process by both the City and Comcast. We have confidence that a renewal agreement will be reached through our informal negotiations on or before that date.

For your convenience, we have enclosed drafts of a proposed Ordinance and Franchise Agreement Extension both of which continue to reserve all rights under the formal renewal procedures of the 1984 Cable Act. Please be assured that we will continue to operate under and comply with the terms of the Franchise until such time as a renewal agreement is reached.

We look forward to successfully concluding a renewal agreement and to providing quality cable television service in the City of Loveland for many years to come.

Please feel free to contact me at 303/603-2062 if you have any questions or concerns.

Very truly yours,

Jon Lehmann

Jon Lehmann
Director of Regulatory and Government Affairs

Cc: Loveland City Council
Bill Cahill, Loveland City Manager

Enclosures

bcc: to John Duval

CITY OF LOVELAND
ECONOMIC DEVELOPMENT OFFICE
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AGENDA ITEM: **21**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Economic Development Department
PRESENTER: Mike Scholl, Economic Development Manager

TITLE:
A Resolution Approving a Conditional Loan and Materials Use Tax Waiver for the Artspace Project

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 approves and authorizes the City Manager to sign a commitment letter based on the term sheet negotiated by staff and Artspace. The commitment letter awards a loan of $300,000 in support of the project. The loan would fill the gap in funding and complete the financing package for the CHFA tax credit application due on March 1. The commitment letter also includes a waiver of Construction Materials Use Tax estimated to be $71,000. These commitments (the loan and use tax waiver) are expressly subject to satisfaction of the following conditions by December 31, 2013: (a) award of the tax credits by CHFA; (b) appropriation of loan amount and final approval of the use tax waiver by Council; and (c) approval and execution of a final loan agreement, note, and deed of trust based on the term sheet attached to the letter.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible
The City is not formally committing any funds at this time. The loan and materials use tax waiver are contingent upon Artspace being awarded the tax credits from the Colorado Housing and Finance Authority (CHFA). If Artspace is awarded the tax credits by December 31, 2013, full

consideration by Council of an appropriation ordinance, the use tax waiver, and a loan agreement (including a note and deed of trust) would occur *with no guarantee of approval*.

SUMMARY:

The award letter and term sheet "commit" the City to provide $300,000 loan to Artspace along with a waiver of the Construction Materials Use tax estimated to be $71,000. The commitment is contingent upon award of Low Income Housing Tax Credits (LIHTCs) for the Project by CHFA, Council appropriation of the loan amount and approval of the final use tax waiver, and completion of a loan agreement (and note and deed of trust in accordance with the Term Sheet attached to the award letter). The commitment is necessary to demonstrate to CHFA that Artspace has completed its financing package and can move forward with the project if they award the LIHTCs.

The loan would be subordinate to the first loan of $1.1 million and would be repaid over 30 years with residual cash flow from the Project. If the cash flow is insufficient to repay the principal, the unpaid balance would be due at the end of 30 years. Based on the cash flow, which is a conservative estimate of projected cash flow, the loan would be repaid by year 28. The primary lender is willing to accept a subordinate loan because the $5.1 million contribution from the Tax Credits, which do not need to be repaid, creates substantial equity in the project and nationally, LIHTC are seen as a good investment with very few instances of default.

The total project cost is estimated to be $8,800,000 with the City's participation at $921,000 or 10.4 percent of the total development cost. Roughly $1.5 million would be used to stabilize the Feed and Grain building. The project is consistent with the City's approved Downtown Strategic Plan.

If the tax credits are awarded in the March 1 round, the project would break ground by the end of the year.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

A. Resolution
B. Award Letter and Term Sheet
C. Staff Memorandum
D. Conceptual Plans
E. Request Letter

RESOLUTION #R-15-2013

A RESOLUTION APPROVING A CONDITIONAL LOAN AND MATERIALS USE TAX WAIVER FOR THE ARTSPACE PROJECT

WHEREAS, in October, 2010, the Loveland City Council ("Council") approved a contract with ArtSpace, Inc. ("ArtSpace") to provide pre-development services for a mixed use live/work artist space in Downtown Loveland; and

WHEREAS, since 2010 ArtSpace has been engaged in pre-development and planning activities and now has the Feed and Grain Building located on North Railroad Avenue under contract, with plans to build a new 30 unit affordable housing project to the west of the Building and to renovate the Building for gallery and studio space to complement the housing (the "Project"); and

WHEREAS, Artspace has estimated the total Project cost at approximately $8.8 million, a significant portion of which is anticipated to be funded by Low Income Housing Tax Credits (the "Tax Credits"); and

WHEREAS, ArtSpace has identified a funding gap in the financing of the Project based on current estimates and has requested that the City provide a commitment to make a loan in the amount of $300,000 (the "Loan") and approve a construction materials use tax waiver to demonstrate to the Colorado Housing and Finance Authority ("CHFA") that ArtSpace has completed its financing package for and is ready to proceed with the Project; and

WHEREAS, Council desires to provide a conditional commitment to make the Loan and provide a materials use tax waiver in an amount not to exceed $71,000 (the "Use Tax Waiver") as set forth herein.

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

Section 1. That Council hereby approves the Loan Commitment Letter attached hereto as **Exhibit A** and incorporated herein by reference (the "Commitment Letter"), which includes a commitment to make the Loan and provide the Use Tax Waiver conditioned upon satisfaction of all of the following on or before December 31, 2013: (a) award of the Tax Credits by CHFA; (b) appropriation of the Loan amount and final approval of the Use Tax Waiver by City Council; and (c) approval and execution of a final loan agreement, note, and deed of trust securing the Loan, which shall include, but not be limited to, the terms and conditions set forth in the Term Sheet attached to the Commitment Letter.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to modify the Commitment Letter in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City; provided, however, that the Commitment Letter shall remain subject to the conditions set forth in Section 1 above.

Section 3. That the City Manager is hereby authorized and directed to execute the Commitment Letter on behalf of the City of Loveland and deliver the same to ArtSpace.

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

ADOPTED this 5th day of February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

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CITY COUNCIL
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(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

February XX, 2013

Mr. L. Kelley Lindquist, Executive Director
Artspace Projects, Inc.
250 Third Avenue North, Suite 500
Minneapolis, MN 55401

Dear Mr. Lindquist:

I am pleased to inform you that the City of Loveland approved a conditional loan of $300,000 to the Artspace Projects Inc. ("Artspace" or successor ownership entity) at the Feed and Grain (the project). In addition, the City has agreed to waive the construction materials use tax for this project estimated to be $71,000. The approval is conditioned upon satisfaction of the following on or before December 31, 2013: (a) award of Low Income Housing Tax Credits by the Colorado Housing and Finance Authority (CHFA); (b) appropriation of the loan amount and final approval of the use tax waiver by City Council; and (c) approval and execution of a final loan agreement, note, and deed of trust securing the loan. Please note the City has already contributed $550,000 toward predevelopment costs in support of this project.

The funds will be used for specific public improvements that include water and sewer improvements, environmental remediation, site work and other items as defined in the Term Sheet. Should the project costs decrease for any reason, it would be the City's intention to reduce the loan amount commensurate with the percent decrease in costs.

The funds will be disbursed to the single purpose development entity created by Artspace to own the project upon receipt of the Certificate of Occupancy for the Project. Further, the City reserves the right to review construction and permanent financing and require public review and comment on the design in addition to compliance with the City's Municipal Code and development standards and guidelines for this type of project.

As a subordinate lender, the City will agree to accept the residual cash flow as outlined in the Term Sheet at 1.75 percent interest for 30 years. In consideration for the City's contribution, the City will also receive 10 percent of the net sale proceeds, should the project be sold or refinanced. However, we recognize that as a LIHTC project sale or refinance may not occur for 30 years.

As you know, this project has been identified as both a catalyst for our downtown revitalization effort and for the continued growth of arts and culture in Loveland. We look forward to working with you to bring this project to a successful completion. If you have any questions, the City's Project Manager for the Loveland Artspace project is Mike Scholl, Economic Development Manager. If you have any questions, Mike can be reached at (970)962-2607 or mike.scholl@cityofloveland.org.

Sincerely,

William D. Cahill, City Manager
City of Loveland

Attachments: Term Sheet

TERM SHEET
Development Agreement

January 28, 2013

Background

Terms of Agreement
Exhibit 1 – Cash Flow Schedule
Exhibit 2 – Map
Exhibit 3 – Project Description
Exhibit 4 – Concept Plan
Exhibit 5 – Prohibited Uses

Background

Terms of Agreement

Parties: Artspace Projects, Inc., (*developer*) a non-profit organization formed in the State of Minnesota, with rights to assign commitments to a single-purpose entity formed to own the Project.

City of Loveland (*City*) a home rule municipality

Loan: The *City* shall loan Artspace an amount not to exceed $300,000 subordinate to bank financing at 1.75 percent interest for 30 years. The loan will be repaid over 30 years from residual cash flow based on the schedule in *Exhibit 1 – Estimated Residual Cash Flow Schedule*. Any unpaid balance shall be due and payable at the end of the 30 year period.

Financing: The developer shall submit construction and permanent financing for review and approval by the City. Approval will not be unreasonably withheld and the review will be completed in a timely manner.

Additional Requirements:

1. Financing is conditioned upon successful award of Low Income Housing Tax Credits from the Colorado Housing and Finance Authority on or before December 31, 2013 and appropriation of the loan funds and final agreement by Loveland City Council.
2. The developer will agree not to transfer the property or a controlling interest in the ownership entity prior to receipt of a certificate of occupancy.

3. The developer will agree to deed restrictions prohibiting uses as outlined in *Exhibit – 5 Prohibited Uses.*

Developer Contingencies:

1. The City acknowledges that all CEFs and permit fees are waived as identified on the fee list on the attached Fee & Improvement Matrix.
2. City agrees to waive the City's Construction Materials Use Tax.

City Financial Assistance:

City agrees to provide developer with a loan in an amount not to exceed **$300,000** for public improvements and other amenities upon receipt of permanent certificate of occupancy.

a. Existing building remediation and demolition
b. Repair or removal of deteriorated site improvements
c. Utility and infrastructure improvements in the public right of way, including street and alley improvements
d. Sidewalk and streetscape improvements
e. Incremental energy efficiency and conservation improvements for fixed building systems in excess of basic levels (HVAC, mechanical etc.)
f. Façade improvements for all visible portions of the building facing a public right of way
g. Other, including amenities. See attached Fee & Improvement Matrix.

Design Review: Prior to submission of the site plan for review and application for a building permit, the City will require a public meeting to allow for review and input in the design. This is in addition to, and not a substitute for any neighborhood meetings and/or notices required as part of the development review process under the Loveland Municipal Code.

Rights of Access: For purposes of assuring compliance with the agreement, representatives of the City shall have reasonable rights of access without charges or fees at normal construction hours during the period of construction. Access shall include the inspection and field verification of public improvement invoices submitted by the developer. Representatives of the city shall be identified in writing to the developer.

Right to Cure: In the event of a default or breach by the developer of a mortgage deed of trust or other security instrument with respect to the Project prior to the

completion of the project, the City may cure the default prior to any completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the developer of all costs and expense incurred by the City in curing the default. The City shall also be entitled to a lien upon the property to the extent of such costs and disbursements. Any such lien shall be subordinate to mortgages, deeds of trust or other security instruments executed for the sole purpose of obtaining funds to purchase and develop the property as authorized herein. The Right to Cure will be contingent on approval of the construction lender and tax credit investor.

Share of Estimated Net Residual Cash Flow:

In consideration of the City's contribution to the project, including but not limited to public improvements and fee waivers, the Developer shall execute and deliver a note and deed of trust securing the loan, payable from estimated net residual cash flow. If the net cash flow is insufficient to repay the loan over the term, the remaining balance shall be paid at the end of the 30 year period.

For purposes of the agreement, the "Net Cash Flow" shall mean the gross revenue of the project from all sources (including but not limited to, rents, maintenance charges, utility reimbursements interest and retained deposits) minus (1) any and all property taxes and assessments for the property, (2) maintenance and operation expenses for federal tax purposes, (3) reasonable and customary management fees, (4) debt service.

Share of the Sale or Refinancing Proceeds:

In consideration of the City's contribution to the project, upon sale or refinance at any time after receipt of the certificate of occupancy, the City shall receive ten percent (10%) of the Net Sales or Refinancing Proceeds, if any, from the sale or refinance. For purposes of this agreement, "Net Sales or Refinancing Proceeds" shall mean the gross sales price or refinance amount minus (1) customary and reasonable costs of sale or refinance, and (2) taxes due on gain, if any. Notwithstanding any other provisions, the City's right to a portion of the Net Sale or Refinancing Proceeds will be secured by a deed of trust.

Right of Review: The developer shall provide the City with annual financial statement for purposes of determining share of Net Cash Flow and/or Net Sale or Refinancing Proceeds if any. The City reserves the right to review and audit the project books and financials at any time with a thirty day (30) notice.

Casualty Loss: The developer will agree to insure and rebuild in the event of a casualty (fire, natural disaster etc.).

Deed of Trust: The City's right to Net Cash Flow, its share of Net Sales or Refinancing Proceeds, and any other amounts due under the loan agreement shall be secured by deed of trust on the property. The City will agree subordinate its deed of trust to approved construction and permanent financing for the project in an amount not to exceed $1.1 million.

Other: The developer and City reserve the right to include additional items in the loan agreement not included in the term sheet subject to approval by both parties. This term sheet shall not create a legal obligation on the part of either the City or the developer, and neither party intends to be legally bound or have any liability to the other unless and until both parties sign a formal agreement.

Exhibit 1

Estimated Net Residual Cash Flow Schedule

Year	Principle Balance	Principle + Interest	Residual Cash Flow/Payment to the City	NPV
1	300,000	5,250	1,158	1,138
2	304,092	5,322	2,263	2,186
3	307,151	5,375	3,370	3,199
4	309,156	5,410	4,479	4,179
5	310,087	5,427	5,587	5,123
6	309,926	5,424	6,693	6,031
7	308,657	5,402	7,797	6,905
8	306,262	5,360	8,896	7,743
9	302,725	5,298	9,988	8,544
10	298,035	5,216	11,072	9,309
11	292,179	5,113	12,147	10,037
12	285,145	4,990	13,209	10,726
13	276,926	4,846	14,257	11,378
14	267,515	4,682	15,289	11,992
15	256,907	4,496	16,303	12,568
16	245,100	4,289	17,295	13,103
17	232,095	4,062	18,263	13,598
18	217,893	3,813	19,204	14,053
19	202,502	3,544	20,116	14,467
20	185,930	3,254	20,994	14,839
21	168,190	2,943	21,836	15,169
22	149,297	2,613	22,637	15,455
23	129,273	2,262	23,395	15,698
24	108,140	1,892	24,105	15,896
25	85,928	1,504	24,762	16,048
26	62,669	1,097	25,363	16,155
27	38,403	672	25,902	16,215
28	13,173	231	13,404	8,247
29	0	0	0	0
30	0	0	0	0
TOTAL			409,784	300,001

Exhibit 2

Map

Artspace Lofts at the Feed & Grain

Artspace Lofts

NOTE: All calculations were made using best available data and should be considered approximate.

N

100 50 0 100 Feet

Date: 1/28/2013

City of Loveland

Exhibit 3

Project Description

A. Description of Development

Site Design: The property shall be developed according to the basic concept drawings submitted for review in *Exhibit 4 – Preliminary Concept Plan.* It is acknowledged that the conceptual design is general and approximate.

Generally, the property shall be developed as an affordable multi-family rental with approximately 30 units on four stories with at grade parking. The building will be developed to maximize the developable ground and provide public courtyard space. Rental preference will be given to artists who meet affordable housing criteria.

The property design shall acknowledge and work to enhance the special character of Downtown Loveland. The design shall be consistent with the existing standards set forth in the BE Zone guidelines.

Public Improvements: Public improvements shall include, but are not limited to:

a. Existing building remediation and demolition
b. Repair or removal of deteriorated site improvements
c. Utility and infrastructure improvements in the public right of way, including street and alley improvements
d. Sidewalk and streetscape improvements
e. Incremental energy efficiency and conservation improvements for fixed building systems in excess of basic levels (HVAC, mechanical etc.)
f. Façade improvements for all visible portions of the building facing a public right of way
g. Other, including amenities. See attached Fee & Improvement Matrix.

Obligations of the Developer:

Obtain construction and permanent financing.

Design and construct the Project in accordance with the description above and applicable ordinances and laws.

Secure all permits and approvals needed for the construction of the project.

City's Responsibilities:

Give all appropriate assistance to Developer in securing necessary permits for the project, including coordinating with developer in public presentation, Planning Commission, City Council, or other body involved in permits or approvals for the project. Project is subject to all approvals, permits, and development requirements set forth in the Loveland Municipal Code and all development standards and guidelines.

Exhibit 4
Preliminary Concept Plan

Exhibit 5

Prohibited Uses

No portion of the Property or any building, structure or improvement presently or subsequently erected on the Property, shall be used for any of the following uses: (a) indoor housing or raising of animals; (b) pawn shops; (c) skateboard park; (d) retail motor vehicle sales, rental or repair; (e) check cashing or payday loan businesses; (f) manufacturing or processing of an end product from a natural raw material source, whether animal, mineral or vegetable (g) tattoo parlors; (h) self-storage units; (i) gun stores; (j) recycling collection and / or processing facilities; (k) retail car wash; (l) clubs or lodges; (m) crematorium; (n) junkyard; (o) jails, detention and penal centers and facilities; (p) retail gas station; (q) long-term care facilities; (r) dairy processing plant; (s) laundry and dry-cleaning plants; and (t) retail laundry and dry-cleaning establishments.

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: City Council

From: Mike Scholl, Economic Development Manager

Date: January 31, 2013

RE: Artspace/Funding Request

Background:

In October of 2010, City Council approved an agreement with Artspace Inc. to provide pre-development services for an affordable housing project for artists in Downtown Loveland. The contract called for the City to cover $550,000 in pre-development costs. The Kresge Foundation contributed an additional $150,000 to the project.

Since 2010, Artspace has made significant progress including getting the Feed and Grain building under contract and applying for Low Income Housing Tax Credits (LIHTC). Artspace applied for LIHTCs twice in 2012, but was not awarded the tax credits. This is not unusual and successful applications often require multiple submissions prior to award. Based on positive feedback from the Colorado Housing Finance Agency (CHFA), Artspace anticipates a successful award this year. The deadline for the first round of LIHTCs is March 1, 2013.

Artspace has identified a $300,000 funding gap based on the current pro forma. The total project cost is estimated at $7.5 million with an additional $1.3 million being used to stabilize the Feed and Grain building ($8.8 million total).

Prior to submitting the application for the LIHTCs on March 1, Artspace was asked by CHFA to complete the financing and obtain commitments from all funders. Having a funding commitment contingent on award of LIHTCs would greatly strengthen their application.

Artspace Request:

Artspace has requested the City loan $300,000 in support of the project. The loan would fill the gap in funding and complete the financing package for the CHFA tax credit application.

The loan would be subordinate to the first loan of $1.1 million and would be repaid over 30 years with residual cash flow. The estimated cash flow schedule is included as an attachment. If the cash flow is

insufficient to repay the principal, the unpaid balance would be due at the end of 30 years. Based on the cash flow, which is a conservative estimate of projected cash flow, the loan would be repaid by year 28. In addition, the Cash Flow Schedule includes a Net Present Value calculation gives the actual value of the payment based on present values (*i.e. a $25,902 payment 27 years from now is only worth $16,215 today*). The bank is willing to accept a subordinate loan because the $5.1 million contribution from the Tax Credits, which do not need to be repaid, creates substantial equity in the project and nationally, LIHTC are seen as a good investment with very few instances of default.

City Council is being asked to approve the draft "award" letter based on the agreed upon term sheet. Both the term sheet and letter are attached for your review. Payment would not be made until the receipt of a Certificate of Occupancy by the ownership entity created by Artspace. Artspace would be required to obtain all construction financing and manage completed project at no cost to the City.

The award letter would not legally bind or require Council to approve the appropriation. If the LIHTCs are awarded in June or July, staff would prepare a 1st and 2nd reading of the appropriation along with the loan agreement based on the attached Term Sheet. If the LIHTCs are not awarded, Council would not be required to take any further action.

The City is also requesting 10 percent of the sale proceeds for any future sale or refinance. While this would be secured by a recorded deed of trust, LIHTC projects cannot refinance until year 15 and often extend payments to the full 30 year term.

The award would also include a waiver of materials use tax, which has been standard for affordable housing projects in the City.

Considerations:

Staff and Artspace have worked to bring down the proposed City's contribution considerably. In addition, staff requested that further contributions by the City be a loan and not as a non-refundable grant. As a percentage of the total development cost, the City contribution is 10.4 percent.

$550,000 – Pre-development
$300,000 – Subordinate Loan
$71,000 – Materials Use Tax Waiver
$921,000

Total Development Cost = $8,800,000

City contribution = 10.4 percent

Artspace is seeking consideration by Council in February, which would allow them to include the City's award letter in the tax credit application by March 1, 2013.

Staff expects the funds to come from Council reserves designated for Downtown projects.

Estimated Cash Flow Schedule

Year	Principle Balance	Principle + Interest	Residual Cash Flow/Payment to the City	NPV
1	300,000	5,250	1,158	1,138
2	304,092	5,322	2,263	2,186
3	307,151	5,375	3,370	3,199
4	309,156	5,410	4,479	4,179
5	310,087	5,427	5,587	5,123
6	309,926	5,424	6,693	6,031
7	308,657	5,402	7,797	6,905
8	306,262	5,360	8,896	7,743
9	302,725	5,298	9,988	8,544
10	298,035	5,216	11,072	9,309
11	292,179	5,113	12,147	10,037
12	285,145	4,990	13,209	10,726
13	276,926	4,846	14,257	11,378
14	267,515	4,682	15,289	11,992
15	256,907	4,496	16,303	12,568
16	245,100	4,289	17,295	13,103
17	232,095	4,062	18,263	13,598
18	217,893	3,813	19,204	14,053
19	202,502	3,544	20,116	14,467
20	185,930	3,254	20,994	14,839
21	168,190	2,943	21,836	15,169
22	149,297	2,613	22,637	15,455
23	129,273	2,262	23,395	15,698
24	108,140	1,892	24,105	15,896
25	85,928	1,504	24,762	16,048
26	62,669	1,097	25,363	16,155
27	38,403	672	25,902	16,215
28	13,173	231	13,404	8,247
29	0	0	0	0
30	0	0	0	0
TOTAL			409,784	300,001

30 NOV 2012

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NORTH WEST PERSPECTIVE

SOUTH EAST PERSPECTIVE

INTERIOR PERSPECTIVE

Housing Authority of the City of Loveland

artspace

ARTSPACE LOVELAND

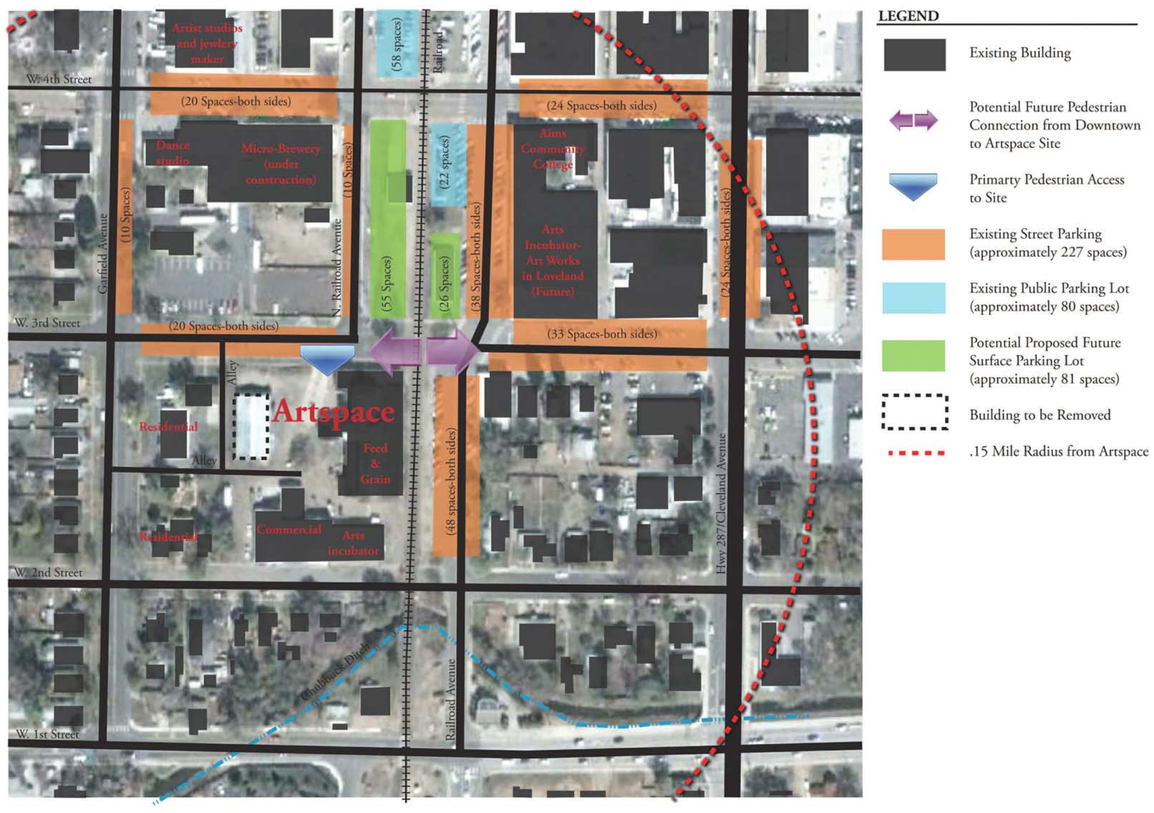
RENDERINGS

DESIGN CONCEPTS

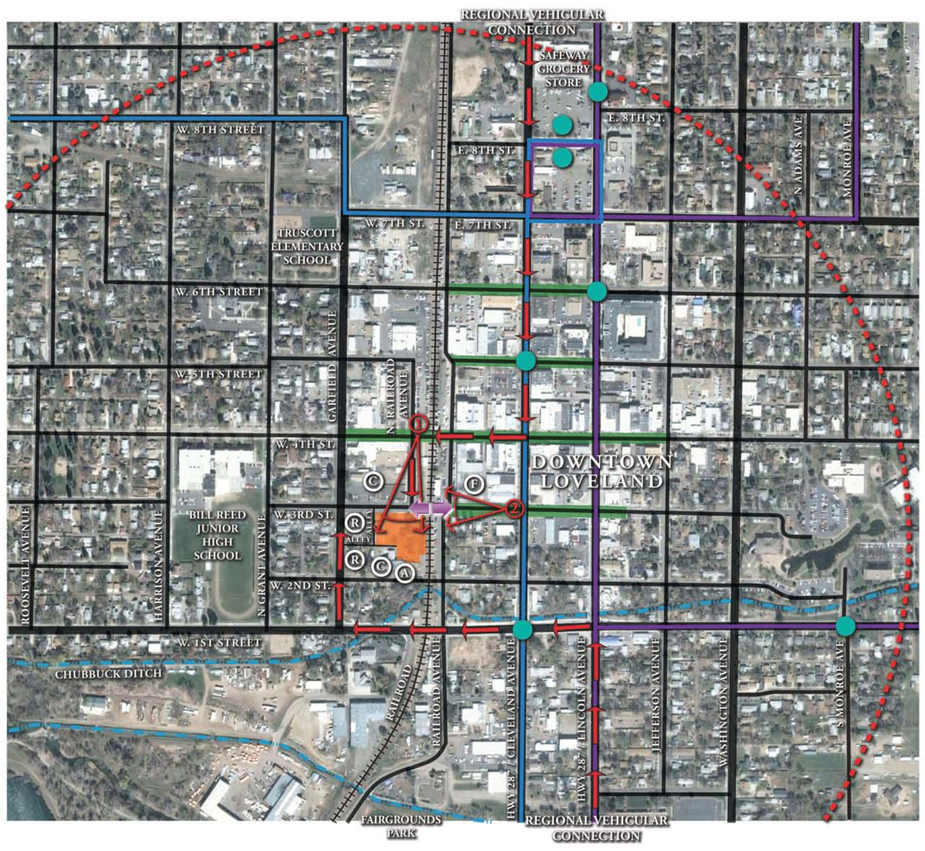
MUNDUS BISHOP

30 NOV 2012

SITE PLAN



SITE CONTEXT



DOWNTOWN CONTEXT

ARTSPACE LOVELAND

SITE PLAN AND SITE CONTEXT

DESIGN CONCEPTS

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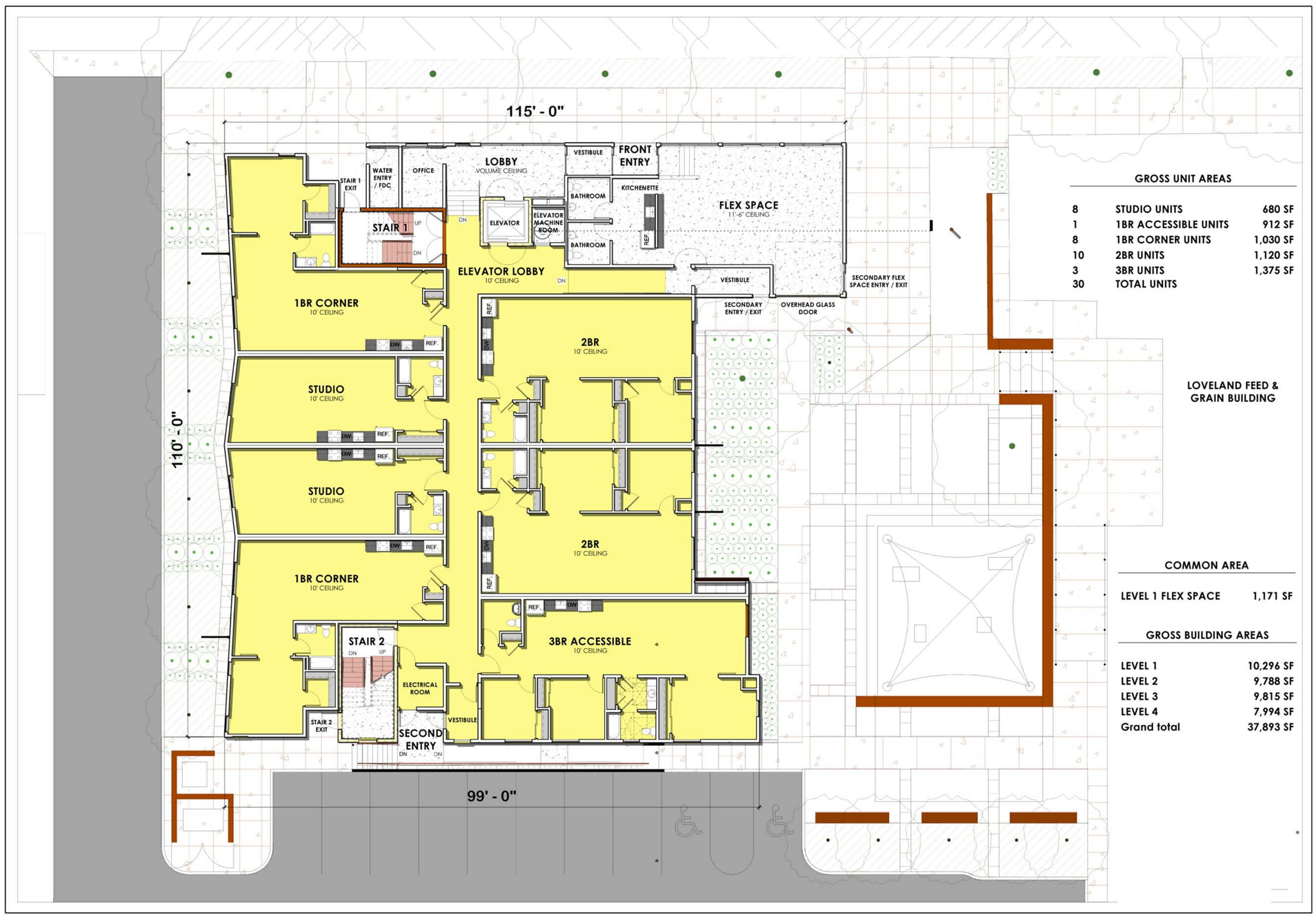
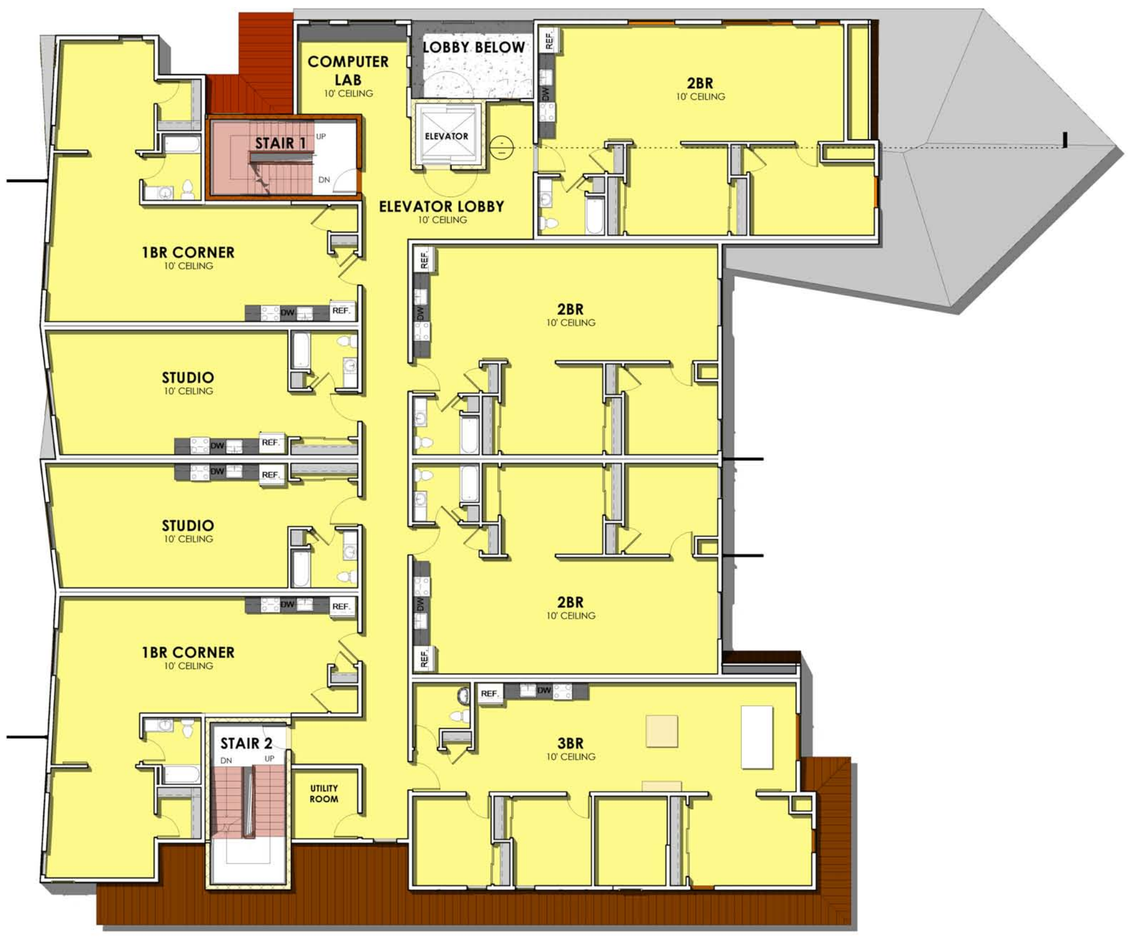


LEVEL 1



LEVEL 2

BUILDING FEATURES:

COMMON FLEX SPACE WITH BATHROOMS AND SERVING AREA

2 COMMON BALCONIES

COMMON COMPUTER LAB

LARGE ELEVATOR WITH EXTENDED CAB

COMMON LAUNDRY FACILITY

COURTYARD AND ON SITE PARKING

ARTSPACE LOVELAND

BUILDING PLANS

DESIGN CONCEPTS

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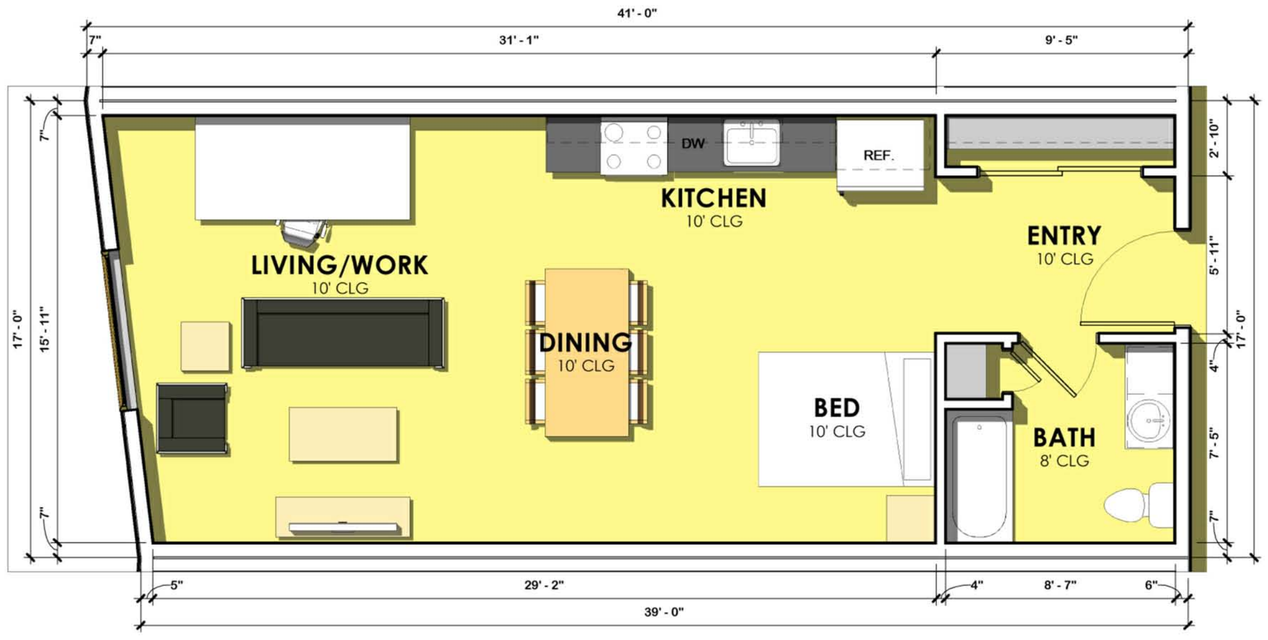
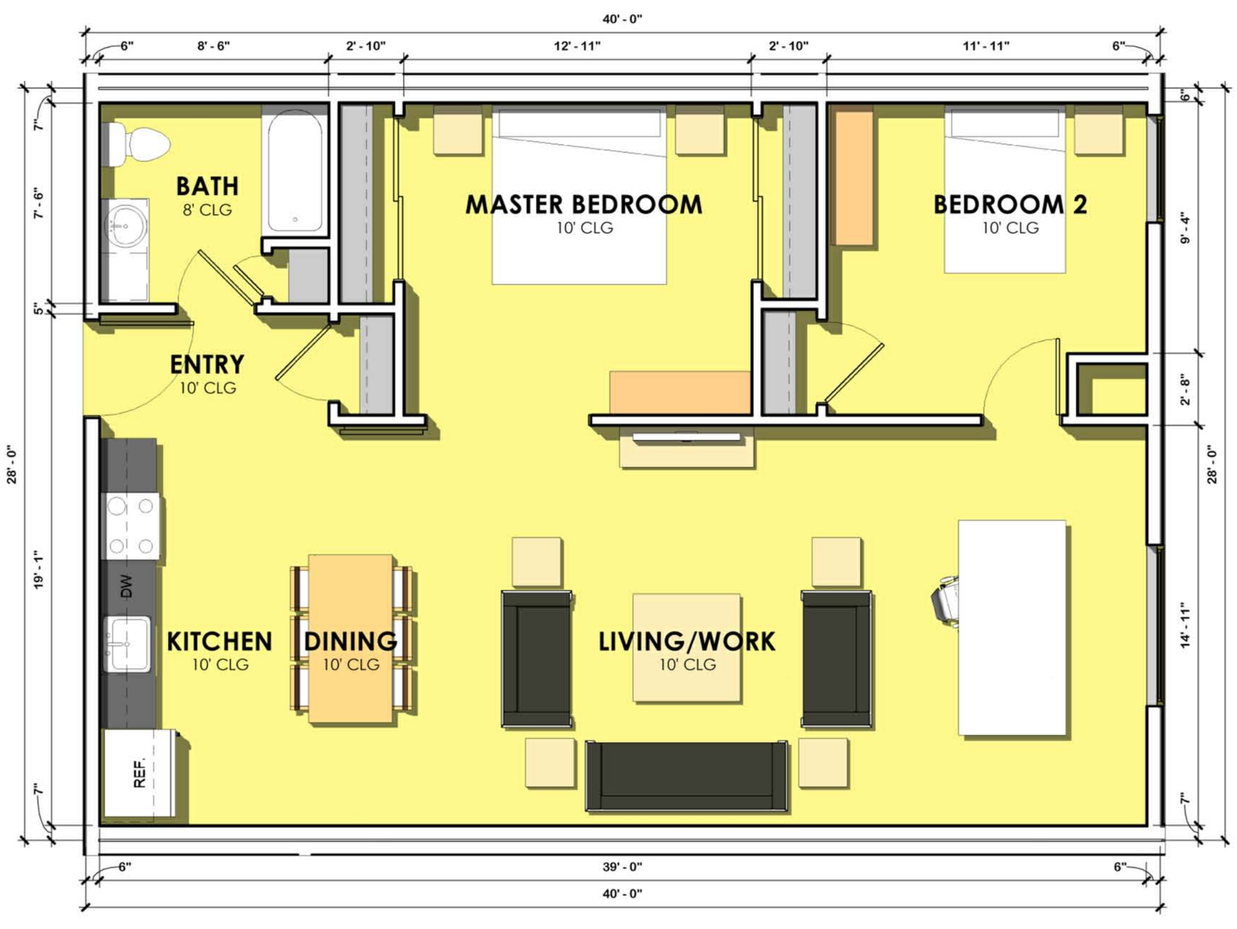


SAMPLE STUDIO UNIT

- BED AREA
- 1 BATH
- FULL KITCHEN
- DINING - LIVING - WORK SPACE
- 10' CEILINGS
- APPROXIMATELY 700 SF

SAMPLE 1 BEDROOM UNIT

- 1 BEDROOM
- 1 BATH
- FULL KITCHEN
- DINING - LIVING - WORK SPACE
- 10' CEILINGS
- APPROXIMATELY 900 SF



SAMPLE 2 BEDROOM UNIT

- 2 BEDROOMS
- 1 BATH
- FULL KITCHEN
- DINING - LIVING - WORK SPACE
- 10' CEILINGS
- APPROXIMATELY 1100 SF

ARTSPACE LOVELAND

SAMPLE UNIT PLANS

DESIGN CONCEPTS

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sustainable architecture
the

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Housing Authority of the City of Loveland

artspace

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artspace.org

January 28, 2013

Mr. Bill Cahill
City Manager
City of Loveland
500 East Third
Loveland, CO 80537

RE: Request For City of Loveland Financial Assistance

Dear Mr. Cahill:

Thank you for considering this request for additional City of Loveland financial participation in the Artspace Loveland project.

Artspace deeply appreciates the City's predevelopment support for the project, which totals $550,000. This support has been critical in advancing our work on this important project. The City's investment has facilitated site identification, physical due diligence and architectural planning, financing applications and fund raising efforts.

On March 1, we will apply to the Colorado Housing Finance Agency for Low Income Housing Tax Credit Financing that will comprise the last public funding necessary to implement this $9 million project. It is critical that this funding application be complete and comprehensive.

As we approach this application deadline, a funding deficit of approximately $371,000 exists. This is the last "gap" in project funding. While we have worked hard to reduce this need through cost reduction efforts the gap reflects our efforts to deliver a project that meets the community's expectations and incorporates all of the on-site and off-site improvement requirements of the Feed and Grain site. We want to deliver a project that we all will be proud of.

Board of Directors James C. Adams / Mark W. Addicks / Fred Argir / Beverly L. Barnes / Peter Beard / Randall Bourscheidt / Paul Brawner / Lucy Brown Minn
Ogden Confer / Diane Dalto / Matthew E. Damon / Louis (Lou) DeMars / Terrance R. Dolan / Marie Feely / Beth Frost-Johnson / Roy Gabay / Bonnie Heller
Robert Jensen / Peter A. Lefferts / Randy Loomis / Peggy Lucas / Richard Martin / Betty Massey / Herman J. Milligan, Jr., Ph.D. / Nicholas Nash, Ph.D.
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Susan Kenny Stevens / Leslie Black Sullivan / Kristin Tillotson / Rebecca Yanisch / Cree Zischke

artspace

artspace.org

At this time Artspace requests City of Loveland consideration of additional financial support. We make this request fully acknowledging the City's existing significant financial commitment to the project through its contribution of approximately $550,000 toward predevelopment costs. Moreover, the City's support and commitment of staff time and leadership has been instrumental in helping the project advance.

More specifically, Artspace respectfully requests City financial participation in the form of a subordinate second mortgage in the amount of $300,000 to be repaid over a term of 30 years through participation in project residual cash flow and a City waiver of Construction Materials Use Tax (valued at approximately $71,000).

City Loveland approval of this financing prior to the CHFA application date of March 1 will fill the last remaining piece of project "readiness".

Thank you very much for your consideration.

Greg Handberg
Senior Vice President, Properties

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: **22**
MEETING DATE: 2/5/2013
TO: City Council
FROM: Steve Adams, Water & Power
PRESENTER: Jim Lees

TITLE:
A resolution concerning funding for the Water Enterprise to improve the Water Treatment Plant and undertake a comprehensive water line replacement program

RECOMMENDED CITY COUNCIL ACTION:
Adopt the resolution 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 to adopt a resolution that provides funding mechanisms for the Water Enterprise through external and internal loans, a series of rate increases, and an annual transfer of funds from the General Fund to the Water Enterprise. This funding will be used to improve the Water Treatment Plant and undertake a comprehensive water line replacement program.

BUDGET IMPACT:
☒ Positive
☒ Negative
☐ Neutral or negligible
The Water Enterprise will be positively affected by the receipt of cash for capital projects. The General Fund will be negatively affected due to its contribution of $750,000 per year for 8 years to the Water Enterprise, limiting the ability of the General Fund to fund other General Fund needs.

SUMMARY:

Staff has been to three City Council study sessions in 2012 for input on the Water and Wastewater cost-of-service rate study. Funding the needs of the Water Enterprise has been the primary focus of these study sessions. Staff now returns with a resolution for Council consideration to carry out direction from the Council at the November 27, 2012 study session, in the following areas:

1) Pursue a 20-year external loan for $10 million
2) Pursue an 8-year internal loan for $6 million
3) Have the General Fund contribute $750,000 per year for 8 years to pay for the principal portion of the internal loan
4) Implement the following series of rate increases to provide adequate cash flow to fund the needs of the Water Utility:

   2014: 13%

   2015-2019: 9% per year

   2020-2022: 8% per year

This resolution is intended to be the guiding document for funding the needs of the Water Enterprise through 2022. The attached Staff Report, Financing Scenarios Table, and PowerPoint presentation, explain the specifics of the components of the resolution, as well as providing additional background information. The Appendix Report and Appendix PowerPoint present other background materials that have been developed over the course of the last several months for City Council study sessions.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

1. Staff Report
2. PowerPoint presentation
3. A Resolution concerning funding for the Water Enterprise to improve the Water Treatment Plant and to undertake a comprehensive water line replacement program
4. Table summarizing financing scenarios from the latter stages of the process
5. Appendix Report on financing scenarios from the latter stages of the process
6. Appendix PowerPoint presentation on financing scenarios from the latter stages of the process

Department of Water and Power
Service Center • 200 N. Wilson Avenue • Loveland, CO 80537
(970) 962-3000 • (970) 962-3400 Fax • (970) 962-2620 TDD
www.cityofloveland.org

TO: City Council

THROUGH: Bill Cahill, City Manager
Steve Adams, Water and Power Director

FROM: Jim Lees, Utility Accounting Manager
Chris Matkins, Water Utilities Manager
Alan Krcmarik, Executive Fiscal Advisor

DATE: February 5, 2013

SUBJECT: Staff Report on Water Utility Financing Proposal: Recommendations On How To Carry Out Direction From City Council

Through the course of the Water and Wastewater cost-of-service rate study begun in February of last year, the focus has been on how best to fund the needs of the Water Utility. Several funding options have been considered, and Staff received input from the Loveland Utilities Commission (LUC) at six meetings in 2012 and at the January 16, 2013 meeting, from the Citizens' Finance Advisory Commission (CFAC) at their November 14, 2012 meeting, and from City Council at three Study Sessions during 2012, including the final one on November 27, 2012, where specific direction was received. After considering this feedback, Staff is now seeking for City Council to adopt a resolution that will 1) indicate support for a preferred borrowing option; and 2) provide for a series of annual funds transfers and rate increases to meet future needs of the Water Utility. Today, Staff will present specific actions to carry out the consensus direction from City Council that were developed from guidance received at the November 27, 2012 Study Session.

Direction from November 27, 2012 City Council Study Session. At this meeting, the governing body gave consensus direction to meet the financing needs of the Water Utility through four specific instructions:

1) Pursue a 20-year external loan for $10 million
2) Pursue an 8-year internal loan for $6 million
3) Have the General Fund contribute $750,000 per year for 8 years to pay for the principal portion of the internal loan
4) Implement the following series of rate increases to provide adequate cash flow to fund the needs of the Water Utility:
   2014: 13%
   2015-2019: 9% per year
   2020-2022: 8% per year

This series of rate increases represents the lower of the two series of rate increases that were presented to Council at this Study Session.

These four components were represented by Scenario D at the Study Session, and an important reason this scenario garnered support from Council was that it provided funding for $17.5 million of water line replacements over the ten year period from 2013-2022. This represents 74% of the Staff-recommended level of line replacements, which Staff views as adequate.

One of the scenarios that was presented at the Study Session was Scenario B, which featured a $12 million external loan for 20 years, no internal loan, and no contribution from the General Fund. In follow-up to a request after the Study Session, Staff prepared a Scenario B-1, with the change of making the $12 million external loan a 10-year loan instead of a 20-year loan. The annual debt service for Scenario B-1 was $1.2 million, and the result of this high debt service was that there was only $6.5 million available for line replacements, and no funds available for line replacements until 2020. Based on Council's dismissal of another scenario because it provided only $7.9 million of funding for line replacements, Staff concluded that Scenario B-1 would also not fulfill what Council wanted to accomplish.

Next, using the same numbering convention as above, is a more detailed discussion of the four instructions from City Council's direction to be incorporated into the resolution:

1) $10 Million, 20-Year External Loan. City staff has identified three external funding options:

A. A loan from a bank to the City of Loveland Water Utility Enterprise;
B. A loan from the Colorado Water Resources and Power Development Authority ("CWRPDA" or the "Authority") to the Water Utility Enterprise; and
C. Issuance of water revenue bonds by the City of Loveland through its Water Utility Enterprise

Each of these techniques is described in more detail in the Appendix Report. Staff is actively pursuing the three options to determine how to best meet objectives at the lowest overall cost. At a future City Council meeting, Staff will present loan documents to Council for its consideration and approval.

2) $6 Million, 8-Year Internal Loan. At the November Study Session, as was mentioned above, Scenario D was the scenario that received consensus support from City Council. Scenario D assumes that the $6 million internal loan would come from the General Fund. After further investigation, Staff has discovered a noteworthy drawback to having the source of the $6 million internal loan be the General Fund. In total, Scenario D features a combination of the $10 million external loan for 20 years, and the $6 million internal loan for 8 years from the General Fund. This scenario has level (P&I) payments that total $1.5 million per year, but the General Fund would contribute $750,000 per year toward the $1.5 million total annual debt service, or, more accurately, the General Fund would forgive and give the Water Utility credit for the $750,000 annual payment against the $6 million loan. If the internal loan is made in 2013, this approach would cause the Water Utility to lose its status as an Enterprise Fund in 2014, but it would regain that status in 2015. The Enterprise Fund status is lost for one year under this scenario because the substance of this loan transaction, rather

than its form, contemplates that the Water Utility will not be paying back the $6 million. Therefore the City Attorney, in consultation with bond counsel, advises that this $6 million loan will be considered under TABOR to be a grant of $6 million to the Water Utility in 2013 resulting in its loss of enterprise status in 2014, but regaining it in 2015.

To further clarify, if in 2013 bonds are issued by the Water Utility and a grant is made from the City's General Fund to the Water Utility that is 10% or greater than the Water Utility's annual revenues, under TABOR, the Water Utility will lose its enterprise status the following year, 2014. And assuming that no grant of 10 % or greater is received by the Water Utility from the General Fund in 2014, the Water Utility will regain its enterprise status under TABOR in 2015.

The City's TABOR spending base would ratchet up by the amount of the Water Utility's 2014 annual revenues if enterprise status is lost, and then ratchet back down in 2015 by the amount of those revenues in 2015.

There are several drawbacks that are worth noting in regard to the Water Utility losing its enterprise status:

a) The Water Utility would not be able to issue bonds or issue any other multi-year debt in 2014 without a vote of the citizens. If some unanticipated large funding need arose in 2014 for the Water Utility, and being able to meet that need depended on a public vote, the Utility would be at some risk. The Water Utility would be able to issue multi-year debt without a vote in 2015 when it regains its enterprise status.

b) There could be an adverse effect on the awarding of multi-year contracts. If, for example, enterprise status is lost in 2014, then the City Council would not be able to award a multi-year contract without the limitation that the contract is subject to the City Council's annual appropriation of funds to pay the contract. This would make the contract more uncertain to potential construction contractors, and could lead to a higher bid price for the project. Staff currently expects that the Water Treatment Plant construction contract may not be awarded until 2014, and would need to be a two year contract. Loss of enterprise status in 2014 is therefore a significant issue.

c) Loss of enterprise status could limit the structure of an external loan. We have received some interest from a lender willing to disburse the external loan proceeds as needed, over time, rather than an initial lump sum. This could save substantial interest costs and be advantageous. However, if enterprise status is lost after 2013 due to an excessive General Fund transfer, then the utility may not be able to accept distributions from such a loan, because the utility would not have authority to create new debt or obligation without a vote of the citizens, and distributions on a loan may be regarded as new debts. A loss of enterprise status therefore limits the structure of an external loan in a way that could be costly to the utility.

For these reasons, Staff opposes an approach that results in the loss of enterprise status, and has developed another internal loan option. Instead of having the General Fund be the source for the $6 million internal loan, the Power Utility would be the source. Staff has done an analysis of the 10-Year Financial Plan for Power, and with the proposed 8-year payback schedule, Power would be able to provide the $6 million for the loan in 2013 and still complete all of the capital projects in the 10-Year Financial Plan. The General Fund could still contribute $750,000 per year for 8 years toward the

$1.5 million of annual debt service. But since the amount of the annual General Fund contribution would be less than 10% of the Water Utility's annual revenues, the Water Utility would not lose its enterprise status. Since getting the loan from the General Fund comes with a certain amount of risk associated with losing enterprise status, Staff recommends getting the internal loan from the Power Utility, where that same risk would not come into play.

3 & 4) $750,000 Annual General Fund Contribution and Series of Rate Increases. For these financing options to succeed, an annual transfer of $750,000 from the General Fund to the Water Utility and the series of rate increases referenced in #4 above must be implemented. The current Council cannot bind a future Council to adopt annual transfers from the General Fund to the Water Utility or a series of rate increases. However, by adopting this resolution, Council can put into place a plan for an annual transfer of $750,000 from the General Fund to the Water Enterprise and the multi-year rate increases referenced in #4 above. The resolution would ensure that these General Fund transfers and rate increases would occur automatically every year as set forth in the resolution unless and until the Council determines otherwise by a future resolution or ordinance.

Utility Bill Projections. In a subsequent public meeting after the November 27, 2012 Study Session, City Council requested to see what a total City utility bill would look like over the next 10 years, taking into account projected rate increases for all of the services. PowerPoint slide 9 illustrates how an average Residential water bill would change over the next 10 years based on the current series of rate increases. Slides 10-13 specifically address the Council inquiry illustrating average total City utility bill projections over the next 10 years for Residential and Commercial customers. These figures show an average annual increase in the Residential utility bill of 4.8% and 5.6% for the average annual increase in the Commercial bill.

Staff Recommendation. In reviewing the four key components of the consensus direction given by Council at the November 27, 2012 Study Session, Staff's recommendation for each of them is to adopt a resolution to:

1) **$10 Million, 20-Year External Loan:** Direct the City Manager to seek out the most advantageous financing package
2) **$6 million, 8-Year Internal Loan:** Establish the Power Enterprise as the source of the internal loan. With Power being the source of the loan, there would be no loss of enterprise status for the Water Enterprise. This is the most risk-averse choice for internal borrowing.
3) **General Fund Annual Contribution:** Establish an annual appropriation in the General Fund of $750,000 to be transferred to the Water Enterprise. The Water Enterprise would then, in turn, use those funds to pay the principal portion of the internal loan from the Power Enterprise.
4) **Series of Rate Increases:** Approve the following series of rate increases to provide adequate cash flow to fund the needs of the Water Utility:
   2014: 13%
   2015-2019: 9% per year
   2020-2022: 8% per year

Given City Council's considerable support for the Utility's needs and measured guidance on rate increase limitations, Staff is comfortable with these four recommendations. Staff

believes this course of action will increase investment in the Water Utility significantly with provisions for returning to a self-funding Water Utility Enterprise within a 10 year planning horizon.

At their January 16, 2013 meeting, the LUC voted 7-1 to recommend to City Council for the approval of the 4-component Staff Recommendation shown above.

Attached for informational purposes is a table summarizing the financing scenarios that have been developed over the latter stages of the process, the PowerPoint slides that will be presented to the Council at this meeting, an Appendix Report that gets into more detail regarding the financing scenarios developed from November until now, and an Appendix PowerPoint presentation which also provides more information on the financing scenarios.

RECOMMENDATION:

Have City Council adopt a resolution to:

1) Direct the City Manager to secure for City Council's future consideration and approval a $10 million, 20-year external loan to the Water Enterprise on the most advantageous terms available.
2) Authorize and approve the Power Enterprise loaning $6 million to the Water Enterprise in 2013, to be repaid in 8 annual payments.

3) Direct the City Manager, in each year during the 8-year term of the $6 million loan from the Power Enterprise to the Water Enterprise referenced in #2 above, to include in the City's annual budget and appropriation ordinances the transfer of $750,000 from the General Fund to the Water Enterprise to be used to pay the annual principal portion of the loan from the Power Enterprise
4) Have Staff, prior to each calendar year, present a resolution for consideration and adoption by the City Council approving a revised Schedule of Rates, Charges and Fees for services provided by the Water and Power Department that incorporates the following increases in water rates:
   2014: 13%
   2015-2019: 9% per year
   2020-2022: 8% per year

1

Water Utility Financing Proposal:

Recommendations on How to Carry Out Direction from City Council

City Council Presentation

February 5, 2013

Overview

- Recap of Gathering Input
- Direction from November 27, 2012 City Council Study Session
- Resolution to Accomplish Council Direction
- Water Monthly Utility Bill Projections
- Total City Monthly Utility Bill Projections
- Staff and LUC Recommendation
- Discussion and Decision

Recap of Gathering Input

- Rate study begun in February, 2012
- Feedback from City Council and Advisory Groups
  - 3 Study Sessions with City Council
  - 7 Meetings with LUC
  - 1 Meeting with CFAC

Direction From November 27, 2012 City Council Study Session

1. Pursue a 20-year External Loan for $10M
2. Pursue an 8-year Internal Loan for $6M
3. General Fund contribution to Water Utility of $750K per year for 8 years
4. Series of rate increases

2014:	13%
2015 – 2019:	9% per year
2020 – 2022:	8% per year

Resolution to Accomplish Council Direction

1. $10M, 20-year External Loan
   - Direct City Manager to find best External Financing Option
     A. Bank Loan
     B. Colorado Water Resources and Power Development Authority
     C. Water Utility Bonding
   - Loan document to be presented to Council for approval

Resolution to Accomplish Council Direction

2. $6M, 8-year Internal Loan
   - Authorize Internal Loan for Water Utility

   Two Potential Funding Sources:

   A. General Fund
      - Water Utility would lose enterprise status

   B. Power Utility
      - Water Utility would <u>not</u> lose enterprise status

Impact of Losing Enterprise Fund Status

- Would lose status for one year and regain it the next
- City's spending base under TABOR would ratchet up, then down
- Water Utility couldn't issue multi-year debt without a vote of Loveland citizens
- Adverse impact on awarding of contracts
- Could limit structure of external loan

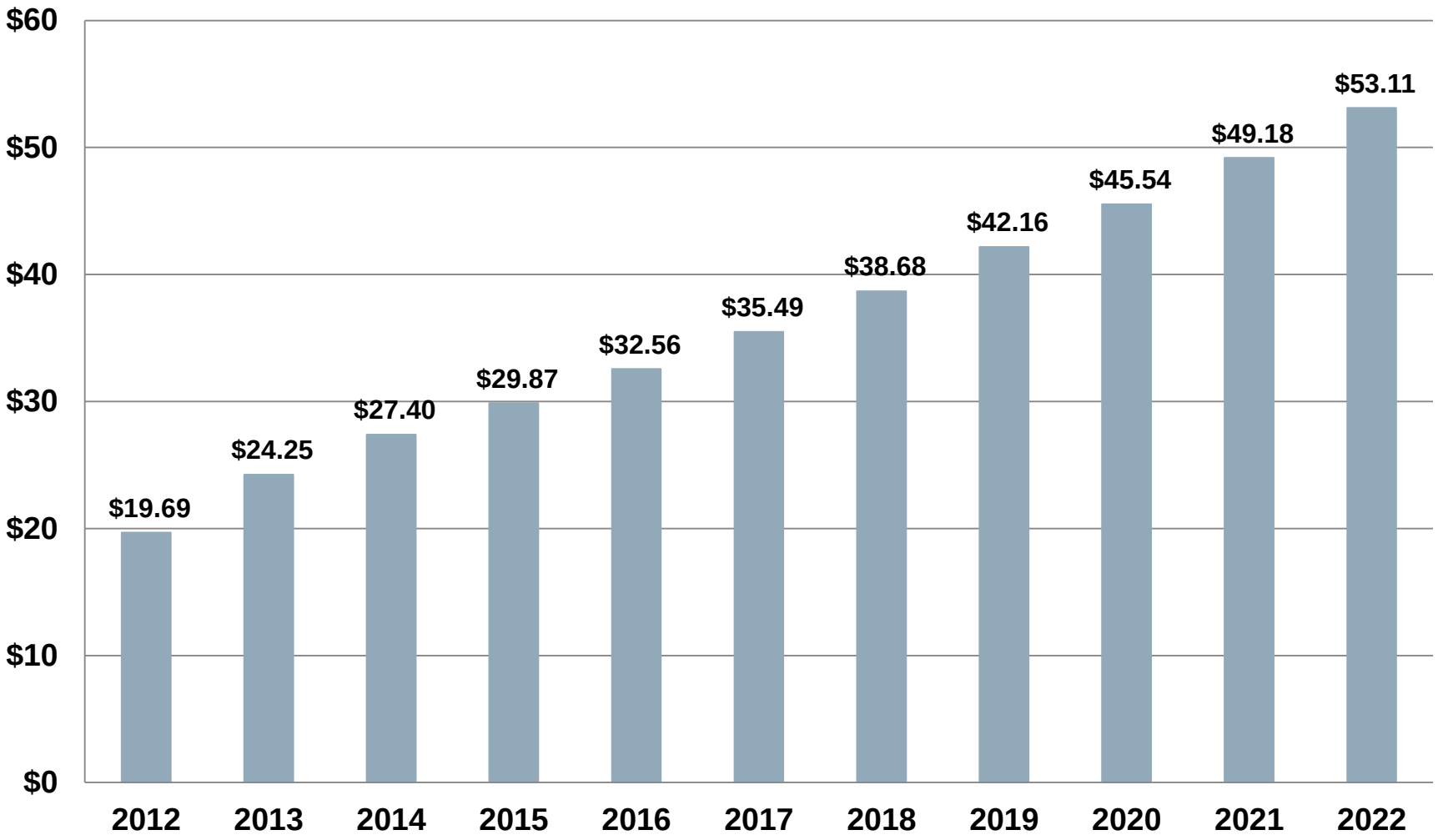
Resolution to Accomplish Council Direction

3. Annual transfer of $750K for 8 years from the General Fund to the Water Utility
   - $750K to be used for annual principal payment on Internal Loan
4. Series of rate increases:

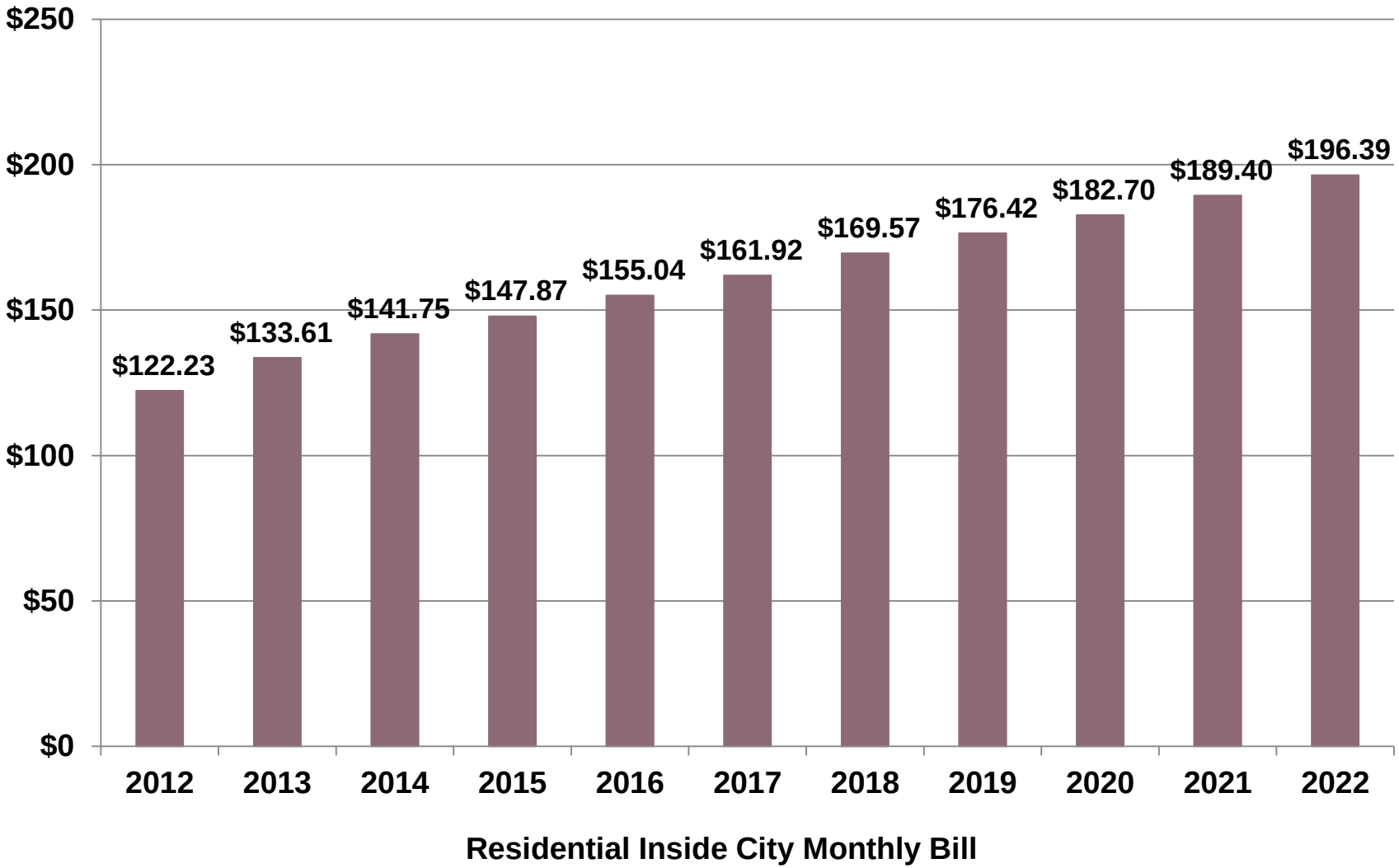
2014:	13%
2015 – 2019:	9% per year
2020 – 2022:	8% per year

- Annual transfers and rate increases would occur automatically unless directed otherwise by future Council

Projected Average Monthly Residential Water Bill 2012-2022 (8,100 gallons per month) – Based on Current Series of Rate Increases



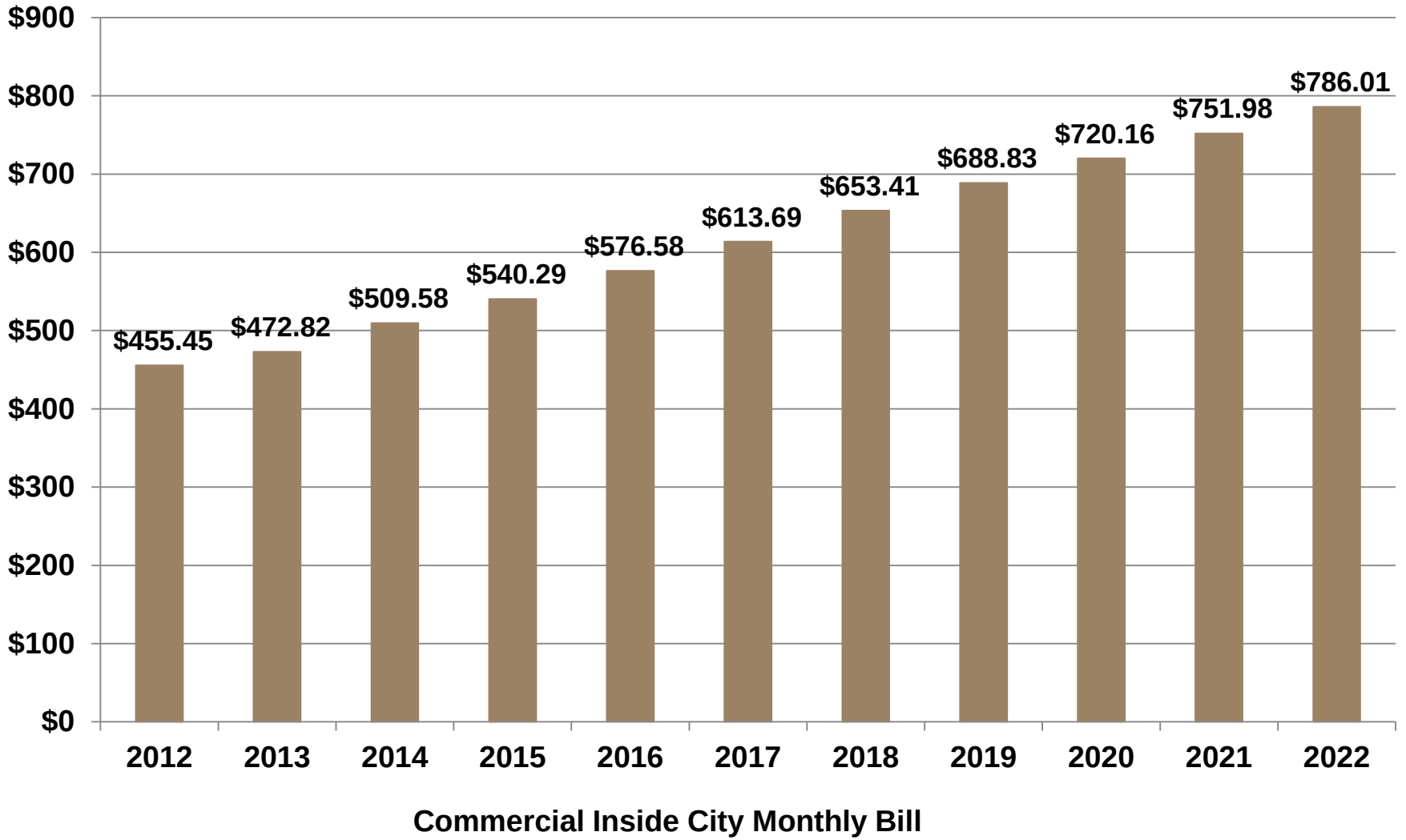
Projection of Customer's Total Monthly Utility Bill 2012-2022 Residential Inside City



Projection of Customer's Total Monthly Utility Bill 2012-2022 Residential Inside City

Utility Total Monthly Bill Per Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Water	$19.69	$24.25	$27.40	$29.87	$32.56	$35.49	$38.68	$42.16	$45.54	$49.18	$53.11
Wastewater	$15.72	$18.84	$20.91	$23.21	$25.76	$28.60	$31.74	$33.96	$36.34	$38.88	$41.60
Electric	$60.38	$63.88	$65.95	$65.95	$66.86	$66.86	$66.86	$66.86	$66.86	$66.86	$66.86
Storm Drainage	$8.30	$8.30	$9.10	$9.97	$10.93	$11.98	$12.99	$14.08	$14.54	$14.80	$15.07
Street Maintenance	$1.67	$1.87	$1.92	$1.97	$2.03	$2.09	$2.15	$2.21	$2.27	$2.33	$2.40
Solid Waste Management	$15.67	$15.67	$15.67	$16.10	$16.10	$16.10	$16.30	$16.30	$16.30	$16.50	$16.50
Mosquito Control	$.80	$.80	$.80	$.80	$.80	$.80	$.85	$.85	$.85	$.85	$.85
Total Residential Inside City	$122.23	$133.61	$141.75	$147.87	$155.04	$161.92	$169.57	$176.42	$182.70	$189.40	$196.39
% Inc/(Dec) to Prior Year		9.31%	6.09%	4.31%	4.85%	4.44%	4.73%	4.04%	3.55%	3.67%	3.69%

Projection of Customer's Total Monthly Utility Bill 2012-2022 Commercial Inside City



Projection of Customer's Total Monthly Utility Bill 2012-2022 Commercial Inside City

Utility Total Monthly Bill Per Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Water	$78.56	$83.34	$94.17	$102.65	$111.89	$121.96	$132.93	$144.90	$156.49	$169.01	$182.53
Wastewater	$121.43	$121.43	$134.79	$149.62	$166.07	$184.33	$204.61	$218.93	$234.26	$250.66	$268.21
Electric	$168.43	$178.20	$183.97	$183.97	$186.51	$186.51	$186.51	$186.51	$186.51	$186.51	$186.51
Storm Drainage	$62.97	$62.97	$69.02	$75.65	$82.91	$90.87	$98.50	$106.77	$110.29	$112.28	$114.30
Street Maintenance	$24.06	$26.88	$27.63	$28.40	$29.20	$30.02	$30.86	$31.72	$32.61	$33.52	$34.46
Solid Waste Management	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Mosquito Control	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total Commercial Inside City	$455.45	$472.82	$509.58	$540.29	$576.58	$613.69	$653.41	$688.83	$720.16	$751.98	$786.01
% Inc/(Dec) to Prior Year		3.81%	7.78%	6.02%	6.72%	6.44%	6.47%	5.42%	4.55%	4.42%	4.53%

Council Action Requested

Adopt a Resolution Identifying the Following Funding Sources:

1) 20-year External Loan for $10M with most advantageous financing package
2) 8-year Internal Loan for $6M from Power Enterprise to Water Enterprise
3) Annual transfer of $750K for 8 years from the General Fund to the Water Enterprise
4) Series of rate increases

2014:	13%
2015 – 2019:	9% per year
2020 – 2022:	8% per year

LUC Recommendation

- At their January 16, 2013 meeting, the LUC voted 7-1 to support the Staff-recommended actions

16

Discussion & Decision

FIRST READING February 5, 2013

SECOND READING _____

RESOLUTION #R-16-2013

A RESOLUTION CONCERNING FUNDING FOR THE WATER ENTERPRISE TO IMPROVE THE WATER TREATMENT PLANT AND UNDERTAKE A COMPREHENSIVE WATER LINE REPLACEMENT PROGRAM

WHEREAS, for well over one hundred years, the City of Loveland Water Utility has provided the Loveland community with a safe and reliable source of potable water at some of the lowest rates in the State of Colorado; and

WHEREAS, the Water Utility is now facing significant financial challenges due to escalating regulatory requirements, increasing operation and maintenance costs, aging infrastructure, and water treatment plant capacity limitations; and

WHEREAS, to meet these challenges and provide for the City's future economic growth and development, the Water Utility must improve the water treatment plant and undertake a comprehensive water line replacement program; and

WHEREAS, the City Council desires to secure adequate funding for the Water Utility to meet these project needs through a combination of sources, specifically external borrowing, internal borrowing, General Fund transfer, and water rate increases, designed to equitably distribute the financial impacts between current and future Water Utility customers and the citizens of Loveland who will benefit from the City's future economic growth and development; and

WHEREAS, Section 13-3(b) of the Loveland Municipal Charter provides that loans from one utility account to another shall be allowed with the City Council's approval, but shall require the affirmative vote of a majority of the entire City Council; and

WHEREAS, the Loveland Municipal Charter and Code provide that all utility rates, charges, and fees shall be set by the City Council by resolution adopted upon two readings.

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

Section 1. That the City Council hereby directs the City Manager to secure for the City Council's future consideration and approval as the Board of the City's Water Utility Enterprise a twenty-year amortized loan from an external source (or sources) to the Water Enterprise, on the most advantageous terms available as determined by the City Manager, in consultation with the City Attorney and the City's Executive Fiscal Advisor, in the principal

amount necessary to pay all financing costs and establish any required reserves to achieve net loan proceeds of Ten Million Dollars ($10,000,000).

Section 2. That the City Council hereby authorizes and approves the Power Enterprise loaning to the Water Enterprise in 2013 Six Million Dollars ($6,000,000) to be repaid by the Water Enterprise to the Power Enterprise in eight annual, fully-amortized principal and interest payments with the interest to be determined and accrue at the variable rate and in the manner required by Loveland Municipal Charter Section 13-3(b).

Section 3. That the City Council hereby directs that, in each year during the eight-year term of the loan contemplated in Section 2 above, the City Manager shall include in the City's annual budget and appropriation ordinances for each of those years the transfer of Seven Hundred Fifty Thousand Dollars ($750,000) from the General Fund to the Water Enterprise to be used by the Water Enterprise to pay the principal due on the Six Million Dollar ($6,000,000) loan from the Power Enterprise.

Section 4. That the City Council hereby adopts the following rate increases across all Water Utility customer classes for each of the next nine years as listed below, said rate increases to take effect beginning with billings mailed on or after January 1 of the then-current year:

2014	13% increase
2015	9% increase
2016	9% increase
2017	9% increase
2018	9% increase
2019	9% increase
2020	8% increase
2021	8% increase
2022	8% increase

The rate increases adopted herein shall be in addition to, and not in lieu of, any other rate increases for water service that may hereafter be adopted by the City Council to more accurately reflect the cost of providing water service to the Water Utility's customers.

Section 5. That this Resolution shall be effective as of the date of its adoption on second reading as provided in the Loveland Municipal Code.

ADOPTED this ____ day of February, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

Water Utility Financing Scenarios for February 5, 2013 City Council Meeting

Scenario	Rate Track	Loan Amount	Loan Type/General Fund Assistance	Interest Rate	Annual Debt Service	Total Interest Payments	Level of Funding Provided for WTP	Level of Funding Provided for Line Replacements	% of Line Replacements Funded	First Year of Line Replacments	Loss of Enterprise Fund Status
A	A	$16M	30 Year External Loan	3.4% fixed	$820K	$9.0M	Fully Funded ($27.4M)	Fully Funded ($23.5M)	100%	2013	NO
B	B	$12M	20 Year External Loan	3.05% fixed	$800K	$4.0M	Fully Funded ($27.4M)	$12.8M	54%	2013	NO
B-1	B	$12M	10 Year External Loan	1.55% fixed	$1.5M	$1.2M	Fully Funded ($27.4M)	$6.5M	28%	2020	NO
C	B	$10M	10 Year Internal Loan	1.7% variable	$1.1M	$1.0M (assuming 1.7%)	Fully Funded ($27.4M)	$7.9M	34%	2020	NO
D	B	$10M - $6M -	20 Year External Loan 8 Year Internal Loan* *General Fund pays $750K per year principal for internal loan and Water Utility pays up to $94K of interest per year	3.05% fixed 1.5%-4.0% variable	$675K + $843K $1.5M	$4.1M	Fully Funded ($27.4M)	$17.5M	74%	2013	YES
D-1	B	$10M - $6M -	20 Year External Loan 8 Year Internal Loan from Power* *General Fund pays $750K per year principal for internal loan and Water Utility pays up to $94K of interest per year	3.05% fixed 1.5%-4.0% variable	$675K + $843K $1.5M	$4.1M	Fully Funded ($27.4M)	$17.5M	74%	2013	NO

NOTES:

1.

- Rate Track A: 17% in 2014; 18% per year 2015-2018; 4% per year 2019-2022
- Rate Track B: 13% in 2014; 9% per year 2015-2019; 8% per year 2020-2022

2. Scenario A is the only scenario that continues the transfer of a portion of Water Sales to the Raw Water Fund throughout the 10 year period through 2022. All other scenarios discontinue this transfer for the years from 2018-2022. During that five year period, 100% of Water Sales would stay in the Water Fund. The elimination of this transfer reduces the revenue stream into the Raw Water Fund starting in 2018, but the justification is that the needs of the Water Utility are greater and more immediate than the near-term needs to acquire and store more raw water.

3. External loan interest rates and length of loan could vary depending on what type of loan vehicle is used.

4. Current Water/Wastewater inflation rate is 4.2%

Department of Water and Power
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(970) 962-3000 • (970) 962-3400 Fax • (970) 962-2620 TDD
www.cityofloveland.org

TO: City Council

THROUGH: Bill Cahill, City Manager
Steve Adams, Water and Power Director

FROM: Jim Lees, Utility Accounting Manager
Chris Matkins, Water Utilities Manager
Alan Krcmarik, Executive Fiscal Advisor

DATE: February 5, 2013

SUBJECT: Appendix Report on Water Utility Financing Update: Recommendations On How To Carry Out Direction From City Council

DESCRIPTION:
This Appendix Report is included to provide Council with more background information on the four funding scenarios that were presented at the November 27, 2012 Study Session (Scenarios A-D) as well as two other scenarios that have been developed by Staff since then (Scenarios B-1 and D-1). Scenario B-1 was developed in response to a request after the November 27, 2012 Study Session as an alternative to Scenario B. Scenario B-1 is the same as Scenario B with the exception that Scenario B-1 features an external $12 million loan for 10 years instead of the $12 million, 20 year loan duration of Scenario B. Scenario D-1 was developed as an alternative to Scenario D, with the only change being that the funding source for the $6 million, 8 year internal loan is the Power Utility Fund in Scenario D-1 instead of the General Fund in Scenario D. There is also more detailed information on the three financing alternatives that Staff is exploring for the $10 million, 20 year external loan.

SUMMARY:

NOTE: All of the financial information discussed in the "Summary of Funding Scenarios" and "Pros and Cons of Financing Scenarios" sections below is summarized in the table that is labeled Attachment 2 to the Cover Letter and in slides 8-9 of the Appendix PowerPoint presentation.

Summary of Funding Scenarios. All of the funding scenarios have two common elements:

1) All generate an adequate level of funding for projects at the Water Treatment Plant (WTP) over the next 10 years.
2) All proceeds from borrowing (whether external or internal loans) would be received and available to spend in 2013.

The key differences between the scenarios are:

1) The rate increases necessary to fund Scenario A is:
   2014: 17%
   2015-2018: 18% per year
   2019-2022: 4% per year

   The rate increases necessary to fund all of the other scenarios (B through D1) is:
   2014: 13%
   2015-2019: 9% per year
   2020-2022: 8% per year

2) Scenario A provides funding for 100% of the Staff-recommended water line replacements over the next 10 years. Scenarios B through D1 provide reduced waterline replacement funding (<100%).

3) Scenario A is the only scenario that continues the transfer of a portion of Water Sales to the Raw Water Fund throughout the 10 year period through 2022. All other scenarios discontinue this transfer for the years from 2018-2022. During that five year period, 100% of Water Sales would stay in the Water Fund. The elimination of this transfer reduces the revenue stream into the Raw Water Fund starting in 2018, but the justification is that the needs of the Water Utility are greater and more immediate than the near-term needs to acquire and store more raw water.

4) Scenarios A, B, B-1 and C do not include any contributions from the General Fund, while Scenarios D and D-1 do incorporate General Fund contributions.

Scenario A –features a $16 million external loan for 30 years, and has level principal and interest (P&I) payments of $820,000 per year. This loan assumes a fixed interest rate of 3.4%, and requires $9.0 million of interest payments over the life of the loan.

Scenario B –features a $12 million external loan for 20 years, and has level (P&I) payments of $800,000 per year. This loan assumes a fixed interest rate of 3.05%, and requires $4.0 million of interest payments over the life of the loan.

Scenario B-1 –features a $12 million external loan for 10 years and has level (P&I) payments of $1.5 million per year. This loan assumes a fixed interest rate of 1.55%, and requires $1.2 million of interest payments over the life of the loan.

Scenario C –features a $10 million internal loan for 10 years, and has level (P&I) payments of $1.1 million per year. This loan assumes a fixed interest rate of 1.7% (varies with the City's investments return), and requires $1.0 million of interest payments over the life of the loan.

Scenario D –features a combination of a $10 million external loan for 20 years, and a $6 million internal loan for 8 years. The $6 million loan would come from the City's General Fund. This scenario has level (P&I) payments that total $1.5 million per year,

but the General Fund would contribute $750,000 per year toward the $1.5 million total annual debt service, or, more accurately, the General Fund would forgive and give the Water Utility credit for the $750,000 annual payment against the $6 million loan. If the internal loan is made in 2013, this approach would cause the Water Utility to lose its status as an Enterprise Fund in 2014, but it would regain that status in 2015. The Enterprise Fund status is lost for one year under this scenario because the substance of this loan transaction, rather than its form, contemplates that the Water Utility will not be paying back the $6 million. Therefore the City Attorney, in consultation with bond counsel, advises that this $6 million loan will be considered under TABOR to be a grant of $6 million to the Water Utility in 2013 resulting in its loss of enterprise status in 2014, but regaining it in 2015.

Scenario D-1 –features a combination of a $10 million external loan for 20 years, and a $6 million internal loan (from the Power Utility Fund) for 8 years. This scenario has level (P&I) payments of $1.5 million per year, but requires the General Fund to contribute $750,000 per year toward the $1.5 million total annual debt service. In contrast to Scenario D, this scenario would **not** cause the Water Utility to lose its status as an Enterprise Fund .

Pros and Cons of Financing Scenarios

The Pros for Scenario A ($16 million external loan for 30 years) are:

A) Provides full funding ($23.5 million) for line replacements over the 10 year timeframe.
B) This is the only scenario preserving the transfer of a portion of Water Sales to the Raw Water Fund throughout the period from 2013-2022.
C) Does not deplete General Fund surplus dollars
D) Promotes intergenerational equity – aligns the service lifethe improvement with the customer base that's paying for it.

The Cons for Scenario A are:

A) Requires largest rate increases
B) Requires longest repayment period and the most interest over the life of the loan
C) Utility must meet additional financial requirements, such as minimum debt service coverage

The Pros for Scenario B ($12 million external loan for 20 years) are:

A) Provides $12.8 million (54% of Staff-recommended level) of funding for line replacements . This is less than Scenario A, but more than Scenario C.
B) Offers lower rate increases than Scenario A
C) No General Fund subsidy required
D) Promotes intergenerational equity.

The Cons for Scenario B are:

A) Longer amortization period and higher total interest paid compared to other alternates.
B) Additional financial requirements, same as Scenario A

The Pros for Scenario B-1 ($12 million external loan for 10 years) are:

A) It has a shorter loan repayment period
B) Offers lower rate increases than Scenario A

C) No General Fund subsidy is required
D) Promotes some intergenerational equity

The Cons for Scenario B-1 are:

A) No line replacements funded until 2020, and other capital projects must be cut in 2018-2019.
B) A total of only $6.5 million (28% of Staff-recommended level) of line replacement projects funded in this scenario, only in the last three years of the timeframe.

The Pros for Scenario C ($10 million internal loan for 10 years) are:

A) Shorter amortization period
B) Lower rate increases compared to Scenario A
C) No additional financial requirements triggered by external borrowing
D) Loan interest is paid to the City

The Cons for Scenario C are:

A) No line replacement funding until 2020, and other capital projects would be cut in 2018-2019. $7.9 million of line replacement projects funded only in the last three years .
   It could adversely impact the General Fund's ability to address emergency situations. Staff is developing plans to borrow this money without impacting General Fund capital programs. However, this scenario reduces flexibility for the City to meet unforeseen needs, or costs arising from a natural weather event
B) If the City's investment return increases above 1.7%, the annual debt service payment for Water would also increase.

The Pros for Scenario D ($10 million external loan for 20 years, $6 million internal loan from non-utility funds for 8 years) are:

A) Provides $17.5 million (74%) of line replacements .
B) Requires lower rate increases compared to Scenario A
C) Promotes intergenerational equity

The Cons for Scenario D are:

A) The Water Utility would lose its status as an Enterprise Fund for one year.
B) The City's spending base under TABOR would change.
C) General Fund dollars would be depleted.
D) A longer repayment period and more interest over the life of the loan versus Scenario C
E) Additional financial requirements

The Pros for Scenario D-1 ($10 million external loan for 20 years, $6 million internal loan from Power Fund for 8 years) are:

A) Provide $17.5 million of funding for line replacements which represents 74% of the Staff-recommended line replacements.
B) Offers lower rate increases compared to Scenario A
C) Retains Enterprise Fund status
D) Promotes intergenerational equity

The Cons for Scenario D-1 are:

A) General Fund dollars would be depleted which could be used for other General Fund needs.

B) A longer repayment period and more interest over the life of the loan
C) Additional financial requirements

Feedback from November 27, 2012 Study Session. Council indicated consensus support for Scenario D, although at the time, they were not aware of the possibility of the Water Fund losing its status as an enterprise fund. There also was some Council support for Scenario A and some for Scenario B. There was no Council support for Scenario C.

External Financing Options. City staff has identified three external funding options:

A. A loan from a bank to the City of Loveland Water Utility Enterprise;
B. A loan from the Colorado Water Resources and Power Development Authority ("CWRPDA" or the "Authority") to the Water Utility Enterprise; and
C. Issuance of water revenue bonds by the City of Loveland through its Water Utility Enterprise

Each of the techniques is described briefly below.

1. Loan from a Bank

Staff has contacted regional, state, and national banks to determine feasibility of a direct bank loan Several banks have indicated interest in preparing a financing option for the City to consider. Based on the bank's review of the Utility's financial position and projections, a bank could provide a loan to fund the project. Banks may elect to perform their own credit assessment risk and not to require a formal rating from Standard & Poor's, Moody's, or Fitch.

Some banks expressed an inability extend credit for the anticipated 20-year payback period, but wereinterested in a loan 15 years and shorter. Others indicated that 20 years is feasible but may require higher interest rates. Based on recent Council interactions, the annual loan debt service should be limited to about $675,000 . Current low interest rates make this option viable.

The advantages of a Loan from a Bank include: a) relatively simple loan and debt service documents; b) quick loan terms determination .; c) competitive interest rates d) financing benefits local or Colorado banks e) potential greater flexibility in setting the rate, prepayment options, and re-financing terms if interest rates decrease.

2. A Loan from the Colorado Water Resources and Power Development Authority (the Authority).

The State of Colorado offers financing programs for water utility projects. Staff have been investigating one program with the Authority and the Colorado Department of Public Health and Environment.

Under this program, the Authority issues bonds that provide loans for the Water Utility . The Authority would issue to bonds. The Authority has a triple-A credit rating (the highest available) and the rates on the bonds would be lower than if the City Water Utility issued bonds. The Authority's program also uses federal dollars to reduce interest rates approximately 30%.

The use of federal money requires prevailing wages on the funded projects, increasing construction costs Based on a 2011 study, the State Department of Transportation concluded that the prevailing wage requirement did not add significant costs to projects. Staff is evaluating whether this program offers the lowest net cost to the City.

The Authority groups financing needs of several communities into one bond issuance to save on administrative costs. In discussions with the Authority, their financial staff believes the Authority's board would allow the City of Loveland Water Utility to proceed on the first round schedule. The advantage would that we would be able to proceed immediately through the financing process. While there is a chance that another utility could be combined with Loveland, the financing could be tailored to Loveland's specific needs.

This borrowing technique is fairly complex, requires the longest amount of time to complete, and requires the highest administrative/reporting/overhead requirements of all borrowing options. The Water Utility would work closely with the Authority to accomplish all of the requirements and may have to coordinate with other jurisdictions in the process.

3. City Water Utility Bond Issuance

This option proposes that the City Water Utility Enterprise would issue revenue bonds to fund $10 million of improvements as previously discussed the Loveland Utility Commission and the Council. This could be completed within two months. The City and its Water Utility have strong financial positions and have detailed long-term financial plans in place. The Water Utility Enterprise would obtain a credit rating from at least one of the three major credit rating agencies. This is a very detailed process and requires assistance of the City's bond counsel and an external financial advisor. For a $10 million bond issue, staff has estimated $200,000 of issuance costs. The bond issue would also require a debt service reserve account to be funded. This can be done from the issuance of bonds or from other available water utility funds. Interest earned on money held in the debt service reserve reduces carrying costs over the term of the bond issue.

The advantage of this approach is that the Water Utility bond issue would be designed solely for its own use. Interest rates on the bonds are not likely to be as low as the Authority financing approach. At the time of issuance, the call features on the bonds would have to be determined, allowing the bonds to be called prior to the final 20 year maturity. Typical call features are at the tenth year with no premium for call. Shorter call terms required a premium.

A water utility revenue bond process could be completed more quickly that the Authority approach, and would require a considerable amount of staff time. A water utility bond issue would require an extensive set of documents.

Staff is actively pursuing the three options to determine how to best meet objectives at the lowest overall cost.

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Water Utility Financing Proposal:

Recommendations on How to Carry Out Direction from City Council (Appendix Slides)

City Council Presentation

February 5, 2013

Overview

- Six Borrowing Scenarios
- Feedback from November 27, 2012 City Council Study Session
- External Financing Options

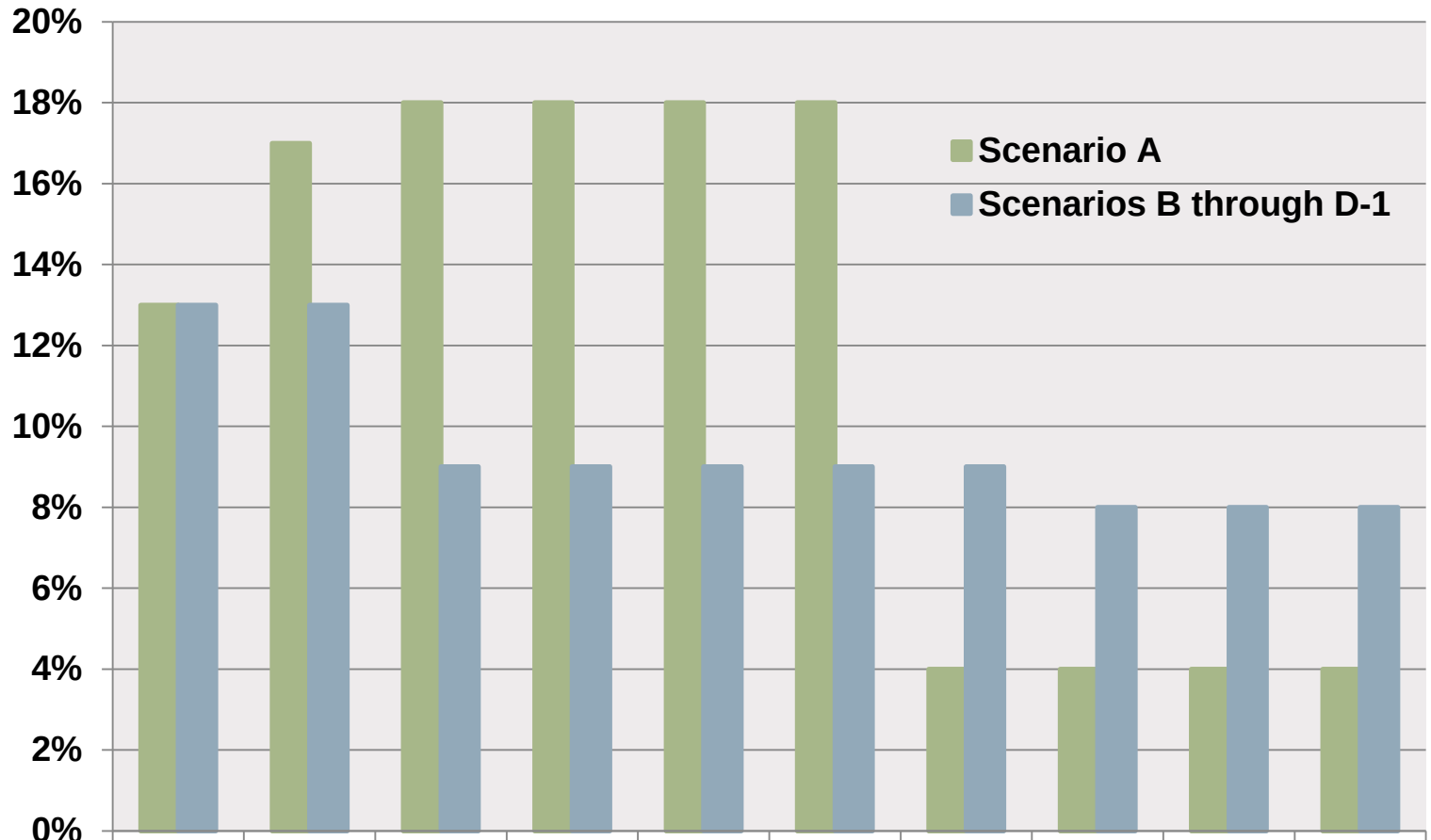
Common Elements In All Scenarios

- All fully fund Staff-recommended projects at Water Treatment Plant
- All loan proceeds would be available in 2013

Key Differences Between the Scenarios

- Series of rate increases
- Level of funding for water line replacements
- Transfer of Water Sales to Raw Water Fund
- General Fund contributions
- Annual debt service

Projected Annual Water Rate Increases 2013-2022



	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Scenario A	13%	17%	18%	18%	18%	18%	4%	4%	4%	4%
Scenarios B through D-1	13%	13%	9%	9%	9%	9%	9%	8%	8%	8%

Debt Service Comparison

Scenario	Loan Amount	Loan Type	Interest Rate	Annual Debt Service	Total Interest Payments
A	$16M	30 Year External Loan	3.4% (fixed)	$820K	$9.0M
B	$12M	20 Year External Loan	3.05% (fixed)	$800K	$4.0M
B-1	$12M	10 Year External Loan	1.55% (fixed)	$1.5M	$1.2M
C	$10M	10 Year Internal Loan	1.7% (variable)	$1.1M	$1.0M (assuming 1.7%)
D	$10M – 20 Yr External $6M – 8 Yr Internal (from non-utility funds)		3.05% (fixed) 1.5%-4.0% (variable)	$675K + $843K $1.5M	$4.1M
D-1	$10M – 20 Yr External $6M – 8 Yr Internal (from Power fund)		3.05% (fixed) 1.5%-4.0% (variable)	$675K + $843K $1.5M	$4.1M

NOTE: Scenarios D and D-1 require General Fund contribution

Level of Funding Provided

Scenario	Loan Amount	Loan Type	WTP	Line Replacements	% of Line Replacements	First Year of Line Replacements
A	$16M	30 Year External Loan	Fully Funded ($27.4M)	Fully Funded ($23.5M)	100%	2013
B	$12M	20 Year External Loan	Fully Funded ($27.4M)	$12.8M	54%	2013
B-1	$12M	10 Year External Loan	Fully Funded ($27.4M)	$6.5M	28%	2020
C	$10M	10 Year Internal Loan	Fully Funded ($27.4M)	$7.9M	34%	2020
D	$10M – 20 Yr External $6M – 8 Yr Internal (from non-utility funds)		Fully Funded ($27.4M)	$17.5M	74%	2013
D-1	$10M – 20 Yr External $6M – 8 Yr Internal (from Power fund)		Fully Funded ($27.4M)	$17.5M	74%	2013

Scenario A
Pros and Cons of $16M, 30 Yr External Loan

PROS
A. Provides full funding of $23.5M for line replacements.
B. Continues transfer of portion of Water Sales to Raw Water Fund.
C. No depletion of General Fund dollars.
D. Promotes intergenerational equity.

CONS
A. Higher rate increases.
B. Longest repayment period.
C. Additional financial requirements

Scenario B
Pros and Cons of $12M, 20 Yr External Loan

PROS
A. Provides $12.8M of funding for line replacements.
B. Lower rate increases.
C. No depletion of General Fund dollars.
D. Promotes intergenerational equity.

CONS
A. Longer repayment period.
B. Additional financial requirements.

Scenario B-1
Pros and Cons of $12M, 10 Yr External Loan

PROS
A. Shorter repayment period.
B. Lower rate increases.
C. No depletion of General Fund dollars.
D. Promotes intergenerational equity.

CONS
A. No funding for line replacements until 2020.
B. Lowest total funding of line replacements in any of the scenarios.

Scenario C
Pros and Cons of $10M, 10 Yr Internal Loan

PROS
A. Shorter repayment period.
B. Lower rate increases.
C. No additional financial requirements.
D. Loan interest is paid to the City.

CONS
A. No funding for line replacements until 2020.
B. Less funds for other City needs.
C. Variable interest rate

Scenario D

Pros and Cons of $10M External and $6M Internal Loan from Non-Utility Funds

PROS
A. Provides $17.5M of funding for line replacements.
B. Lower rate increases.
C. Promotes intergenerational equity.

CONS
A. Loss of Enterprise Fund status for one year.
B. Change in City's spending base under TABOR.
C. Depletion of General Fund dollars.
D. Longer repayment period.
E. Additional financial requirements.

Scenario D-1

Pros and Cons of $10M External and $6M Internal Loan from Power Fund

PROS
A. Provides $17.5M of funding for line replacements.
B. Lower rate increases.
C. No loss of Enterprise Fund status.
D. Promotes intergenerational equity.

CONS
A. Depletion of General Fund dollars.
B. Longer repayment period.
C. Additional financial requirements.

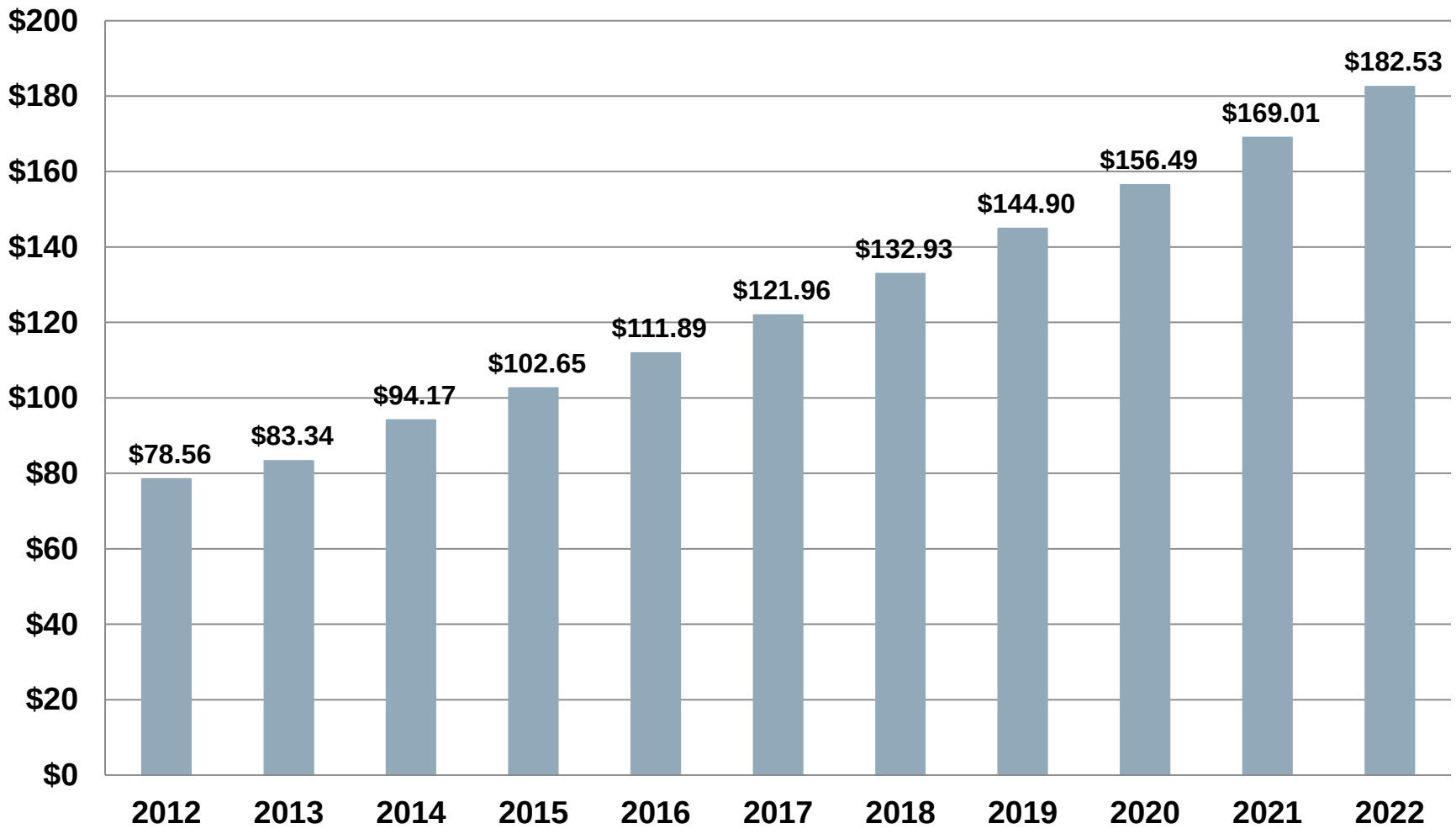
Feedback From November 27, 2012 City Council Study Session

- Consensus indication for Scenario D
- Some support for Scenario A
- Some support for Scenario B
- No support for Scenario C

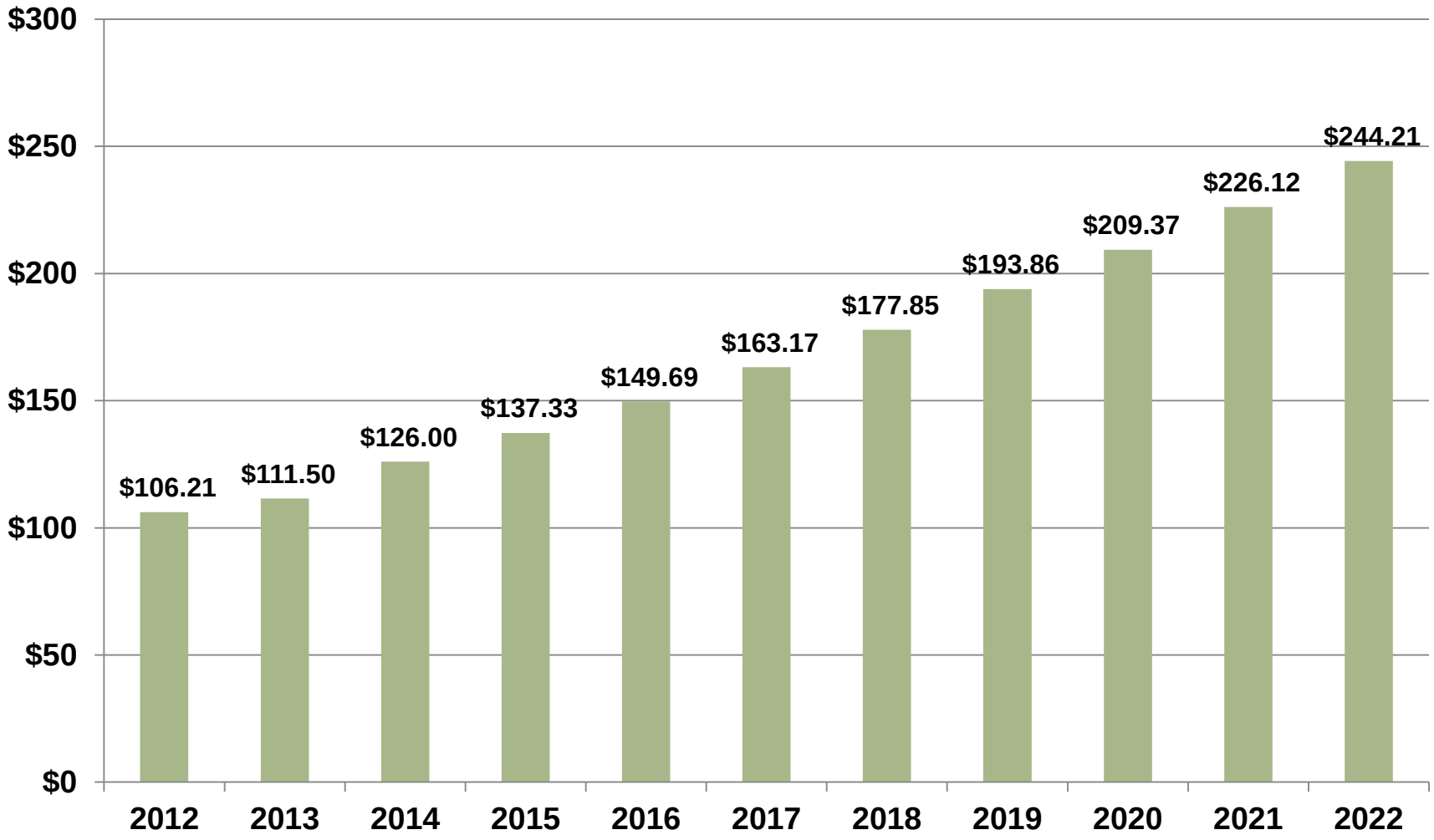
External Financing Options

1. Bank Loan
2. Colorado Water Resources and Power Development Authority
3. Water Utility Bonding

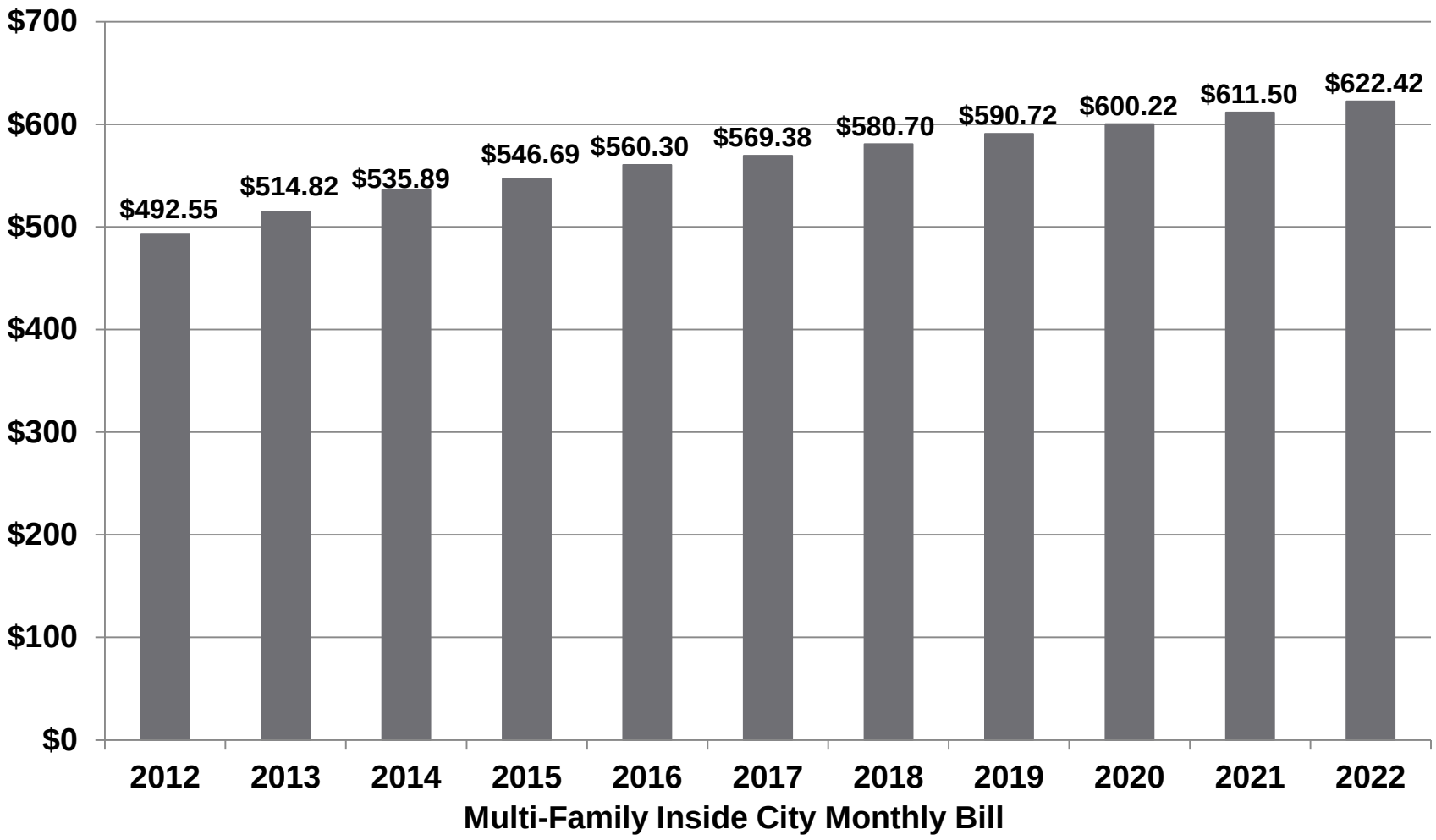
Projected Average Monthly Commercial Water Bill 2012-2022 (41,630 gallons per month) – Based on Current Series of Rate Increases



Projected Average Monthly Irrigation Water Bill 2012-2022 (46,700 gallons per month) – Based on Current Series of Rate Increases



Projection of Customer's Total Monthly Utility Bill 2012-2022
Multi-Family Inside City



*Based on an average sized Multi-Family complex of 5.83 dwelling units

Projection of Customer's Total Monthly Utility Bill 2012-2022 Multi-Family Inside City

Utility Total Monthly Bill Per Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Water	$52.84	$55.90	$63.17	$68.86	$75.05	$81.80	$89.16	$97.19	$104.96	$113.36	$122.43
Wastewater	$12.65	$11.22	$12.46	$13.83	$15.36	$17.05	$18.92	$20.25	$21.66	$23.17	$24.80
Electric	$351.99	$372.43	$384.50	$384.50	$389.80	$389.80	$389.80	$389.80	$389.80	$389.80	$389.80
Storm Drainage	$4.61	$4.61	$5.05	$5.53	$6.06	$6.64	$7.20	$7.80	$8.06	$8.21	$8.36
Street Maintenance	$1.67	$1.87	$1.92	$1.97	$2.03	$2.09	$2.15	$2.21	$2.27	$2.33	$2.40
Solid Waste Management	$64.13	$64.13	$64.13	$67.34	$67.34	$67.34	$68.52	$68.52	$68.52	$69.68	$69.68
Mosquito Control	$4.66	$4.66	$4.66	$4.66	$4.66	$4.66	$4.95	$4.95	$4.95	$4.95	$4.95
Total Multi-Family Inside City	$492.55	$514.82	$535.89	$546.69	$560.30	$569.38	$580.70	$590.72	$600.22	$611.50	$622.42
% Inc/(Dec) to Prior Year		4.52%	4.09%	2.02%	2.49%	1.62%	1.99%	1.73%	1.61%	1.88%	1.79%

*Based on an average sized Multi-Family complex of 5.83 dwelling units