

**LOVELAND CITY COUNCIL MEETING
TUESDAY, APRIL 2, 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

PROCLAMATION DECLARING APRIL 9, 2013, AS “NATIONAL SERVICE RECOGNITION DAY”

PROCLAMATION DECLARING APRIL 21-27, 2013, AS “NATIONAL CRIME VICTIMS’ RIGHTS WEEK”

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 March 19, 2013 regular meeting
 This is an administrative action to approve the Council minutes.

2. **DEVELOPMENT SERVICES** (presenter: Bethany Clark)
HISTORIC DESIGNATION LOVELAND ELKS LODGE-ORDINANCE AMENDMENT
A motion to approve on second reading an Ordinance amending Ordinance #5743 and designating as a Historic Landmark the Loveland Elks Lodge/Loveland 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 amending Ordinance #5743 and designating as a Historic Landmark the "Loveland Elks Lodge" at 103 East 4th Street. This ordinance modifies the name under which the historic structure located at 103 East 4th Street is designated. The first reading of the ordinance was approved unanimously by City Council at the March 19, 2013 meeting.

3. **DEVELOPMENT SERVICES** (presenter: Noreen Smyth)
PUBLIC HEARING
PUBLIC NOTICE REQUIREMENTS
A motion to approve an ordinance repealing and reenacting chapter 18.05, repealing section 16.16.070, and enacting a new chapter 16.18 regarding public notice requirements for land use and zoning matters
A legislative action to consider first reading of an ordinance to approve a staff-initiated text amendment to the Subdivision and Zoning Codes to modify requirements related to provisions for public notices. The notice requirements for oil and gas development will be established in a separate amendment, which is scheduled for Planning Commission on April 22nd and Council on May 21st.

4. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)
EXCEPTION TO THE ADEQUATE COMMUNITY FACILITIES ORDINANCE FOR THE BRINKMAN NORTH CATALYST PROJECT
A motion to approve a resolution #R-24-2013 for an exception to the adequate community facilities ordinance pursuant to Section 16.16.050(c) of the Loveland Municipal Code for a proposed building to be constructed at 541 N. Lincoln Ave., Loveland, Colorado
This is an administrative action. The resolution would approve an exception from the Adequate Community Facilities (ACF) ordinance. The exemption would allow for the final approval of the Site Development Plan on the Brinkman North Catalyst project. The ACF exemption is required because the parking will be accessed from the public alley. The current standard for alleys are twenty trips per day at peak hour, the project increases the peak trips to thirty. The slight increase in traffic will not cause significant impact to the alley or require additional capital improvements by the City.

5. **PUBLIC WORKS** (presenter: Dave Klockeman)
PUBLIC HEARING
IGA WITH CDOT MADISON AVENUE PEDESTRIAN IMPROVEMENTS
 1. **A motion to approve a resolution #R-25-2013 for an Intergovernmental Agreement Between the City of Loveland, Colorado and the State of Colorado, Acting By and Through the Department of Transportation, For Design and Construction of new sidewalk, curb and gutter, and street lights along the east side of Madison Avenue from the intersection of East 29th Street and Madison Avenue north to Seven Lakes Drive**
 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 a state grant to construct sidewalk, street and gutter improvements and street**

lights along the east side of Madison Avenue from 29th Street north to Seven Lakes Drive

This is an administrative action. The Resolution authorizes the City Manager to execute a grant agreement with the State of Colorado. This grant will partially fund the replacement of the bridge on Madison Avenue at the Chubbuck Ditch. The ordinance appropriates the grant funds.

**6. PUBLIC WORKS (presenter: Keith Reester)
RECYCLEBANK AGREEMENT FOR SOLID WASTE PROGRAM**

A motion to approve Recyclebank Agreement for Solid Waste Program

This is an administrative action. Costs and benefits of partnering with Recyclebank were discussed during the September 2013 study session. City Council directed staff to prepare an agreement with Recyclebank for the City Manager's signature, under the terms presented during the study session. This agenda item formalizes that Council direction. This partnership is designed to increase community recycling tonnages and divert more recyclable materials from the landfill, by rewarding citizens for their recycling efforts. The program includes a sophisticated marketing and education program encouraging city residents to do business with local merchants who choose to partner with Recyclebank at no cost. Net annual cost will be \$62,000. No rate impact is anticipated to occur as a result of this change.

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

7. CITY CLERK (presenter: Terry Andrews)

APPROVAL OF COUNCIL MINUTES

Motion to approve minutes from the March 12, 2013 study session.

This is an administrative action to approve the Council minutes. This item is on the

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regular agenda as not all Councilors were present at the meeting. Councilor Shaffer was absent.

8. **WATER AND POWER** (presenter: Jackie Sargent)
PLATTE RIVER POWER AUTHORITY PRESENTATION
Introduction of new Platte River Power Authority (PRPA) General Manager, Jackie Sargent and her presentation on PRPA
 This is an information only item. The purpose of this item is to introduce the new PRPA General Manager, Jackie Sargent. Ms. Sargent will give a presentation about PRPA.
9. **DEVELOPMENT SERVICES** (presenter: Karl Barton)
LOVELAND/JOHNSTOWN INTERGOVERNMENTAL AGREEMENT
 This study session item is an informative presentation on a conceptual outline draft of an IGA between Loveland and Johnstown. The IGA would establish a process for the two municipalities to cooperate on matters regarding annexation in the area along the I-25 corridor and to agree on a common Growth Management Area (GMA) boundary. The agreement would establish a process for determining which municipality would annex land within an area that would remain within the GMA boundaries of both municipalities, referred to as the "overlap area". The IGA also contains terms committing the two municipalities to cooperate in the future in infrastructure planning and preserving development opportunities in the Overlap Area.
10. **FINANCE** (presenter: Brent Worthington)
ADMINISTRATIVE FEE FOR NO PROOF OF INSURANCE (NPOI)
Information related to an administrative fee for cases where there was a failure to provide proof of insurance (NPOI) that is later dismissed
 This is an information only item. Following Citizen Comment at the Council meeting February 5, 2013, Council requested a review of the fee for failure to provide proof of insurance or No Proof of Insurance (NPOI). This item describes the fee imposed on motorists cited with NPOI, and provides background on the development of the fee and a comparison of processes used by other Colorado municipalities.
11. **FINANCE** (presenter: Brent Worthington)
FEBRUARY 2013 FINANCIAL REPORT
 This is an information only item. No action is required. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending February 28, 2013.
12. **CITY MANAGER** (presenter: Alan Krcmarik)
INVESTMENT REPORT FOR FEBRUARY 2013
 This is an information only item. No action is required. The budget estimate for investment earnings for 2013 is \$2,760,560. Through February, the amount posted to the investment account is \$363,425 including realized gains. Actual year-to-date earnings are lower than the budget projection by \$77,620. Based on the monthly statement, the estimated annualized 1.01% yield on the securities held by US Bank was down from last month and under the annual target rate of 1.20% for 2013. Reinvestment rates have been near record low levels, much lower than the budget projection.

ADJOURN



CITY COUNCIL

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PROCLAMATION

- WHEREAS,** service to others is a hallmark of the American character, and central to how we meet our challenges; and
- WHEREAS,** the nation's mayors are increasingly turning to national service and volunteerism as a cost-effective strategy to meet city needs; and,
- WHEREAS,** AmeriCorps and Senior Corps address the most pressing challenges facing our cities and nation, from educating students for the jobs of the 21st century and supporting veterans and military families to preserving the environment and helping communities recover from natural disasters; and
- WHEREAS,** national service expands economic opportunity by creating more sustainable, resilient communities and providing education, career skills, and leadership abilities for those who serve; and
- WHEREAS,** national service participants serve in more than 70,000 locations across the country, bolstering the civic, neighborhood, and faith-based organizations that are so vital to our economic and social well-being; and
- WHEREAS,** national service participants increase the impact of the organizations they serve with, both through their direct service and by recruiting and managing millions of additional volunteers; and,
- WHEREAS,** national service represents a unique public-private partnership that invests in community solutions and leverages non-federal resources to strengthen community impact and increase the return on taxpayer dollars; and,
- WHEREAS,** AmeriCorps members and Senior Corps volunteers demonstrate commitment, dedication, and patriotism by making an intensive commitment to service, a commitment that remains with them in their future endeavors; and
- WHEREAS,** the Corporation for National and Community Service shares a priority with mayors nationwide to engage citizens, improve lives, and strengthen communities; and is joining with mayors across the country to support the Mayors Day of Recognition for National Service on April 9, 2013.

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim April 9, 2013, as

NATIONAL SERVICE RECOGNITION DAY

and encourage residents to recognize the positive impact of national service in our city, to thank those who serve; and to find ways to give back to their communities.

Signed this 2nd day of April, 2013

Cecil A. Gutierrez, Mayor



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PROCLAMATION

- WHEREAS,** 18.7 million Americans are directly harmed by crime each year, and each crime affects many more family members, friends, neighbors, and co-workers; and
- WHEREAS,** crime can leave a lasting physical, emotional, or financial impact on people of all ages and abilities, and of all economic, racial, and social backgrounds; and
- WHEREAS,** in addition to these challenges, crime victims face a criminal justice system that, at times, ignores their rights and treats them with disrespect; and
- WHEREAS** in 1982, the President's Task Force on Victims of Crime envisioned a national commitment to a more equitable and supportive response to victims; and
- WHEREAS** the nation heeded this call to action and promoted victims' rights initiatives, effective and compassionate victim services, and just compensation and financial support; and
- WHEREAS,** today thousands of victim assistance programs provide help and support to child victims of violence and sexual abuse; stalking victims; survivors of homicide victims; victims of drunk-driving crashes; and victims of domestic, dating, and sexual violence and other crimes; and
- WHEREAS** the victim assistance community faces new challenges to reach and serve all victims, including victims of new crimes like cybercrime and terrorism and victims who have not always trusted the criminal justice system, including immigrant victims, urban youth, and victims who are lesbian, gay, bisexual, transgender, or questioning; and
- WHEREAS,** now is the time to embrace new solutions that involve new partnerships with underserved communities and a greater emphasis on learning what works in meeting victims' needs; and
- WHEREAS,** the U.S. Department of Justice, through the *Vision 21* initiative, calls for a renewed commitment to serving all victims of crime in the 21st century; and
- WHEREAS,** National Crime Victims' Rights Week, April 21–27, 2013, provides an opportunity to celebrate the energy, creativity, and commitment that launched the victims' rights movement, inspired its progress, and continues to advance the cause of justice for crime victims; and
- WHEREAS,** the City of Loveland is joining forces with victim service providers, criminal justice agencies, and concerned citizens throughout our community and America to raise awareness of victims' rights and observe National Crime Victims' Rights Week.

NOW THEREFORE, we the City Council do hereby proclaim the week of April 21–27, 2013, as

NATIONAL CRIME VICTIMS' RIGHTS WEEK

and reaffirm this City's commitment to respect and enforce victims' rights and address their needs during National Crime Victims' Rights Week and throughout the year; and express our appreciation for those victims and crime survivors who have turned personal tragedy into a motivating force to improve our response to victims of crime and build a more just community.

Signed this 2nd day of April, 2013.

Cecil A. Gutierrez, Mayor



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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, McKean, Shaffer, Fogle, Taylor. Councilor Clark arrived at 6:50 p.m.

**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. Councilor Shaffer moved to approve the Consent Agenda, including the amended minutes. The motion was seconded by Councilor Trenary and a roll call vote was taken with all councilors present voting in favor thereof.

1. CITY CLERK**Approval of Council Minutes
Motion**

Administrative Action: The minutes from the March 5, 2013 regular meeting were approved as amended.

2. CITY MANAGER**BOARDS AND COMMISSION APPOINTMENTS**

Administrative Action: The following appointments to the Fire and Rescue Advisory Commission, Human Services Commission were approved.

Eugene Culbertson to City Commission Member on the Fire and Rescue Advisory Commission for a term effective until June 30, 2015.

Audra Montoya to Human Services Commission for a term effective until June 30, 2015.

3. PARKS & RECREATION**Supplemental Budget And Appropriation—"Fishing is Fun" Grant
Ordinance # 5752**

Administrative Action: An ordinance on second reading enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for a Federal grant from the

United States Fish and Wildlife Service for construction of certain components of the River's Edge Natural Area Development Project was approved and ordered published on second reading.

4. DEVELOPMENT SERVICES

Historic Designation – Elks Lodge Public Hearing and Ord.

A Public Hearing was held and Ordinance amending Ordinance #5743 and Designating as a Historic Landmark the Loveland Elks Lodge Located at 103 East 4th Street in Loveland, Colorado was approved and ordered published on first reading.

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports None.

b) Business from Council

Shaffer

Attended the Cheryl Meyers art exhibit as well as the "Look. Think. Make. Connect! Annual Thompson School District Art Show" going on at the Museum. Expressed appreciation for the Boards and Commission Summit, especially Nikki Garshelis. Attended an open house for Housing Authority Mirasol project, Phase II, which is currently being occupied. Asked for support from three other councilors to bring the question of a ban on oil and gas operation or "fracking" back to Council for discussion at a future Study Session. Councilors Trenary, Farley and Gutierrez supported the direction. There will be no public hearing at that time. Staff was directed to bring information on what other communities have done including any legal ramifications, for those actions.

Trenary

Attended the Water and Power open house to listen to the history of the City's water rights.

Gutierrez

Warned residents to beware of scammers requesting financial assistance for family or neighbors stranded in a foreign country. Encouraged citizens that see or suspect vandalism to report it to the Police right away.

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

5. CITY CLERK

APPROVAL OF COUNCIL MINUTES

Administrative action: Councilor Taylor was not present at the Study Session. Councilor Shaffer moved to approve the February 26, 2013 Study Session minutes. The motion, seconded by Councilor Trenary, carried with all voting in favor and Councilor Taylor abstaining.

6. DEVELOPMENT SERVICES

PUBLIC HEARING

OIL AND GAS DEVELOPMENT REGULATIONS

Ordinance #5753

Legislative Action: Development Services Director, Greg George introduced this item to Council. The first reading of the ordinance was approved with five councilors voting in favor of the ordinance and four against at the March 5, 2013 meeting. The ordinance would:

- a. Require operators to obtain a permit from the City prior to locating an oil and gas facility within Loveland city limits.
- b. Provide two processes and each with a different mix of standards for obtaining a permit.

- i. Mandatory Process: The mandatory process would require compliance with standards referred to as "baseline standards." These standards are designed to protect public health, safety and welfare and the environment, while avoiding preemption by state law and the Colorado Oil and Gas Conservation Commission (COGCC) regulations. The permit would require approval by the Planning Commission, with possible appeal to City Council.

- ii. Option process: The optional process would be strictly voluntary and would require compliance with standards referred to as "enhanced standards," in addition to most of the baseline standards. These standards are designed to mitigate adverse impact on public health, safety and welfare and the environment to a greater degree than required by the COGCC. To encourage operators to agree to comply with these higher enhanced standards that might otherwise be preempted by state law, the permit would be approved by the Director of Development Services, with no appeal to either the Planning Commission or City Council. Any appeal would be to Larimer County District Court. Mayor Gutierrez opened the public hearing at 8:46. Jake Matters, Assistant to the Attorney General related to matters of Oil and Gas, answered questions from Council. Mr. Matters told Council that the Commission was comfortable with the changes and would recommend Council approve the ordinance. Mr. Matters discouraged Council from considering a ban on oil and gas fracturing; Bill Watry, 2208 Mugho Place spoke in support, and questioned the need for enhanced standards; Carl Wagner, Equalizer Lake, spoke in support; Carla Westin, 226 S. Washington spoke in opposition; Steve Fancher, 2001 Frances, spoke in support; Mike Eberhard, Anadarko, spoke in support, Council asked Mr. Eberhard to summarize his comments and direct them to the City Clerk, to be forwarded to City Council; Deanna Ball, 2591 Begonia, spoke in opposition; Sharon Anhorn, 303 N. Garfield, deferred her time to Colt Dole, Mr. Dole spoke in opposition; Carla Massaro, 425 Ontero, spoke in opposition; Robert Winkler, resident of Weld County, spoke in opposition; Ann Harroun, 3321 Apple Ave, spoke in opposition; Ryan Millard, 2903 Montana Pl, spoke in opposition; Dr. Nathan Pole, no address given, spoke in opposition; Irene Fortune, 1430 Avon, spoke in opposition; Richard ??, Ft. Collins resident, spoke in support; Daniel Largon, 2830

Corina Dr, spoke in opposition; Steve Johnson, Johnstown resident, spoke in opposition; Tom Buchanan, 910 W. 8th St, spoke in support; Bonnie McClathy, non-resident, spoke in opposition; Linda Sandahl, 4170 Garfield, spoke in opposition; Jack Canty, 6295 Bluff Ln, spoke in support; Linda Schlotsty, 1761 E. 7th St, spoke in opposition; Kathy Hartman, 945 S. 6th, spoke in opposition; Tommy Thompson, Colorado resident, spoke in support; Layton Birsch, 2075 Grays Peak Dr., spoke in opposition; Susan Aldridge, Anadarko, spoke in support of the ordinance. Staff will put together a white paper that identifies the differences between the City of Loveland "Baseline Standards" and the State Regulations. Dawn Autsin, 1630 20th St, spoke in opposition; Ethel Mininger, 2874 Chicory, spoke in support; Matthew Fredrecek, 1360 20th St S.W., spoke in opposition; Judy Freeman, 1641 Pinon St. spoke in opposition; Stan Dempsey 1660 Lincoln, president of the Colorado Petroleum Association, spoke in support; Kim Orr, no address given, spoke in opposition; Evi Buckner Osler, 3354 Valley Oak Drive, spoke in opposition; Jeannie Essling, 2108 Skyrock, spoke in opposition; Linda Owen, 1642 Pinon Ct. spoke in opposition; Barbara Case, 2475 Glendale Ct. spoke in opposition; Weldon Thees 4933 Filbert Dr., spoke in opposition; Sal Vadivia 800 block of 4th St, spoke in opposition. Mayor Gutierrez closed the public hearing at 10:30 p.m. and called for a break. Council reconvened at 10:41 p.m. Staff addressed questions that arose during public comment. Discussion ensued. City Attorney John Duval recommended Council consider the ordinance identified as "Clean draft incorporating City Attorney's changes made today". Councilor Shaffer moved to adopt and ordered published on second reading "AN ORDINANCE ADDING TO THE LOVELAND MUNICIPAL CODE CHAPTER 18.77 FOR THE REGULATION OF OIL AND GAS OPERATIONS AND CHAPTER 18.78 FOR SETBACKS FOR DEVELOPMENT FROM OIL AND GAS OPERATIONS IN THE CITY OF LOVELAND". The motion, seconded by Councilor McKean, carried five Councilors voting in favor and Councilors Gutierrez, Farley, Shaffer, and Trenary voting no.

ADJOURNMENT

Having no further business to come before Council, the March 19, 2013 Regular Meeting was adjourned at 1:00 a.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

**CITY OF LOVELAND****DEVELOPMENT SERVICES DEPARTMENT**

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AGENDA ITEM: 2
MEETING DATE: 4/2/2013
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Bethany Clark, Community & Strategic Planning

TITLE:

An ordinance amending Ordinance #5743 and designating as a Historic Landmark the Loveland Elks Lodge located at 103 East 4th Street, in Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Move to adopt on second reading an ordinance amending Ordinance #5743 and designating as a Historic Landmark the Loveland Elks Lodge located at 103 East 4th Street in Loveland, Colorado

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 legislative action to adopt an ordinance on second reading amending Ordinance #5743 and designating as a Historic Landmark the "Loveland Elks Lodge" at 103 East 4th Street. This ordinance modifies the name under which the historic structure located at 103 East 4th Street is designated.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:

On February 19, 2013 City Council passed on second reading Ordinance #5743 designating as a Historic Landmark the Loveland Elks Lodge/Loveland Hotel located at 103 East 4th Street. On February 25, 2013 the City Attorney's Office received a letter from an attorney representing the owner of the building directly east of the Loveland Elks Lodge. The letter indicated that the adjacent owner was operating their business under the trade name "Loveland Hotel" and to avoid confusion for their patrons asked for the name "Loveland Hotel" to be removed from the designation title. This amending ordinance modifies the name under which the historic structure located at 103 East 4th Street is designated from "Loveland Elks Lodge/Loveland Hotel" to "Loveland Elks Lodge" and further clarifies the historical reference to the "Loveland Hotel". City Council unanimously passed this ordinance for first reading on the consent agenda at the March 19, 2013 meeting.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

- A. Ordinance

FIRST READING: March 19, 2013

SECOND READING: April 2, 2013

ORDINANCE NO.

AN ORDINANCE AMENDING ORDINANCE #5743 AND DESIGNATING AS A HISTORIC LANDMARK THE LOVELAND ELKS LODGE #1051 LOCATED AT 103 EAST 4TH STREET IN LOVELAND, COLORADO

WHEREAS, on February 19, 2013, City Council adopted Ordinance #5743 on second reading, designating the building located on that real property described on **Exhibit A** attached hereto and incorporated herein by reference (“Property”), known as 103 East 4th Street, Loveland, Colorado, as a historic landmark pursuant to Chapter 15.56 of the Loveland Municipal Code (“Code”); and

WHEREAS, the building so designated was originally constructed as the Lovelander Hotel in 1913, was purchased by the Loveland Elks Lodge #1051 in 1927, and has been operated as the Loveland Elks Lodge since its purchase; and

WHEREAS, Ordinance #5743 designated the building located on the Property as a historic structure under the name “Loveland Elks Lodge/Loveland Hotel”; and

WHEREAS, the building adjacent to the Loveland Elks Lodge #1051 at 111 East 4th Street, Loveland, Colorado was constructed sometime between 1918 and 1927 as an addition to the original Lovelander Hotel and continues to operate under the registered trade name “Loveland Hotel”; and

WHEREAS, the City Council desires to amend Ordinance #5743 to modify the name under which the historic structure located on the Property is designated from “Loveland Elks Lodge/Loveland Hotel” to “Loveland Elks Lodge #1051”.

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

Section 1. Ordinance #5743 is hereby amended to substitute “Loveland Elks Lodge #1051” for “Loveland Elks Lodge/Loveland Hotel” throughout, with the intended and resulting effect that the building located on the Property and designated as a historic structure under that Ordinance shall be known as the “Loveland Elks Lodge #1051”.

Section 2. Ordinance #5743 shall remain in full force and effect in accordance with its terms, as amended by this Ordinance.

Section 3. 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 4. That the City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

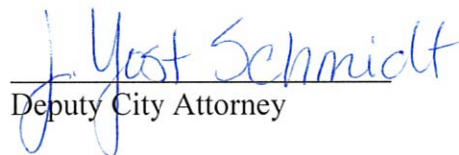
Signed this 4th day of April, 2013

Cecil A. Gutierrez, Mayor

Attest:

City Clerk

APPROVED AS TO FORM:



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



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AGENDA ITEM: 3
MEETING DATE: 4/2/2012
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Noreen Smyth, Current Planning

TITLE:

AN ORDINANCE REPEALING AND REENACTING CHAPTER 18.05, REPEALING SECTION 16.16.070, AND ENACTING A NEW CHAPTER 16.18 REGARDING PUBLIC NOTICE REQUIREMENTS FOR LAND USE AND ZONING MATTERS

RECOMMENDED CITY COUNCIL ACTION:

Move to adopt the ordinance 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. Adoption a motion continuing the item to a future Council meeting
-

DESCRIPTION:

A legislative action to consider first reading of an ordinance to approve a staff-initiated text amendment to the Subdivision and Zoning Codes to modify requirements related to provisions for public notices. The notice requirements for oil and gas development will be established in a separate amendment, which is scheduled for Planning Commission on April 22nd and Council on May 21st.


BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

This item proposes a text amendment to the public notice sections of Title 16, the Subdivision Code, and Title 18, the Zoning Code. This amendment was pursued in response to challenges development applicants have experienced in meeting the Code's lake front mailed notice requirements. The amendment scales back the lake front notice requirements, simplifies the

method for measuring mailed notice distances, clarifies the notification requirement through a reorganization of text, and provides for expanded notice for properties fronting golf courses and parks. The amendment also provides allowance for the Director of Development Services to provide notice of his or her decision to property owners who may be affected by such a decision, in addition to those owners otherwise required to receive notice.

REVIEWED BY CITY MANAGER: 

LIST OF EXHIBITS:

1. Text Amendment showing substantive changes
2. Existing code provisions-18.05 and 16.16
3. Staff memorandum

FIRST READING April 2, 2013

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE REPEALING AND REENACTING CHAPTER 18.05, REPEALING SECTION 16.16.070, AND ENACTING A NEW CHAPTER 16.18 REGARDING PUBLIC NOTICE REQUIREMENTS FOR LAND USE AND ZONING MATTERS

WHEREAS, Chapter 18.05 of the Loveland Municipal Code sets forth standards for public notice for neighborhood meetings, public hearings, and staff decisions as specified within Title 18; and

WHEREAS, Section 16.16.070 sets forth provides standards for public notice for neighborhood meetings, public hearings, and staff decisions as specified within Title 16; and

WHEREAS, the standards set forth in Chapter 18.05 include specific provisions applicable to notice for lakefront properties and that have created challenges for development applicants that warrant amendment to clarify such situations apply similar standards for properties fronting parks or golf courses in addition to lakes; and

WHEREAS, the amendments to Chapter 18.05 are also intended to simplify the method of measuring mailed notice distance, clarify requirements through a reorganization of the text, and require notice for director decisions and applications that have not previously been included in the public notice sections; and

WHEREAS, the creation of a new Chapter 16.18 is intended to enact consistent public notice standards applicable to subdivision decisions that track the provisions contained in the reenacted Chapter 18.05; and

WHEREAS, the new proposed Chapters 18.05 and 16.18 have been reviewed by the Title 18 Committee, by the Planning Commission at a public hearing, and recommended to Council for adoption.

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

Section 1. That Chapter 18.05 of the Loveland Municipal Code is hereby repealed and reenacted to read as follows:

Chapter 18.05

PUBLIC NOTICE REQUIREMENTS

Sections:

18.05.010	Purpose.
18.05.020	Neighborhood Meetings.
18.05.030	Mailed Notice for Neighborhood Meetings.
18.05.040	Posted Notice for Neighborhood Meetings.
18.05.050	Public Hearings.
18.05.060	Mailed Notice for Public Hearings.
18.05.070	Posted Notice for Public Hearings.
18.05.080	Published Notice for Public Hearings.
18.05.090	Staff Decisions.
18.05.100	Computation of Time.
18.05.110	Notice Cost.
18.05.120	Applicant's Certification.
18.05.130	Failure to Provide Notice, Defective Notice.
18.05.140	Continuation of Hearings.
18.05.150	Notice for Appeals.

18.05.010 Purpose.

This Chapter provides standards for public notice for neighborhood meetings, public hearings, and staff decisions as specified within Title 18.

18.05.020 Neighborhood Meetings.

Mailed and posted public notice is required for neighborhood meetings. It is the applicant's responsibility to mail and post public notice for neighborhood meetings.

18.05.030 Mailed Notice for Neighborhood Meetings.

A. Deadline for Mailing. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 18.05.030.C(1), at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 18.05.120

B. Content. The written (mailed) notice for neighborhood meetings shall include the following:

1. Time, date, and location of the meeting.
2. The application(s) to be considered.
3. Project name.
4. Applicant's name.
5. Vicinity map identifying the site within the neighborhood context.
6. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties,

- include a statement that the full legal description is available at the Current Planning Division office.
7. Description of the proposal for the subject property, including existing and proposed zoning, if applicable.
 8. Primary contact (applicant or applicant's consultant) information, including name of individual, name of company, phone number and e-mail address.
 9. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.

C. Requirements for Mailing.

1. **Ownership List.** A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall within the distances provided in Table 18.05-1 and Sections 18.05.030.C (3) through (6), shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Assessor. This list shall be current to within sixty (60) days prior to the mailing.
2. **Area of Notification.** For all applications requiring written (mailed) public notice, the distances specified in Table 18.05-1 Mailed Notice Distance Requirements, shall be used to determine the area to which such notice shall be given, except as provided in Sections 18.05.030.C (3) through (6). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 18.05-1 MAILED NOTICE DISTANCE REQUIREMENTS FOR NEIGHBORHOOD MEETINGS			
Application Type	Application Size		
	Under 5 acres	5 – 50 acres	Greater than 50 acres
Annexation, Zoning	1,200 ft.	1,200 ft.	1,200 ft.
Comprehensive Plan Amendment	See Section 6.0 of the Loveland Comprehensive Master Plan		
Major Home Occupation	All members of the neighborhood <i>as defined in Section 18.48.020</i>		
PUD General Development Plan	1,200 ft.	1,200 ft.	1,200 ft.
PUD Preliminary Development Plan	600 ft.	900 ft.	1,200 ft.
Rezoning	600 ft.	900 ft.	1,200 ft.
Special Review	600 ft.	900 ft.	1,200 ft.
Variance	200 ft.	200 ft.	200 ft.

3. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
4. Lake, golf course and park front notification.

- a. If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 18.05-1. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
- 5. Reduction in Notification Area. All notification distances in Table 18.05-1 shall be reduced by fifty (50) percent, but shall not be less than three hundred (300) feet, for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.
- 6. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 18.05-1 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.

18.05.040 Posted Notice for Neighborhood Meetings.

A. Deadline for Posting. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall post a notice on the subject property.

B. Content. The posted notice for neighborhood meetings shall include the following:

- 1. Time, date, and location of the meeting.
- 2. The application(s) to be considered.
- 3. Project name.
- 4. City of Loveland Current Planning Division contact information, including the division phone number.

C. Requirements for Posting.

- 1. It shall be the applicant's responsibility to have the sign(s) created by a sign company.
- 2. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the neighborhood meeting. The Current Planning Division shall provide the applicant with specifications for the posting location of the required signs.

3. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 18.05.120.

18.05.050 Public Hearings.

Mailed, posted and published public notice is required for public hearings. It is the applicant's responsibility to mail and post public notice for public hearings; the City is responsible to publish notice for public hearings.

18.05.060 Mailed Notice for Public Hearings.

A. **Deadline for Mailing.** At least fifteen (15) days prior to a public hearing, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 18.05.060.C(1), at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 18.05.120.

B. **Content.** The mailed notice for public hearings shall include the following:

1. Time, date, and location of the hearing.
2. The application(s) to be considered.
3. Project name.
4. Applicant's name.
5. Vicinity map identifying the site within the neighborhood context.
6. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Current Planning Division office.
7. Description of the proposal for the subject property.
8. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
9. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
10. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.

C. **Requirements for Mailing.**

1. **Ownership List.** A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall within the distances provided in Table 18.05-2 and Sections 18.05.060.C (3) through (7), shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Assessor. This list shall be current to within sixty (60) days prior to the mailing.
2. **Area of Notification.** For all applications requiring written (mailed) public notice, the distances specified in Table 18.05-2 Mailed Notice Distance Requirements, shall be used to determine the area to which such notice shall be given, except as provided in

Sections 18.05.060.C (3) through (7). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 18.05-2 MAILED NOTICE DISTANCE REQUIREMENTS FOR PUBLIC HEARINGS			
Application Type	Application Size		
	Under 5 acres	5 – 50 acres	Greater than 50 acres
Annexation, Zoning	1,200 ft.	1,200 ft.	1,200 ft.
Be District Developments*	300 ft.	300 ft.	300 ft.
Comprehensive Plan Amendment	See Section 6.0 of the Loveland Comprehensive Master Plan		
Height Exception	300 ft.	300 ft.	300 ft.
PUD General Development Plan	1,200 ft.	1,200 ft.	1,200 ft.
PUD Preliminary Development Plan	600 ft.	900 ft.	1,200 ft.
Rezoning	600 ft.	900 ft.	1,200 ft.
Special Review – for type 3 permit	600 ft.	900 ft.	1,200 ft.
Variance	200 ft.	200 ft.	200 ft.

* For Be District developments requiring approval of Planning Commission as indicated in 18.24.050

3. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
4. Lake, golf course and park front notification.
 - a. If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 18.05-2. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
5. Reduction in Notification Area. All notification distances in Table 18.05-2 shall be reduced by fifty (50) percent, but shall not be less than three hundred (300) feet, for

infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.

6. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 18.05-2 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the public hearing.
7. Mineral Estate Owners. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given by the applicant at least thirty (30) days prior to the public hearing in accordance with the requirements of the Colorado Notification of Surface Development Act (C.R.S. § 24-65.5-101 et seq.)(the “act”). An affidavit of the applicant’s compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of the act.

18.05.070 Posted Notice for Public Hearings.

A. Deadline for Posting. At least fifteen (15) days prior to a public hearing, the applicant shall post a notice on the subject property.

B. Content. The posted notice for public hearings shall include the following:

1. Time, date, and location of the hearing.
2. The application(s) to be considered.
3. Project name.
4. City of Loveland Current Planning Division contact information, including the division phone number.

C. Requirements for Posting.

1. It shall be the applicant’s responsibility to have the sign(s) created by a sign company.
2. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant’s responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the public hearing. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
3. An affidavit of the applicant’s compliance with the posted notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 18.05.120.

18.05.080 Published Notice for Public Hearings.

A. Deadline for Publishing. Notice shall be published by the current planning division at least fifteen (15) days prior to a public hearing.

B. Content. The published notice for public hearings shall include the following:

1. Time, date, and location of the hearing.
2. The application(s) to be considered.
3. Project name.
4. Applicant's name.
5. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Current Planning Division office.
6. Description of the proposal for the subject property.
7. City of Loveland Current Planning Division contact information, including the division phone number.
8. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.

C. Requirements for Publishing. Notice of the public hearing shall be published one (1) time in a newspaper of general circulation.

18.05.090 Staff Decisions.

A. Required Notice. Mailed or posted public notice is required for certain staff decisions relating to special review and major home occupation applications. Refer to Code Section 18.40 for requirements applicable to special review application and Section 18.48.020 for requirements applicable to major home occupation application.

B. Optional Notice. Notice of staff decisions authorized under this Title but not otherwise subject to specific notice requirements may be required by the Current Planning Manager when the following circumstances exist:

1. A discretionary decision has been made by staff concerning the application of one or more regulations contained in this Title; and
2. The decision may impact the use or enjoyment of property within the vicinity of the subject site; and
3. There is reason to believe that there may be parties of interest residing or owning property within the vicinity of the affected property.

C. Type and Distance of Optional Notice. Notice type(s) and distance for optional notice shall be at the discretion of the Current Planning Manager. In no instance shall mailed notice exceed 300 feet from the boundary of the subject property.

18.05.100 Computation of Time.

In computing any period of time prescribed for the purpose of giving notice under the provisions of this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.

18.05.110 Notice Cost.

All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for Published Notice.

18.05.120 Applicant's Certification.

Prior to the neighborhood meeting or public hearing, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant in Sections 18.05.020 and 18.05.050.

18.05.130 Failure to Provide Notice, Defective Notice.

Failure to provide the required affidavit, or evidence of a defective mailing list prior to a neighborhood meeting or public hearing, shall result in termination of the review process until proper notice is provided, meeting all applicable provisions herein.

18.05.140 Continuation of Hearings and Neighborhood Meetings.

A hearing or neighborhood meeting for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing or meeting is announced to the public at the time of continuance.

18.05.150 Notice for Appeals.

Any final decision under this Title that is appealed is subject to the same notice standards as the original notice.

Section 2. That Section 16.16.070 of the Loveland Municipal Code is hereby repealed and a new Chapter 16.18 of the Loveland Municipal Code is hereby enacted lieu thereof to read as follows:

16.18**PUBLIC NOTICE REQUIREMENTS****Sections:**

- 16.18.010 Purpose.**
- 16.18.020 Neighborhood meetings.**
- 16.18.030 Public hearings.**
- 16.18.040 Staff decisions (minor subdivisions).**
- 16.18.050 Additional notice requirements.**
- 16.18.060 Notice for appeals.**

16.18.010 Purpose.

- A. Purpose. This section provides standards for public notice for neighborhood meetings, public hearings, and staff decisions as specified within Title 16.

- B. Applicability. Public notice shall not be required for Final Plats for Major Subdivisions, Boundary Line Adjustments, Lot Mergers, or Simple Plats.

16.18.020 Neighborhood meetings.

- A. Applicability. Mailed and posted public notice is required for neighborhood meetings. It is the applicant's responsibility to mail and post public notice for neighborhood meetings.

B. Mailed Notice for Neighborhood Meetings.

1. Deadline for Mailing. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.18.020(B)(3)(a) at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).
2. Content. The written (mailed) notice for neighborhood meetings shall include the following:
 - a. Time, date, and location of the meeting.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. Applicant's name.
 - e. Vicinity map identifying the site within the neighborhood context.
 - f. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Civic Center.
 - g. Description of the proposal for the subject property.
 - h. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
 - i. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
3. Requirements for Mailing.
 - a. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the distances provided in Table 16.18-1 and subsections (c) through (f) of this subsection 16.18.020.B.(3) shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Assessor. This list shall be current to within sixty (60) days prior to the mailing.
 - b. Area of Notification. The distances specified in Table 16.18-1 Mailed Notice Distance Requirements for Neighborhood Meetings, shall be used to determine the area to which written (mailed) notice shall be given, except as provided in subsections c through f of this subsection 16.18.020(B)(3). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 16.18-1 MAILED NOTICE DISTANCE REQUIREMENTS FOR NEIGHBORHOOD MEETINGS			
Application Type	Application Size		
	Under 5 acres	5 – 50 acres	Greater than 50 acres
Preliminary Plat	600 ft.	900 ft.	1,200 ft.

- c. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
 - d. Lake, golf course and park front notification.
 - a. If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 16.18-1. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
 - e. Reduction in Notification Area. All notification distances in Table 16.18-1 shall be reduced by fifty (50) percent, but shall not be less than four hundred (400) feet, for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.
 - f. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 16.18-1 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
- C. Posted Notice for Neighborhood Meetings.
- 1. Deadline for Posting. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall post a notice on the subject property.
 - 2. Content. The posted notice for neighborhood meetings shall include the following:
 - a. Time, date, and location of the meeting.
 - b. The application(s) to be considered.
 - c. Project name.

- d. City of Loveland Current Planning Division contact information, including the division phone number.
- 3. Requirements for Posting.
 - a. It shall be the applicant's responsibility to have the sign(s) created at a sign company.
 - b. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the neighborhood meeting. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
 - c. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).

16.18.030 Public hearings.

- A. Applicability. Mailed, posted and published public notice is required for public hearings. It is the applicant's responsibility to mail and post public notice for public hearings and staff's responsibility to publish notice for public hearings.
- B. Mailed Notice for Public Hearings.
 - 1. Deadline for Mailing. At least fifteen (15) days prior to a public hearing, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.18.030(B)(3)(a) at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).
 - 2. Content. The written (mailed) notice for public hearings shall include the following:
 - a. Time, date, and location of the hearing.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. Applicant's name.
 - e. Vicinity map identifying the site within the neighborhood context.
 - f. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at City Hall.
 - g. Description of the proposal for the subject property.
 - h. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
 - i. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
 - j. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
 - 3. Requirements for Mailing.

- a. **Ownership List.** A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the distances provided in Table 16.18-2 and subsections (c) through (g) of this subsection 16.18.030..B(3) shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Assessor. This list shall be current to within sixty (60) days prior to the mailing.
- b. **Area of Notification.** The distances specified in Table 16.18-2 Mailed Notice Distance Requirements for Public Hearings, shall be used to determine the area to which written (mailed) notice shall be given, except as provided in subsections c through g of this subsection 16.18.030(B)(3). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 16.18-2 MAILED NOTICE DISTANCE REQUIREMENTS FOR PUBLIC HEARINGS			
Application Type	Application Size		
	Under 5 acres	5 – 50 acres	Greater than 50 acres
Preliminary Plat	600 ft.	900 ft.	1,200 ft.
Obsolete Subdivisions	See Chapter 16.36		
Vacation (of easements or rights-of-way)	See Chapter 16.36		

- c. **Public rights-of-way and streets.** Notification distance shall be calculated inclusive of public rights-of-way and public streets.
- d. **Lake, golf course and park front notification.**
 - a. If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 16.18-2. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
- e. **Reduction in Notification Area.** All notification distances in Table 16.18-2 shall be reduced by fifty (50) percent, but shall not be less than four hundred (400) feet, for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at

least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.

- f. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 16.18-2 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the public hearing.
 - g. Mineral Estate Owners. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given by the applicant at least thirty (30) days prior to the public hearing in accordance with the requirements of the Colorado Notification of Surface Development Act (C.R.S. § 24-65.5-101 et seq.) (the “act”). An affidavit of the applicant’s compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of the act.
- C. Posted Notice for Public Hearings.
1. Deadline for Posting. At least fifteen (15) days prior to a public hearing, the applicant shall post a notice on the subject property.
 2. Content. The posted notice for public hearings shall include the following:
 - a. Time, date, and location of the hearing.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. City of Loveland Current Planning Division contact information, including the division phone number.
 3. Requirements for Posting.
 - a. It shall be the applicant’s responsibility to have the sign(s) created at a sign company.
 - b. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant’s responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the public hearing. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
 - c. An affidavit of the applicant’s compliance with the posted notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).
- D. Published Notice for Public Hearings.
1. Deadline for Publishing. Notice shall be published by the Current Planning Division at least fifteen (15) days prior to a public hearing.
 2. Content. The published notice for public hearings shall include the following:
 - a. Time, date, and location of the hearing.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. Applicant’s name.
 - e. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral

estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Civic Center.

- f. Description of the proposal for the subject property.
 - g. City of Loveland Current Planning Division contact information, including the division phone number.
 - h. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
3. Requirements for Publishing. Notice of the public hearing shall be published one (1) time in a newspaper of general circulation.

16.18.040 Staff decisions (minor subdivisions).

- A. Applicability. Mailed and posted public notice is required for staff decisions. It is the applicant's responsibility to mail and post public notice for staff decisions.
- B. Mailed Notice for Staff Decisions.
 - 1. Deadline for Mailing. Within fifteen (15) days after the preliminary approval of a minor plat of subdivision, the planning division shall formulate a preliminary written statement of findings and the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.18.040(B)(3)(a) at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to final approval of the minor subdivision and shall satisfy the requirements of Section 16.18.050(C).
 - 2. Content. The written (mailed) notice for staff decisions shall include the following:
 - a. Date of the decision.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. Applicant's name.
 - e. Vicinity map identifying the site within the neighborhood context.
 - f. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Civic Center.
 - g. Description of the proposal for the subject property.
 - h. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
 - i. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
 - j. A statement that interested parties may submit an appeal in accordance with the requirements of Chapter 18.80 of this Code and the date of the ten (10) day deadline for filing an appeal.
 - 3. Requirements for Mailing.
 - a. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within

the distances provided in Table 16.18-3 and subsections c through f of this subsection 16.18.040(B)(3) shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Assessor. This list shall be current to within sixty (60) days prior to the mailing.

- b. Area of Notification. The distances specified in Table 16.18-3 Mailed Notice Distance Requirements for Staff Decisions, shall be used to determine the area to which written (mailed) notice shall be given, except as provided in subsections c through f of this subsection 16.18.040(B)(3). All properties that fall wholly or partially within the distance, as measured from the perimeter of the subject property, shall be included.

Table 16.18-3 MAILED NOTICE DISTANCE REQUIREMENTS FOR STAFF DECISIONS			
Application Type	Application Size		
	Under 5 acres	5 – 50 acres	Greater than 50 acres
Minor Subdivision	300 ft.	300 ft.	300 ft.

- c. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
- d. Lake, golf course and park front notification.
 - a. If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 16.18-3. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
- e. Reduction in Notification Area. All notification distances in Table 16.18-3 shall be reduced by fifty (50) percent, but shall not be less than four hundred (400) feet for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.
- f. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 16.18-3 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The

applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the staff decision.

C. Posted Notice for Staff Decisions.

1. **Deadline for Posting.** The applicant shall post notice on the subject property of the staff decision within fifteen (15) days after the preliminary staff decision and keep it posted for the duration of the ten (10) day appeal period.
2. **Content.** The posted notice for staff decisions shall include the following:
 - a. Date of the decision.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. City of Loveland Current Planning Division contact information, including the division phone number.
3. **Requirements for Posting.**
 - a. It shall be the applicant's responsibility to have the sign(s) created at a sign company.
 - b. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 10-day appeal period. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
 - c. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the final approval for which the notice was given and shall meet the requirements of Section 16.18.050(C).

D. Optional Notice.

1. Notice of staff decisions authorized under this Title but not otherwise subject to specific notice requirements may be required by the Current Planning Manager when the following circumstances exist:
 - a. A discretionary decision has been made by staff concerning the application of one or more regulations contained in this Title; and
 - b. The decision may impact the use or enjoyment of property within the vicinity of the subject site; and
 - c. There is reason to believe that there may be parties of interest residing or owning property within the vicinity of the affected property.
2. **Type and Distance of Optional Notice.** Notice type(s) and distance for optional notice shall be at the discretion of the Current Planning Manager. In no instance shall mailed notice exceed 300 feet from the boundary of the subject property.

16.18.050 Additional notice requirements.

- A. **Computation of Time.** In computing any period of time prescribed for the purpose of giving notice under this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.
- B. **Notice Cost.** All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for the published notice.

- C. Applicant's Certification. Prior to the neighborhood meeting, public hearing, or final staff decision, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant.
- D. Failure to Provide Notice, Defective Notice. Failure to provide the required affidavit or evidence of a defective mailing list prior to a neighborhood meeting or public hearing shall result in termination of the review process until proper notice is provided meeting all applicable provisions under this section.
- E. Continuation of Hearings and Neighborhood Meetings. A hearing or neighborhood meeting for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing or meeting is announced to the public at the time of continuance.

16.18.060 Notice for appeals.

Any final decision under this Title that is appealed is subject to the same notice standards as the original notice.

Section 3. That City Council hereby further amends Titles 18 and 16 to correct cross-references to sections of Chapters 18.05 and 16.18 included in other Sections of Titles 18 and 16 so they refer to the corresponding provisions as renumbered in the foregoing modification and authorizes the City Clerk to make conforming changes to Titles 16 and 18.

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

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

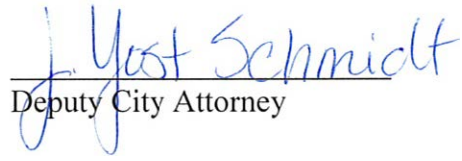
ADOPTED this ____ day of _____, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Deputy City Attorney

CHAPTERS 18.05 AND 16.18 - AMENDMENTS

This amended version of Chapter 18.05 is proposed as a replacement if the entire chapter. The following is intended to identify substantive changes in the provisions of Chapter 18.05. In addition to the substantive changes, the Chapter has been reorganized for improved clarity and ease of use by applicants.

Yellow highlighting indicates substantive, rather than clarifying or organizational, changes related to the following:

- Reduced lake front mailed notice distance
- Inclusion of properties fronting golf courses and parks in same category as lake front properties for mailed notice purposes
- Exclusion of public streets/rights of way when measuring notice distance, to simplify measurement
- Expansion of standard mailed notice distances (in light of exclusion of streets/rights of way)
- Inclusion of public notice standards for certain staff decisions, BE District site development plans requiring Planning Commission approval, and height exceptions

Clarifying changes include the following:

- Organizing the chapter by type of meeting or action (neighborhood meetings, public hearings, staff decisions) instead of by type of noticed (mailed, posted, published), which includes changing section titles within Chapter 18.05
- Including information on staff decision notice requirements set forth in other chapters (Special Review and Major Home Occupation)
- Clarifying method for measuring notice distances (from boundary of subject property rather than a more complicated “radius” measurement)

Chapter 18.05

PUBLIC NOTICE REQUIREMENTS

Sections:

18.05.010	Purpose.
18.05.020	Neighborhood Meetings.
18.05.030	Mailed Notice for Neighborhood Meetings.
18.05.040	Posted Notice for Neighborhood Meetings.
18.05.050	Public Hearings.
18.05.060	Mailed Notice for Public Hearings.
18.05.070	Posted Notice for Public Hearings.
18.05.080	Published Notice for Public Hearings.
18.05.090	Staff Decisions.
18.05.100	Computation of Time.
18.05.110	Notice Cost.

- 18.05.120 Applicant's Certification.**
- 18.05.130 Failure to Provide Notice, Defective Notice.**
- 18.05.140 Continuation of Hearings.**
- 18.05.150 Notice for Appeals.**

18.05.010 Purpose.

This Chapter provides standards for public notice for neighborhood meetings, public hearings, and staff decisions as specified within Title 18.

18.05.020 Neighborhood Meetings.

Mailed and posted public notice is required for neighborhood meetings. It is the applicant's responsibility to mail and post public notice for neighborhood meetings.

18.05.030 Mailed Notice for Neighborhood Meetings.

A. Deadline for Mailing. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 18.05.030.C(1), at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 18.05.120

B. Content. The written (mailed) notice for neighborhood meetings shall include the following:

1. Time, date, and location of the meeting.
2. The application(s) to be considered.
3. Project name.
4. Applicant's name.
5. Vicinity map identifying the site within the neighborhood context.
6. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Current Planning Division office.
7. Description of the proposal for the subject property, including existing and proposed zoning, if applicable.
8. Primary contact (applicant or applicant's consultant) information, including name of individual, name of company, phone number and e-mail address.
9. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.

C. Requirements for Mailing.

1. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall within the distances provided in Table 18.05-1 and Sections 18.05.030.C (3) through (6), shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the

- latest records of the **Larimer County Assessor** [was Clerk and Recorder]. This list shall be current to within **sixty (60) days** [was 30 days] prior to the mailing.
2. Area of Notification. For all applications requiring written (mailed) public notice, the distances specified in Table 18.05-1 Mailed Notice Distance Requirements, shall be used to determine the area to which such notice shall be given, except as provided in Sections 18.05.030.C (3) through (6). All properties that fall wholly or partially within the stated distance, **as measured from the perimeter of the subject property**, shall be included.

Table 18.05-1 MAILED NOTICE DISTANCE REQUIREMENTS FOR NEIGHBORHOOD MEETINGS			
Application Type	Application Size		
	Under 5 acres [was 20 or less]	5 – 50 acres [was 21-50]	Greater than 50 acres
Annexation, Zoning	1,200 ft. [1,000 ft.]	1,200 ft. [1,000 ft.]	1,200 ft. [1,000 ft.]
Comprehensive Plan Amendment	See Section 6.0 of the Loveland Comprehensive Master Plan		
Major Home Occupation	<i>All members of the neighborhood as defined in Section 18.48.020</i>		
PUD General Development Plan	1,200 ft. [1,000 ft.]	1,200 ft. [1,000 ft.]	1,200 ft. [1,000 ft.]
PUD Preliminary Development Plan	600 ft. [500 ft.]	900 ft. [750 ft.]	1,200 ft. [1,000 ft.]
Rezoning	600 ft. [500 ft.]	900 ft. [750 ft.]	1,200 ft. [1,000 ft.]
Special Review	600 ft. [500 ft.]	900 ft. [750 ft.]	1,200 ft. [1,000 ft.]
Variance	200 ft. [150 ft.]	200 ft. [150 ft.]	200 ft. [150 ft.]

3. Public rights-of-way and streets. Notification distance shall be calculated **inclusive of public rights-of-way and public streets.**
4. Lake, golf course and park front notification.
- If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 18.05-1. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the

reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.

5. Reduction in Notification Area. All notification distances in Table 18.05-1 shall be reduced by fifty (50) percent, but shall not be less than three hundred (300) feet, for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.
6. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 18.05-1 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.

18.05.040 Posted Notice for Neighborhood Meetings.

A. Deadline for Posting. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall post a notice on the subject property.

B. Content. The posted notice for neighborhood meetings shall include the following:

1. Time, date, and location of the meeting.
2. The application(s) to be considered.
3. Project name.
City of Loveland Current Planning Division contact information, including the division phone number.

C. Requirements for Posting.

1. It shall be the applicant's responsibility to have the sign(s) created by a sign company.
2. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the neighborhood meeting. The Current Planning Division shall provide the applicant with specifications for the posting location of the required signs.
3. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 18.05.120.

18.05.050 Public Hearings.

Mailed, posted and published public notice is required for public hearings. It is the applicant's responsibility to mail and post public notice for public hearings; the City is responsible to publish notice for public hearings.

18.05.060 Mailed Notice for Public Hearings.

A. Deadline for Mailing. At least fifteen (15) days prior to a public hearing, the applicant shall, by first class mail, send written notice to all property owners on the certified list required

in Section 18.05.060.C(1), at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 18.05.120.

B. Content. The mailed notice for public hearings shall include the following:

1. Time, date, and location of the hearing.
2. The application(s) to be considered.
3. Project name.
4. Applicant's name.
5. Vicinity map identifying the site within the neighborhood context.
6. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Current Planning Division office.
7. Description of the proposal for the subject property.
8. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
9. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
10. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.

C. Requirements for Mailing.

1. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall within the distances provided in Table 18.05-2 and Sections 18.05.060.C (3) through (7), shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Assessor [was Clerk and Recorder]. This list shall be current to within sixty (60) days [was 30 days] prior to the mailing.
2. Area of Notification. For all applications requiring written (mailed) public notice, the distances specified in Table 18.05-2 Mailed Notice Distance Requirements, shall be used to determine the area to which such notice shall be given, except as provided in Sections 18.05.060.C (3) through (7). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 18.05-2 MAILED NOTICE DISTANCE REQUIREMENTS FOR PUBLIC HEARINGS			
Application Type	Application Size		
	Under 5 acres [was 20 or less]	5 – 50 acres [was 21-50]	Greater than 50 acres
Annexation, Zoning	1,200 ft. [1,000 ft.]	1,200 ft. — [1,000 ft.]	1,200 ft. [1,000 ft.]

Be District Developments*	300 ft.	300 ft.	300 ft.
Comprehensive Plan Amendment	See Section 6.0 of the Loveland Comprehensive Master Plan		
Height Exception	300 ft.	300 ft.	300 ft.
PUD General Development Plan	1,200 ft. —[1,000 ft.]	1,200 ft. —[1,000 ft.]	1,200 ft. [1,000 ft.]
PUD Preliminary Development Plan	600 ft. [500 ft.]	900 ft. [750 ft.]	1,200 ft. [1,000 ft.]
Rezoning	600 ft. [1,000 ft.]	900 ft. [1,000 ft.]	1,200 ft. [1,000 ft.]
Special Review – type 3 permit	600 ft. [500 ft.]	900 ft. [1,000 ft.]	1,200 ft. [1,000 ft.]
Variance	200 ft. [150 ft.]	200 ft. [150 ft.]	200 ft. [150 ft.]

* For Be District developments requiring approval of Planning Commission as indicated in 18.24.050

3. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
4. Lake, golf course and park front notification.
 - a. If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 18.05-2. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
5. Reduction in Notification Area. All notification distances in Table 18.05-2 shall be reduced by fifty (50) percent, but shall not be less than three hundred (300) feet, for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.
6. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 18.05-2 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the public hearing.

7. Mineral Estate Owners. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given by the applicant **at least thirty (30) days prior to the public hearing** in accordance with the requirements of **the Colorado Notification of Surface Development Act** (C.R.S. § 24-65.5-101 et seq.) **(the “act”)**. An affidavit of the applicant’s compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of the act.

18.05.070 Posted Notice for Public Hearings.

A. Deadline for Posting. At least fifteen (15) days prior to a public hearing, the applicant shall post a notice on the subject property.

B. Content. The posted notice for public hearings shall include the following:

1. Time, date, and location of the hearing.
2. The application(s) to be considered.
3. Project name.
4. City of Loveland Current Planning Division contact information, including the division phone number.

C. Requirements for Posting.

1. It shall be the applicant’s responsibility to have the sign(s) created by a sign company.
2. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant’s responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the public hearing. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
3. An affidavit of the applicant’s compliance with the posted notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 18.05.120.

18.05.080 Published Notice for Public Hearings.

A. Deadline for Publishing. Notice shall be published by the current planning division at least fifteen (15) days prior to a public hearing.

B. Content. The published notice for public hearings shall include the following:

1. Time, date, and location of the hearing.
2. The application(s) to be considered.
3. Project name.
4. Applicant’s name.
5. **General** description of the size and location of the subject property using street address and nearest street intersection. **For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties,**

include a statement that the full legal description is available at the Current Planning Division office.

6. Description of the proposal for the subject property.
7. City of Loveland Current Planning Division contact information, including the division phone number.
8. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.

C. Requirements for Publishing. Notice of the public hearing shall be published one (1) time in a newspaper of general circulation.

18.05.090 Staff Decisions.

A. Required Notice. Mailed or posted public notice is required for certain staff decisions relating to special review and major home occupation applications. Refer to Code Section 18.40 for requirements applicable to special review application and Section 18.48.020 for requirements applicable to major home occupation application.

B. Optional Notice. Notice of staff decisions authorized under this Title but not otherwise subject to specific notice requirements may be required by the Current Planning Manager when the following circumstances exist:

1. A discretionary decision has been made by staff concerning the application of one or more regulations contained in this Title; and
2. The decision may impact the use or enjoyment of property within the vicinity of the subject site; and
3. There is reason to believe that there may be parties of interest residing or owning property within the vicinity of the affected property.

C. Type and Distance of Optional Notice. Notice type(s) and distance for optional notice shall be at the discretion of the Current Planning Manager. In no instance shall mailed notice exceed 300 feet from the boundary of the subject property.

18.05.100 Computation of Time.

In computing any period of time prescribed for the purpose of giving notice under the provisions of this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.

18.05.110 Notice Cost.

All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for Published Notice.

18.05.120 Applicant's Certification.

Prior to the neighborhood meeting or public hearing, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current

Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant in Sections 18.05.020 and 18.05.050.

18.05.130 Failure to Provide Notice, Defective Notice.

Failure to provide the required affidavit, or evidence of a defective mailing list prior to a neighborhood meeting or public hearing, shall result in termination of the review process until proper notice is provided, meeting all applicable provisions herein.

18.05.140 Continuation of Hearings and Neighborhood Meetings.

A hearing or neighborhood meeting for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing or meeting is announced to the public at the time of continuance.

18.05.150 Notice for Appeals.

Any final decision under this Title that is appealed is subject to the same notice standards as the original notice.

This Chapter 16.18 is intended to restate and modify the public notice requirements previously included in Section 16.16.070 and applicable to notice for neighborhood meetings, public hearings, and staff decisions pursuant to Title 16 of the Loveland Municipal Code, which contains the Subdivision Code. The provisions of Section 16.16.070 have been reorganized to match the proposed reorganization of the public notice provisions applicable under the zoning code set forth in Chapter 18.05.

The following is intended to identify substantive changes in the provisions of Section 16.16.070, which are relocated to Chapter 16.18. In addition to the substantive changes, the Chapter has been reorganized for improved clarity and ease of use by applicants.

16.18

PUBLIC NOTICE REQUIREMENTS

Sections:

- 16.18.010 Purpose.**
- 16.18.020 Neighborhood meetings.**
- 16.18.030 Public hearings.**
- 16.18.040 Staff decisions (minor subdivisions).**
- 16.18.050 Additional notice requirements.**
- 16.18.060 Notice for appeals.**

16.18.010 Purpose.

- A. Purpose. This section provides standards for public notice for neighborhood meetings, public hearings, and staff decisions as specified within Title 16.

~~B. Applicability. Notification shall be given to the public by one (1) or more of the methods provided in Table 16.16.070-1:~~

Table 16.16.070-1 REQUIRED PUBLIC NOTICE			
	Mailed Notice	Posted Notice	Published Notice
Neighborhood Meetings	Required	Required	Not required
Planning — Commission	Required	Required	Required
Public Hearings:			
Preliminary Plat;			
Obsolete Subdivisions;			
Vacation (of easements or			
rights-of-way)			
Director Decision:	Required	Required	Not required
Minor Subdivisions			

- B. Applicability. Public notice shall not be required for Final Plats for Major Subdivisions, Boundary Line Adjustments, Lot Mergers, or Simple Plats.

16.18.020 Neighborhood meetings.

- A. Applicability. Mailed and posted public notice is required for neighborhood meetings. It is the applicant's responsibility to mail and post public notice for neighborhood meetings.
- B. Mailed Notice for Neighborhood Meetings.
1. Deadline for Mailing. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.18.020(B)(3)(a) at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).
 2. Content. The written (mailed) notice for neighborhood meetings shall include the following:
 - a. Time, date, and location of the meeting.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. Applicant's name.
 - e. Vicinity map identifying the site within the neighborhood context.
 - f. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Civic Center.
 - g. Description of the proposal for the subject property.
 - h. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
 - i. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
 3. Requirements for Mailing.
 - a. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the distances provided in Table 16.18-1 and subsections (c) through (f) of this subsection 16.18.020.B.(3) shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Assessor [was Clerk & Recorder]. This list shall be current to within sixty (60) days [was 30 days] prior to the mailing.
 - b. Area of Notification. The distances specified in Table 16.18-1 Mailed Notice Distance Requirements for Neighborhood Meetings, shall be used to determine the area to which written (mailed) notice shall be given, except as provided in subsections c through f of this subsection 16.18.020(B)(3). All properties that fall

wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 16.18-1 MAILED NOTICE DISTANCE REQUIREMENTS FOR NEIGHBORHOOD MEETINGS			
Application Type	Application Size		
	Under 5 acres [was 20 or less]	5 – 50 acres [was 21-50]	Greater than 50 acres
Preliminary Plat	600 ft. [500-ft.]	900 ft. [750-ft.]	1,200 ft. [1,000-ft.]

- c. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
 - d. Lake, golf course and park front notification.
 - a. If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 16.18-1. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
 - e. Reduction in Notification Area. All notification distances in Table 16.18-1 shall be reduced by fifty (50) percent, but shall not be less than four hundred (400) feet, for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.
 - f. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 16.18-1 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
- C. Posted Notice for Neighborhood Meetings.
- 1. Deadline for Posting. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall post a notice on the subject property.
 - 2. Content. The posted notice for neighborhood meetings shall include the following:

- a. Time, date, and location of the meeting.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. City of Loveland Current Planning Division contact information, including the division phone number.
3. Requirements for Posting.
- a. It shall be the applicant's responsibility to have the sign(s) created at a sign company.
 - b. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the neighborhood meeting. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
 - c. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).

16.18.030 Public hearings.

- A. Applicability. Mailed, posted and published public notice is required for public hearings. It is the applicant's responsibility to mail and post public notice for public hearings and staff's responsibility to publish notice for public hearings.
- B. Mailed Notice for Public Hearings.
 - 1. Deadline for Mailing. At least fifteen (15) days prior to a public hearing, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.18.030(B)(3)(a) at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).
 - 2. Content. The written (mailed) notice for public hearings shall include the following:
 - a. Time, date, and location of the hearing.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. Applicant's name.
 - e. Vicinity map identifying the site within the neighborhood context.
 - f. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at City Hall.
 - g. Description of the proposal for the subject property.
 - h. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
 - i. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.

- j. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
3. Requirements for Mailing.
- Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the distances provided in Table 16.18-2 and subsections (c) through (g) of this subsection 16.18.030..B(3) shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County ~~Assessor~~ ~~[was Clerk and Recorder]~~. This list shall be current to within sixty (60) days ~~[was 30 days]~~ prior to the mailing.
 - Area of Notification. The distances specified in Table 16.18-2 Mailed Notice Distance Requirements for Public Hearings, shall be used to determine the area to which written (mailed) notice shall be given, except as provided in subsections c through g of this subsection 16.18.030(B)(3). All properties that fall wholly or partially within the stated distance, ~~as measured from the perimeter of the subject property~~, shall be included.

Table 16.18-2 MAILED NOTICE DISTANCE REQUIREMENTS FOR PUBLIC HEARINGS			
Application Type	Application Size		
	Under 5 acres [was 20 or less]	5 – 50 acres [was 21-50]	Greater than 50 acres
Preliminary Plat	600 ft. [500 ft.]	900 ft. [750 ft.]	1,200 ft. [1,000 ft.]
Obsolete Subdivisions	See Chapter 16.36		
Vacation (of easements or rights-of-way)	See Chapter 16.36		

- Public rights-of-way and streets. Notification distance shall be calculated ~~inclusive~~ of public rights-of-way and public streets.
- Lake, golf course and park front notification.
 - If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 16.18-2. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area,

including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.

- e. Reduction in Notification Area. All notification distances in Table 16.18-2 shall be reduced by fifty (50) percent, but shall not be less than four hundred (400) feet, for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.
 - f. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 16.18-2 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the public hearing.
 - g. Mineral Estate Owners. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given by the applicant **at least thirty (30) days prior to the public hearing** in accordance with the requirements of the **Colorado Notification of Surface Development Act** (C.R.S. § 24-65.5-101 et seq.) **(the “act”)**. An affidavit of the applicant’s compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions **of the act**.
- C. Posted Notice for Public Hearings.
- 1. Deadline for Posting. At least fifteen (15) days prior to a public hearing, the applicant shall post a notice on the subject property.
 - 2. Content. The posted notice for public hearings shall include the following:
 - a. Time, date, and location of the hearing.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. City of Loveland Current Planning Division contact information, including the division phone number.
 - 3. Requirements for Posting.
 - a. It shall be the applicant’s responsibility to have the sign(s) created at a sign company.
 - b. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant’s responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the public hearing. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
 - c. An affidavit of the applicant’s compliance with the posted notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).
- D. Published Notice for Public Hearings.
- 1. Deadline for Publishing. Notice shall be published by the Current Planning Division at least fifteen (15) days prior to a public hearing.
 - 2. Content. The published notice for public hearings shall include the following:

- a. Time, date, and location of the hearing.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. Applicant's name.
 - e. **General** description of the size and location of the subject property using street address and nearest street intersection. **For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Civic Center.**
 - f. Description of the proposal for the subject property.
 - g. City of Loveland Current Planning Division contact information, including the division phone number.
 - h. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
3. Requirements for Publishing. Notice of the public hearing shall be published one (1) time in a newspaper of general circulation.

16.18.040 Staff decisions (minor subdivisions).

- A. Applicability. Mailed and posted public notice is required for staff decisions. It is the applicant's responsibility to mail and post public notice for staff decisions.
- B. Mailed Notice for Staff Decisions.
 - 1. Deadline for Mailing. Within fifteen (15) days after the preliminary approval of a minor plat of subdivision, the planning division shall formulate a preliminary written statement of findings and the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.18.040(B)(3)(a) at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to final approval of the minor subdivision and shall satisfy the requirements of Section 16.18.050(C).
 - 2. Content. The written (mailed) notice for staff decisions shall include the following:
 - a. Date of the decision.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. Applicant's name.
 - e. **Vicinity map identifying the site within the neighborhood context.**
 - f. **General** description of the size and location of the subject property using street address and nearest street intersection. **For platted properties, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Civic Center.**
 - g. **Description of the proposal for the subject property.**
 - h. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
 - i. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.

- j. A statement that interested parties may submit an appeal in accordance with the requirements of Chapter 18.80 of this Code and the date of the ten (10) day deadline for filing an appeal.
3. Requirements for Mailing.
- Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the distances provided in Table 16.18-3 and subsections c through f of this subsection 16.18.040(B)(3) shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Assessor. This list shall be current to within **sixty (60) days [was 30 days]** prior to the mailing.
 - Area of Notification. The distances specified in Table 16.18-3 Mailed Notice Distance Requirements for Staff Decisions, shall be used to determine the area to which written (mailed) notice shall be given, except as provided in subsections c through f of this subsection 16.18.040(B)(3). All properties that fall wholly or partially within the distance, **as measured from the perimeter of the subject property**, shall be included.

Table 16.18-3 MAILED NOTICE DISTANCE REQUIREMENTS FOR STAFF DECISIONS			
Application Type	Application Size		
	Under 5 acres	5 – 50 acres	Greater than 50 acres
Minor Subdivision	300 ft. – [150 ft.]	300 ft. – [150 ft.]	300 ft. – [150 ft.]

- Public rights-of-way and streets. Notification distance shall be calculated **inclusive** of public rights-of-way and public streets.
- Lake, golf course and park front notification.
 - If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 16.18-3. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
- Reduction in Notification Area. All notification distances in Table 16.18-3 shall be reduced by fifty (50) percent, but shall not be less than four hundred (400) feet for infill projects that are twenty (20) acres or less in size. For the purposes of

this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.

- f. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 16.18-3 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the staff decision.
- C. Posted Notice for Staff Decisions.
1. Deadline for Posting. The applicant shall post notice on the subject property of the staff decision within fifteen (15) days after the preliminary staff decision and keep it posted for the duration of the ten (10) day appeal period.
 2. Content. The posted notice for staff decisions shall include the following:
 - a. Date of the decision.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. City of Loveland Current Planning Division contact information, including the division phone number.
 3. Requirements for Posting.
 - a. It shall be the applicant's responsibility to have the sign(s) created at a sign company.
 - b. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 10-day appeal period. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
 - c. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the final approval for which the notice was given and shall meet the requirements of Section 16.18.050(C).
- D. Optional Notice.
1. Notice of staff decisions authorized under this Title but not otherwise subject to specific notice requirements may be required by the Current Planning Manager when the following circumstances exist:
 - a. A discretionary decision has been made by staff concerning the application of one or more regulations contained in this Title; and
 - b. The decision may impact the use or enjoyment of property within the vicinity of the subject site; and
 - c. There is reason to believe that there may be parties of interest residing or owning property within the vicinity of the affected property.
 2. Type and Distance of Optional Notice. Notice type(s) and distance for optional notice shall be at the discretion of the Current Planning Manager. In no instance shall mailed notice exceed 300 feet from the boundary of the subject property.

16.18.050 Additional notice requirements.

- A. **Computation of Time.** In computing any period of time prescribed for the purpose of giving notice under this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.
- B. **Notice Cost.** All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for the published notice.
- C. **Applicant's Certification.** Prior to the neighborhood meeting, public hearing, or final staff decision, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant.
- D. **Failure to Provide Notice, Defective Notice.** Failure to provide the required affidavit or evidence of a defective mailing list prior to a neighborhood meeting or public hearing shall result in termination of the review process until proper notice is provided meeting all applicable provisions under this section.
- E. **Continuation of Hearings and Neighborhood Meetings.** A hearing or neighborhood meeting for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing or meeting is announced to the public at the time of continuance.

16.18.060 Notice for appeals.

Any final decision under this Title that is appealed is subject to the same notice standards as the original notice.

Chapter 18.05**PUBLIC NOTICE REQUIREMENTS****Sections:**

18.05.010	Purpose.
18.04.020	Applicability.
18.05-030	Content of Notice.
18.05.040	Mailed Notice.
18.05.050	Posted Notice.
18.05.060	Computation of Time.
18.05.080	Notice Cost.
18.05.090	Applicant's Certification.
18.05.100	Failure to Provide Notice, Defective Notice.
18.05.110	Continuation of Hearings.

18.05.010 Purpose.

This Chapter provides standards for public notice for neighborhood meetings, public hearings, and Director decisions as specified within Title 18.

18.05.020 Applicability.

Notification shall be given to the public by one (1) or more of the methods provided in Table 18.05-1:

Table 18.05-1 REQUIRED PUBLIC NOTICE			
	Mailed Notice	Posted Notice	Published Notice*
Neighborhood Meetings	Required	Required	Not required
Planning Commission	Required	Required	Required
Public Hearings: Annexation, Zoning; Comprehensive Plan Amendment; General Development Plan; Preliminary Development Plan; Rezoning; Special Review; Vacation; Variance; Vested Property Right	See Chapter 18.72	See Chapter 18.72	See Chapter 18.72
Director Decisions: Home Occupations; Special Review	Required	Required	Not required

***Does not include notice for City Council meetings**

18.05.030 Content of Notice.

Where public notice is required for neighborhood meetings or public hearings, or as otherwise required under this title, the notice shall include the following:

- A. Time, date, and location of the meeting or hearing.

- B. The type(s) of application to be considered.
- C. Project name.
- D. Applicant'(s) name.
- E. Description of the location of the subject property by legal description, and general location using street address and/or nearest street intersection.
- F. Description of the proposal for the subject property.
- G. Primary contact (applicant or applicant's consultant(s)) information, including name of individual; name of company; phone number; e-mail address.
- H. Secondary contact (City of Loveland Current Planning Division) information, including name of reviewing planner; phone number of reviewing planner; e-mail address of reviewing planner.
- I. For public hearing notices, a statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
- J. For Director decision notices, a statement that interested parties may submit an appeal and the deadlines and requirements for filing an appeal.

18.05.040 Mailed Notice.

- A. **Deadline for Mailing.** At least fifteen (15) days prior to a neighborhood meeting, a public hearing, or the date of the Director's decision, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 18.05.040.B, at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the provisions of Section 18.05.090
- B. **Ownership List.** A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the radius distances provided in Table 18.05 -2 shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Clerk and Recorder. This list shall be current to within thirty (30) days prior to the mailing.
- C. **Area of Notification.** For all applications requiring written (mailed) public notice, the radius distances specified in Table 18.05-2 Area of Public Notice Distance by Application Type and Size, shall be used to determine the area to which such notice shall be given, except as provided in Sections 18.05.040.D and E.

Table 18.05-2 AREA OF MAILED NOTICE DISTANCE BY APPLICATION TYPE AND SIZE			
Application Type	20 acres or less	21 – 50 acres	Greater than 50 acres
Radius Distance in Feet- See Section 18.05.040.D			
Annexation, Zoning	1,000 ft.	1,000 ft.	1,000 ft.
Comprehensive Plan Amendment	See Section 6.0 of the Loveland, Colorado Comprehensive Master Plan		
PUD General Development Plan	1,000 ft.	1,000 ft.	1,000 ft.
PUD Preliminary Development Plan	500 ft.	750 ft.	1,000 ft.
Home Occupation	300 ft.	See Section 18.48.020	
Rezoning	500 ft.	750 ft.	1,000 ft.
Special Review	500 ft.	750 ft.	1,000 ft.
Variance	150 ft.	150 ft.	150 ft.

- D. Reduction in Notification Area. All notification radius distances in Table 18.05-2 shall be reduced by fifty (50) percent, but shall not be less than three hundred (300) feet for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to existing city limits of the City of Loveland. Such radii shall be calculated exclusive of water bodies except as provided below, public rights-of-way except as provided below, and public streets. The right-of-way of Interstate 25 shall be included when calculating notification radius distances. The following lakes shall be included when calculating notification radius distances: Boedecker Lake, Boyd Lake, Horseshoe Lake, and Lake Loveland. The first tier of lots that have frontage on any of these lakes shall be included in the area of public notice regardless of the distance from the subject site should any portion of the lake be within the notification radius.
- E. Expansion of Specified Notification Area. The area of required notification may be expanded up to twice the radius specified in Table 18.05-2 if development associated with an approved application would likely impact properties beyond the specified notification radius, as determined by the Current Planning Manager. Development impacts may include but are not limited to vibration, noise, odor, glare or increased traffic. A determination to expand the notification area must be provided in writing to the applicant at least twenty one (21) prior to the neighborhood meeting.
- F. Mineral Estate Owners. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given in accordance with the requirements of C.R.S. ss 24-65.5-101 et seq. and an affidavit of the applicant's compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 18.05.090.

18.05.050 Posted Notice.

- A. Posting Deadline. At least fifteen (15) days prior to the neighborhood meeting, public hearing or Director's decision on the proposed application, the applicant shall post a notice on the subject property. Such notice shall be readily visible from each public street or highway adjoining the property and shall meet the provisions of Section 18.05.050.B. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 18.05.090
- B. Posting Requirements. The Current Planning Division shall provide the specifications for the notice to be posted on the site, an 8-1/2" x 11" example of the wording as it should appear on the sign, and the number and location of signs required for the site. It shall be the applicant's responsibility to have the sign(s) created at a sign company, post the sign(s) on the site, and ensure that the sign(s) remain in place during the period leading up to the public hearing or Director's decision.

18.05.060 Published Notice.

In addition to the requirements set forth in Sections 18.05.040 and 18.05.050, notice of the time, date and place of the public hearing or Director's decision, along with a statement of the nature of the matter to be considered, including a description of the location of the subject property and the agency or office and telephone number where further information may be obtained shall be published one (1) time in a newspaper of general circulation by the Current Planning Division at least fifteen (15) days prior to any public hearing.

18.05.070 Computation of Time.

In computing any period of time prescribed for the purpose of giving notice under the provisions of this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting

or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.

18.05.080 Notice Cost.

All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for the Published Notice.

18.05.090 Applicant's Certification.

Prior to the neighborhood meeting, public hearing, or Director's decision, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant in Sections 18.05.040 and 18.05.050.

18.05.100 Failure to Provide Notice, Defective Notice.

Failure to provide the required affidavit, or evidence of a defective mailing list prior to a neighborhood meeting or public hearing shall result in termination of the review process until proper notice is provided, meeting all applicable provisions herein.

18.05.110 Continuation of Hearings.

A hearing for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing is announced to the public at the time of continuance. (Ord. 5425 § 1, 2009)

16.16.070 Public notice requirements.

- A. Purpose. This section is intended to provide standards for public notice to be given for neighborhood meetings, public hearings, and Director decisions as required under Title 16.
- B. Applicability. Notification shall be given to the public by one (1) or more of the methods provided in Table 16.16.070-1:

Table 16.16.070-1 REQUIRED PUBLIC NOTICE			
	Mailed Notice	Posted Notice	Published Notice
Neighborhood Meetings	Required	Required	Not required
Planning Commission Public Hearings: Preliminary Plat; Obsolete Subdivisions; Vacation (of easements or rights-of-way)	Required	Required	Required
Director Decision: Minor Subdivisions	Required	Required	Not required

- C. Public notice shall not be required for Final Plats for Major Subdivisions, Boundary Line Adjustments, Lot Mergers, or Simple Plats.
- D. Content of Public Notice. Where public notice is required for neighborhood meetings, public hearings, director's decisions, or as otherwise required under this title, the notice shall include the following:
1. Time, date, and location of the meeting or hearing.
 2. The type(s) of application to be considered.
 3. Project name.
 4. Applicant's(s) name.
 5. Description of the location of the subject property by legal description, and general location using street address and/or nearest street intersection.
 6. Description of the proposal for the subject property.
 7. Primary contact (applicant or applicant's consultant(s)) information, including name of individual; name of company; phone number; e-mail address.
 8. Secondary contact (City of Loveland Current Planning Division) information, including name of reviewing planner; phone number of reviewing planner; e-mail address of reviewing planner.
 9. For public hearing notices, a statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
 10. For director decision notices, a statement that interested parties may submit an appeal in accordance with the requirements of Chapter 18.80 of this Code. (Ord. 5581 § 6, 2011)
- E. Mailed Notice. At least fifteen (15) days prior to a neighborhood meeting, public hearing, or the date of the director's decision, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.16.070.E.1 at the address listed for each owner. An affidavit of the applicant's

compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 16.16.070. (Ord. 5581 § 6, 2011)

1. A list certified by the applicant of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the radius distances provided in Table 16.16.070-2 shall be submitted to the Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Clerk and Recorder.
2. For all applications requiring mailed notice, the radius distances specified in Table 16.16.070-2 Area of Public Notice Distance by Application Type and Size, shall be used to determine the area to which such notice shall be given, except as provided in Sections 16.16.070.E. 3 and 4.

Table 16.16.070-2 AREA OF MAILED NOTICE DISTANCE BY APPLICATION TYPE AND SIZE			
Application Type	20 acres or less	21 – 50 acres	Greater than 50 acres
Obsolete Subdivisions	See Chapter 16.36		
Preliminary Plat	500 ft.	750 ft.	1,000 ft.
Minor Subdivision	150 ft.	150 ft.	150 ft.
Vacation (of easements or rights-of-way)	See Chapter 16.36		

(Ord. 5581 § 6, 2011)

3. All notification radius distances in Table 16.16.070-2 shall be reduced by fifty (50) percent, but shall not be less than three hundred (300) feet for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to existing city limits of the City of Loveland. Such radii shall be calculated exclusive of water bodies except as provided below, public rights-of-way except as provided below, and public streets. The right-of-way of Interstate 25 shall be included when calculating notification radius distances. The following lakes shall be included when calculating notification radius distances: Boedecker Lake, Boyd Lake, Horseshoe Lake, and Lake Loveland. The first tier of lots that have frontage on any of these lakes shall be included in the area of public notice regardless of the distance from the subject site should any portion of the lake be within the notification radius.
4. The area of required notification may be expanded up to twice the radius specified in Table 16.16.070-2 if development associated with an approved application would likely impact properties beyond the specified notification radius, as determined by the Current Planning Manager. Development impacts may include but are not limited to vibration, noise, odor, glare or increased traffic. A determination to expand the notification area must be provided in writing to the applicant at least twenty one (21) days prior to the neighborhood meeting.
5. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given in accordance with the requirements of C.R.S. ss 24-

- 65.5-101 et seq. and an affidavit of the applicant's compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 16.16.070.J.
- F. Posted Notice. At least fifteen (15) days prior to the neighborhood meeting, public hearing or Director's decision on the proposed application, the applicant shall post a notice on the subject property. Such notice shall be readily visible from each public street or highway adjoining the property and shall meet the provisions of Section 16.16.070.F.1. An affidavit of the applicant's compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 16.16.070.J. Where Posted Notice is required under this Chapter, the following shall apply:
1. The Current Planning Division shall provide the specifications for the notice to be posted on the site, along with an 8-1/2" x 11" example of the wording as it should appear on the sign and the number and location of signs required for the site.
 2. It shall be the applicant's responsibility to have the sign(s) created at a sign company, post the sign(s) on the site, and ensure that the sign(s) remain in place during the period leading up to the public hearing or Director's decision.
- G. Published Notice. In addition to the requirements set forth in Sections 16.16.070.E and 16.16.070.F, notice of the time, date and place of the public hearing or Director's decision, along with a statement of the nature of the matter to be considered, including a description of the location of the subject property and the agency or office and telephone number where further information may be obtained shall be published one (1) time in a newspaper of general circulation by the Current Planning Division at least fifteen (15) days prior to any public hearing.
- H. Computation of Time. In computing any period of time prescribed for the purpose of giving notice under this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.
- I. Notice Cost. All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for the Published Notice.
- J. Applicant's Certification. Prior to the neighborhood meeting, public hearing, or Director's decision, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant as provided in Sections 16.16.070.E and 16.16.070.F.
- K. Failure to Provide Notice, Defective Notice. Failure to provide the required affidavit or evidence of a defective mailing list prior to a neighborhood meeting or public hearing shall result in termination of the review process until proper notice is provided meeting all applicable provisions under this Chapter.
- L. Continuation of Hearings. A hearing for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing is announced to the public at the time of continuance. (Ord 5424 § 4, 2009)



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MEMORANDUM

TO: City Council

FROM: Noreen Smyth, Current Planning Division

DATE: March 19, 2013

SUBJECT: Municipal Code Text Amendment Concerning Public Notice

I. EXHIBITS

- A. Planning Commission packet, including Title 18 Committee memos
- B. Planning Commission minutes
- C. Slide presentation

II. KEY ISSUES

Staff believes that all key issues regarding the text amendment have been resolved through the Title 18 Committee, Planning Commission and staff review processes. The Planning Commission unanimously recommends approval of the text amendment as proposed.

III. BACKGROUND

The attached amendment to Title 16, the Subdivision Code, and Title 18, the Zoning Code, concerns the city's public notice requirements as related to neighborhood meetings, public hearings and other city functions that require an official notice to be provided to property owners or the public at large. The notice types required by code, depending on the matter under review, are mailed letters, signs posted on a property, and/or a newspaper posting.

This amendment was initiated by staff in response to challenges applicants have experienced in meeting the code's lake front mailed notice requirement. This requirement, which had been enacted through a code amendment approximately three years ago, required all owners of lake front properties on the four largest lakes in the city to be notified by mail of a public hearing, neighborhood meeting or director's decision whenever the lake fell within the standard notice distance requirement. Since this provision was adopted, applicants impacted by it have felt that

the number of property owners to whom they had to mail notification was too large. Also, some recipients of such notices complained that they had received notice for a project that had no relationship to their property. The provision resulted in a large number of mailed notices being sent out for even minor, inconsequential development proposals near the lakes.

Through this amendment process, staff pursued modification of that provision to allow for a rational nexus between the nature of a development application under review near a lake and mailed notice for the lake front property owners who may be impacted. At the same time, a variety of other improvements to public notice sections of the code were pursued. These other changes center on simplifying the method of measuring mailed notice distance, reorganizing and clarifying the chapter, and allowing for public notice in certain situations for which the code is now silent or vague.

IV. AMENDMENT CONTENT:

The proposed changes to the public notice provisions in Chapters 18.05 and 16.18 (which replaces Section 16.16.070) include a significant amount of reorganization, in addition to substantive changes that are summarized below. Therefore, the attached ordinance, if approved, will represent complete replacements of the respective sections in Titles 16 and 18. A copy of Chapters 18.05 and 16.18 that highlight the substantive changes is attached to this memo.

A detailed description of the proposed amendment is provided in the attached Planning Commission memorandums. The most substantive include the following:

1. Application of an expanded mailed notice distance to all lakes in the city
2. Application of the lake front expanded mailed notice distance to properties on golf courses and public parks
3. Application of the expanded mailed notice distance only when the subject property fronts a lake/park/golf course
4. The proposed expanded mailed notice distance for lake/park/golf course fronting properties is twice the standard notice distance, allowing the Current Planning Manager discretion to extend it to full lake/park/golf course notification under stated conditions
5. Greater specification on how to measure the notice distance (from boundary of subject property instead of a "radius"), making it easier to measure
6. Inclusion of public streets/rights-of-way when determining notice distance, making it easier to measure
7. Expanded standard mailed notice distances to account for the inclusion of public streets/rights-of-way in the notice distance
8. Inclusion of public notice standards for certain staff decisions, BE Zoning District developments, and height exceptions, to clarify application of notice requirements to these development applications
9. Re-organization of the public notice provisions by type of meeting or action (neighborhood meetings, public hearings, staff decisions) instead of type of notice, to

make it easier for applicants to identify the notice provisions applicable to their applications

V. TITLE 18 COMMITTEE AND PLANNING COMMISSION REVIEW

The draft amendment underwent review by the Title 18 Committee at a series of meetings in the latter half of 2012 and by the Planning Commission through a study session and a public hearing. Numerous improvements to the draft amendment have followed as a result of Title 18 Committee and Planning Commission input.

At their first review of the proposed amendment in July, the Title 18 Committee expressed general support for pursuing improvements to the public notice provisions of the code, gave initial feedback on the proposal to staff, and instructed staff to put the item on their following agenda for a more thorough analysis.

At the following meeting, the Committee agreed that the current lake front requirement was excessive and that other changes clarifying the method of measuring notification distances were useful. The Committee wanted to avoid any changes that may result in too significant a decrease in the number of property owners receiving mailed notice, instructing staff to address this matter at their next meeting.

For the next meeting, the Committee voiced support for a proposal to reduce the lake front mailed notice requirement from all properties fronting a lake to instead only properties within double the standard notice distance. The amendment was further refined to modestly increase the standard mailed notification distance. The Committee referred the proposal to the Planning Commission with a unanimous recommendation (with two members absent) of approval.

At their October study session, the Planning Commission expressed general support for the amendment as proposed. However, there was concern that reducing the lake front mailed notice requirement from all properties fronting the lake to instead only properties within double the standard notice distance may be inadequate for particularly significant development applications. Also, the Commission indicated interest in including properties fronting golf courses and public parks in the expanded notice distance.

The comments of the Planning Commission were then reviewed at the following Title 18 Committee meeting. The Committee supported applying the expanded lake front mailed notice requirement to properties fronting golf courses and public parks. It considered the doubling of the notification distance for properties fronting lakes, parks and golf courses to be suitable, and recommended allowing staff the authority to expand the notice distance to all fronting property owners in certain situations.

The Planning Commission then reviewed the revised draft amendment at a public hearing on February 11. No comments or concerns were expressed by members of the public, and Commissioners voted unanimously to recommend approval of the amendment as proposed.

VI. FURTHER AMENDMENTS

Other chapters within both Titles 16 and 18 will require updates to section number references where the public notice chapter is referenced. These corrections to section numbers are authorized by the attached draft ordinance.

RECOMMENDATION

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council adopt the ordinance on first reading.



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Planning Commission Staff Report February 11, 2013

Agenda #: **Public Hearing - 1**

Title: Public Notice Code Amendment

Applicant: City of Loveland Development
Services Department

Request: Code Amendment to Titles 16 & 18

**Staff
Planner:** Noreen Smyth, Senior Planner

Staff Recommendation:

Staff recommends that the Planning Commission recommend approval of the proposed amendment to City Council.

Summary of Analysis

This is a public hearing to consider a staff-initiated text amendment to the public notice sections of Title 16, the Subdivision Code, and Title 18, the Zoning Code. This amendment was pursued in response to challenges applicants have experienced in meeting the Code's lake front mailed notice requirement. In addition to tweaking that provision, the amendment further proposes to change certain other aspects of the public notice section of the Code. These other changes center on simplifying the method of measuring mailed notice distance, clarifying the chapter through a reorganization of the text, and allowing for public notice for properties fronting parks or golf courses, for director decisions and for applications that had not previously been included in the public notice chapter. Minor textual corrections have also been made.

The proposed amendment has undergone review by the Planning Commission at a study session in October 2012 and by the Title 18 Committee at a series of four meetings. Both the Commissioners and the Committee members voiced support for the proposal. The attached draft text amendment reflects changes sought by both. Staff believes that all key issues have been resolved.

I. ATTACHMENTS:

- 1) Draft Chapter 16.18 Text Amendment
- 2) Draft Chapter 18.05 Text Amendment
- 3) Existing Section 16.16
- 4) Existing Chapter 18.05
- 5) Title 18 Committee Meeting Staff Memorandums (7/26/12, 8/23/12, 9/20/12 and 11/15/12)
- 6) Planning Commission Study Session Memorandum (10/17/12)

II. KEY ISSUES:

Staff believes that all key issues have been resolved through the Title 18 Committee, Planning Commission study session and staff review processes.

III. BACKGROUND:

The attached amendments to the public notice provisions of Titles 16 and 18 were initiated by staff a number of months back in response to issues encountered by applicants in enacting the lake front mailed notice requirement. The draft amendment underwent review by the Title 18 Committee at a series of meetings in the latter half of last year and by the Planning Commission at an October 22 study session. Numerous further improvements to the draft amendments have followed as result of Title 18 Committee and Planning Commission input.

Earlier Title 18 Committee changes to the draft were summarized for the Planning Commission at the study session. During the session, the Commission expressed general support for the amendment as proposed. However, there was concern that reducing the lake front mailed notice requirement from *all* properties fronting the lake to instead only properties within *double* the standard notice distance may not be adequate in all situations. Also, the Commission indicated interest in including properties fronting golf courses and public parks in the expanded notice distance.

The comments of the Planning Commission were then reviewed at the following Title 18 Committee meeting. The Committee supported applying the expanded lake front mailed notice requirement to properties fronting golf courses and public parks. It considered the doubling of the notification distance for properties fronting lakes, parks and golf courses to be suitable, but supported allowing staff the authority to expand the notice distance to all fronting property owners in certain situations.

IV. OUTREACH:

Information about the draft amendment and the Planning Commission public hearing date has been emailed to area developers and development consultants. It has also been posted on the city website. An invitation to call staff with questions, submit comments in writing in advance of the

public hearing and/or attend the hearing in person was included with both the email and the website posting. No phone calls or written comments have been received on the matter.

V. STRUCTURE OF THE AMENDMENT:

Included with this report are the Title 16 public notice draft amendment and the Title 18 public notice draft amendment. Other chapters within both Titles 16 and 18 will require updates to section number references where the public notice chapter is referenced. These corrected section numbers will be included with the draft amendment sent to City Council should the Planning Commission recommend approval of the proposal.

The current Title 16 public notice provisions are within the broader “Review Procedures” chapter. The draft amendment proposes to pull the public notice provisions out of that chapter and place them in a new and separate chapter. This will allow greater similarity between the public notice format in the text of Titles 16 and 18 and make it easier to find the provisions within Title 16.

Cross-out versions of the public notice chapters have not been prepared because of the significant amount of reorganization that has occurred. The attached public notice texts, if the amendment is approved, will represent complete replacements of their respective sections in Titles 16 and 18.

VI. AMENDMENT CONTENT:

The attached draft versions of the public notice provisions of Titles 16 and 18 reflect the most recent changes sought by the Commission and the Committee, along with additional minor corrections included by staff. The amendments to the text are summarized as follows:

- Application of the lake front expanded mailed notice distance to properties on golf courses and public parks
- Application of the expanded mailed notice distance to all lakes in the city
- Application of the expanded mailed notice distance *only* when the subject property fronts a lake/park/golf course
- Measurement of the lake/park/golf course notice distance at double the standard notice distance, allowing the Current Planning Manager discretion to extend it to full lake/park/golf course notification
- Inclusion of public streets/rights-of-way when determining notice distance
- Expanded standard mailed notice distances to account for the inclusion of public streets/rights-of-way in the notice distance
- Greater specification on how to measure the notice distance
- Modification of the small application size category from *Under 20 acres* to *Under 5 acres*
- Inclusion of public notice for staff decisions not standardly required to be noticed but anticipated to impact other properties

- Inclusion of a notice distance for BE District developments requiring a public hearing
- Inclusion of a notice distance for height exceptions requiring a public hearing
- Expanded time period for obtaining the property owners list for the mailed notices
- Organization of the public notice provisions by type of meeting instead of type of notice
- Inclusion of staff decision (Special Review and Major Home Occupation) notice requirements in their respective chapters instead of duplicating it in the public notice chapter
- Minor wording changes in the text to improve clarity

VII. SUMMARY:

While a large number of both substantive and clarifying changes are proposed, the most significant changes center on:

- 1) The method of measuring both the lake front and the standard mailed notice distance;
- 2) The inclusion of a notice requirements for applications that had not previously been included in the public notice chapter and an expanded mailed notice for properties fronting golf courses and public parks; and
- 3) Clarifying the Chapter's requirements through a reorganization of the text and other minor wording changes.

Staff will be prepared to discuss the amendment with Commission members at the February hearing.

Action to be taken by the Planning Commission

Conduct the public hearing on the proposed text amendment, taking comments from members of the public if requested. If the Commission considers that adequate analysis of the request has occurred and seeks no changes or only minor changes to the amendment, it can vote on the proposal.

PROPOSED**16.18****PUBLIC NOTICE REQUIREMENTS****Sections:**

- 16.18.010 Purpose.**
- 16.18.020 Neighborhood meetings.**
- 16.18.030 Public hearings.**
- 16.18.040 Staff decisions (minor subdivisions).**
- 16.18.050 Additional notice requirements.**
- 16.18.060 Notice for appeals.**

16.18.010 Purpose.

- A. Purpose. This section provides standards for public notice for neighborhood meetings, public hearings, and staff decisions as required within Title 16.
- B. Applicability. Public notice shall not be required for Final Plats for Major Subdivisions, Boundary Line Adjustments, Lot Mergers, or Simple Plats.

16.18.020 Neighborhood meetings.

- A. Applicability. Mailed and posted public notice is required for neighborhood meetings. It is the applicant's responsibility to mail and post public notice for neighborhood meetings.
- B. Mailed Notice for Neighborhood Meetings.
 - 1. Deadline for Mailing. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.18.020(B)(3)(a) at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).
 - 2. Content. The written (mailed) notice for neighborhood meetings shall include the following:
 - a. Time, date, and location of the meeting.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. Applicant's name.
 - e. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Civic Center.
 - f. Description of the proposal for the subject property.
 - g. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.

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- h. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
- 3. Requirements for Mailing.
 - a. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the distances provided in Table 16.18-1 shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Clerk and Recorder. This list shall be current to within sixty (60) days prior to the mailing.
 - b. Area of Notification. The distances specified in Table 16.18-1 Mailed Notice Distance Requirements for Neighborhood Meetings, shall be used to determine the area to which written (mailed) notice shall be given, except as provided in subsections c through f of this subsection 16.18.020(B)(3). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 16.18-1 MAILED NOTICE DISTANCE REQUIREMENTS FOR NEIGHBORHOOD MEETINGS			
Application Type	Application Size		
	Under 21 acres	21 – 50 acres	Greater than 50 acres
Preliminary Plat	600 ft.	900 ft.	1,200 ft.

- c. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
- d. Lake, golf course and park front notification.
 - a. Should the subject property front a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 16.18-1. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
- e. Reduction in Notification Area. All notification distances in Table 16.18-1 shall be reduced by fifty (50) percent, but shall not be less than four hundred (400) feet for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at

PROPOSED

least eighty (80) percent of its boundary, to existing city limits of the City of Loveland.

- f. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 16.18-1 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
- C. Posted Notice for Neighborhood Meetings.
 1. Deadline for Posting. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall post a notice on the subject property.
 2. Content. The posted notice for neighborhood meetings shall include the following:
 - a. Time, date, and location of the meeting.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. City of Loveland Current Planning Division contact information, including the division phone number.
 3. Requirements for Posting.
 - a. It shall be the applicant's responsibility to have the sign(s) created at a sign company.
 - b. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the neighborhood meeting. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
 - c. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).

16.18.030 Public hearings.

- A. Applicability. Mailed, posted and published public notice is required for public hearings. It is the applicant's responsibility to mail and post public notice for public hearings and staff's responsibility to publish notice for public hearings.
- B. Mailed Notice for Public Hearings.
 1. Deadline for Mailing. At least fifteen (15) days prior to a public hearing, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.18.030(B)(3)(a) at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).
 2. Content. The written (mailed) notice for public hearings shall include the following:
 - a. Time, date, and location of the hearing.
 - b. The application(s) to be considered.
 - c. Project name.

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- d. Applicant's name.
 - e. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at City Hall.
 - f. Description of the proposal for the subject property.
 - g. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
 - h. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
 - i. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
3. Requirements for Mailing.
- a. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the distances provided in Table 16.18-2 shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Clerk and Recorder. This list shall be current to within sixty (60) days prior to the mailing.
 - b. Area of Notification. The distances specified in Table 16.18-2 Mailed Notice Distance Requirements for Public Hearings, shall be used to determine the area to which written (mailed) notice shall be given, except as provided in subsections c through g of this subsection 16.18.030(B)(3). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 16.18-2 MAILED NOTICE DISTANCE REQUIREMENTS FOR PUBLIC HEARINGS			
Application Type	Application Size		
	Under 21 acres	21 – 50 acres	Greater than 50 acres
Preliminary Plat	600 ft.	900 ft.	1,200 ft.
Obsolete Subdivisions	See Chapter 16.36		
Vacation (of easements or rights-of-way)	See Chapter 16.36		

- c. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
- d. Lake, golf course and park front notification.
 - a. Should the subject property front a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park

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that are within two times the distances specified in Table 16.18-2. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.

- b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
 - e. Reduction in Notification Area. All notification distances in Table 16.18-2 shall be reduced by fifty (50) percent, but shall not be less than four hundred (400) feet for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to existing city limits of the City of Loveland.
 - f. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 16.18-2 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the public hearing.
 - g. Mineral Estate Owners. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given by the applicant at least thirty (30) days prior to the public hearing in accordance with the requirements of the Colorado Notification of Surface Development Act (C.R.S. § 24-65.5-101 et seq.) (the “act”). An affidavit of the applicant’s compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of the act.
- C. Posted Notice for Public Hearings.
- 1. Deadline for Posting. At least fifteen (15) days prior to a public hearing, the applicant shall post a notice on the subject property.
 - 2. Content. The posted notice for public hearings shall include the following:
 - a. Time, date, and location of the hearing.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. City of Loveland Current Planning Division contact information, including the division phone number.
 - 3. Requirements for Posting.
 - a. It shall be the applicant’s responsibility to have the sign(s) created at a sign company.

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- b. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the public hearing. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
 - c. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 16.18.050(C).
- D. Published Notice for Public Hearings.
 - 1. Deadline for Publishing. Notice shall be published by the Current Planning Division at least fifteen (15) days prior to a public hearing.
 - 2. Content. The published notice for public hearings shall include the following:
 - a. Time, date, and location of the hearing.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. Applicant's name.
 - e. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Civic Center.
 - f. Description of the proposal for the subject property.
 - g. City of Loveland Current Planning Division contact information, including the division phone number.
 - h. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
 - 3. Requirements for Publishing. Notice of the public hearing shall be published one (1) time in a newspaper of general circulation.

16.18.040 Staff decisions (minor subdivisions).

- A. Applicability. Mailed and posted public notice is required for staff decisions. It is the applicant's responsibility to mail and post public notice for staff decisions.
- B. Mailed Notice for Staff Decisions.
 - 1. Deadline for Mailing. Within fifteen (15) days after the preliminary approval of a minor plat of subdivision, the planning division shall formulate a preliminary written statement of findings and the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.18.040(B)(3)(a) at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to final approval of the minor subdivision and shall satisfy the requirements of Section 16.18.050(C).
 - 2. Content. The written (mailed) notice for staff decisions shall include the following:
 - a. Date of the decision.
 - b. The application(s) to be considered.

PROPOSED

- c. Project name.
 - d. Applicant's name.
 - e. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Civic Center.
 - f. Description of the proposal for the subject property.
 - g. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
 - h. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
 - i. A statement that interested parties may submit an appeal in accordance with the requirements of Chapter 18.80 of this Code and the date of the ten (10) day deadline for filing an appeal.
3. Requirements for Mailing.
- a. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the distances provided in Table 16.18-3 shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Clerk and Recorder. This list shall be current to within sixty (60) days prior to the mailing.
 - b. Area of Notification. The distances specified in Table 16.18-3 Mailed Notice Distance Requirements for Staff Decisions, shall be used to determine the area to which written (mailed) notice shall be given, except as provided in subsections c through f of this subsection 16.18.040(B)(3). All properties that fall wholly or partially within the distance, as measured from the perimeter of the subject property, shall be included.

Table 16.18-3 MAILED NOTICE DISTANCE REQUIREMENTS FOR STAFF DECISIONS			
Application Type	Application Size		
	Under 21 acres	21 – 50 acres	Greater than 50 acres
Minor Subdivision	300 ft.	300 ft.	300 ft.

- c. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
- d. Lake, golf course and park front notification.
 - a. Should the subject property front a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 16.18-3. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.

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- b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
 - e. Reduction in Notification Area. All notification distances in Table 16.18-3 shall be reduced by fifty (50) percent, but shall not be less than four hundred (400) feet for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to existing city limits of the City of Loveland.
 - f. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 16.18-3 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the staff decision.
- C. Posted Notice for Staff Decisions.
 - 1. Deadline for Posting. The applicant shall post notice on the subject property of the staff decision within fifteen (15) days after the preliminary staff decision and keep it posted for the duration of the ten (10) day appeal period.
 - 2. Content. The posted notice for staff decisions shall include the following:
 - a. Date of the decision.
 - b. The application(s) to be considered.
 - c. Project name.
 - d. City of Loveland Current Planning Division contact information, including the division phone number.
 - 3. Requirements for Posting.
 - a. It shall be the applicant's responsibility to have the sign(s) created at a sign company.
 - b. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 10-day appeal period. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
 - c. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the final approval for which the notice was given and shall meet the requirements of Section 16.18.050(C).
- D. Optional Notice.

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1. Notice of staff decisions authorized under this Title but not otherwise subject to specific notice requirements may be required by the Current Planning Manager when the following circumstances exist:
 - a. A discretionary decision has been made by staff concerning the application of one or more regulations contained in this Title; and
 - b. The decision may impact the use or enjoyment of property within the vicinity of the subject site; and
 - c. There is reason to believe that there may be parties of interest residing or owning property within the vicinity of the affected property.
2. Type and Distance of Optional Notice. Notice type(s) and distance for optional notice shall be at the discretion of the Current Planning Manager. In no instance shall mailed notice exceed 300 feet from the boundary of the subject property.

16.18.050 Additional notice requirements.

- A. Computation of Time. In computing any period of time prescribed for the purpose of giving notice under this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.
- B. Notice Cost. All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for the published notice.
- C. Applicant's Certification. Prior to the neighborhood meeting, public hearing, or final staff decision, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant.
- D. Failure to Provide Notice, Defective Notice. Failure to provide the required affidavit or evidence of a defective mailing list prior to a neighborhood meeting or public hearing shall result in termination of the review process until proper notice is provided meeting all applicable provisions under this section.
- E. Continuation of Hearings and Neighborhood Meetings. A hearing or neighborhood meeting for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing or meeting is announced to the public at the time of continuance.

16.18.060 Notice for appeals.

Any final decision that is appealed under this section is subject to the same notice standards as the original notice.

PROPOSED

Yellow highlighting indicates changes made to the draft since the October 22, 2012 Planning Commission study session.

Chapter 18.05**PUBLIC NOTICE REQUIREMENTS****Sections:**

18.05.010	Purpose.
18.05.020	Neighborhood Meetings.
18.05.030	Mailed Notice for Neighborhood Meetings.
18.05.040	Posted Notice for Neighborhood Meetings.
18.05.050	Public Hearings.
18.05.060	Mailed Notice for Public Hearings.
18.05.070	Posted Notice for Public Hearings.
18.05.080	Published Notice for Public Hearings.
18.05.090	Staff Decisions.
18.05.100	Computation of Time.
18.05.110	Notice Cost.
18.05.120	Applicant's Certification.
18.05.130	Failure to Provide Notice, Defective Notice.
18.05.140	Continuation of Hearings.
18.05.150	Notice for Appeals.

18.05.010 Purpose.

This Chapter provides standards for public notice for neighborhood meetings, public hearings, and staff decisions as specified within Title 18.

18.05.020 Neighborhood Meetings.

Mailed and posted public notice is required for neighborhood meetings. It is the applicant's responsibility to mail and post public notice for neighborhood meetings.

18.05.030 Mailed Notice for Neighborhood Meetings.

A. **Deadline for Mailing.** At least fifteen (15) days prior to a neighborhood meeting, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 18.05.030.C(1), at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 18.05.120

B. **Content.** The written (mailed) notice for neighborhood meetings shall include the following:

1. Time, date, and location of the meeting.
2. The application(s) to be considered.

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3. Project name.
4. Applicant's name.
5. Vicinity map identifying the site within the neighborhood context.
6. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Current Planning Division office.
7. Description of the proposal for the subject property, including existing and proposed zoning, if applicable.
8. Primary contact (applicant or applicant's consultant) information, including name of individual, name of company, phone number and e-mail address.
9. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.

C. Requirements for Mailing.

1. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall within the distances provided in Table 18.05-1 and Sections 18.05.030.C (3) through (7), shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Clerk and Recorder. This list shall be current to within sixty (60) days prior to the mailing.
2. Area of Notification. For all applications requiring written (mailed) public notice, the distances specified in Table 18.05-1 Mailed Notice Distance Requirements, shall be used to determine the area to which such notice shall be given, except as provided in Sections 18.05.030.C (3) through (7). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 18.05-1 MAILED NOTICE DISTANCE REQUIREMENTS FOR NEIGHBORHOOD MEETINGS			
Application Type	Application Size		
	Under 5 acres	5 – 50 acres	Greater than 50 acres
Annexation, Zoning	1,200 ft.	1,200 ft.	1,200 ft.
Comprehensive Plan Amendment	See Section 6.0 of the Loveland Comprehensive Master Plan		
Major Home Occupation	All members of the neighborhood <i>as defined in Section 18.48.020</i>		
PUD General Development Plan	1,200 ft.	1,200 ft.	1,200 ft.
PUD Preliminary Development Plan	600 ft.	900 ft.	1,200 ft.
Rezoning	600 ft.	900 ft.	1,200 ft.

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Special Review	600 ft.	900 ft.	1,200 ft.
Variance	200 ft.	200 ft.	200 ft.

3. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
4. Lake, golf course and park front notification.
 - a. Should the subject property front a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 18.05-1. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.
5. Reduction in Notification Area. All notification distances in Table 18.05-1 shall be reduced by fifty (50) percent, but shall not be less than three hundred (300) feet for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to existing city limits of the City of Loveland.
6. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 18.05-1 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.

18.05.040 Posted Notice for Neighborhood Meetings.

A. Deadline for Posting. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall post a notice on the subject property.

B. Content. The posted notice for neighborhood meetings shall include the following:

1. Time, date, and location of the meeting.
2. The application(s) to be considered.
3. Project name.
4. City of Loveland Current Planning Division contact information, including the division phone number.

C. Requirements for Posting.

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1. It shall be the applicant's responsibility to have the sign(s) created by a sign company.
2. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the neighborhood meeting. The Current Planning Division shall provide the applicant with specifications for the posting location of the required signs.
3. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 18.05.120.

18.05.050 Public Hearings.

Mailed, posted and published public notice is required for public hearings. It is the applicant's responsibility to mail and post public notice for public hearings; the City is responsible to publish notice for public hearings.

18.05.060 Mailed Notice for Public Hearings.

A. **Deadline for Mailing.** At least fifteen (15) days prior to a public hearing, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 18.05.060.C(1), at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 18.05.120.

B. **Content.** The mailed notice for public hearings shall include the following:

1. Time, date, and location of the hearing.
2. The application(s) to be considered.
3. Project name.
4. Applicant's name.
5. **Vicinity map identifying the site within the neighborhood context.**
6. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Current Planning Division office.
7. Description of the proposal for the subject property.
8. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
9. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
10. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.

C. **Requirements for Mailing.**

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1. **Ownership List.** A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall within the distances provided in Table 18.05-2 and Sections 18.05.060.C (iii) through (vii), shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Clerk and Recorder. This list shall be current to within sixty (60) days prior to the mailing.
2. **Area of Notification.** For all applications requiring written (mailed) public notice, the distances specified in Table 18.05-2 Mailed Notice Distance Requirements, shall be used to determine the area to which such notice shall be given, except as provided in Sections 18.05.060.C (3) through (7). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 18.05-2 MAILED NOTICE DISTANCE REQUIREMENTS FOR PUBLIC HEARINGS

Application Type	Application Size		
	Under 5 acres	5 – 50 acres	Greater than 50 acres
Annexation, Zoning	1,200 ft.	1,200 ft.	1,200 ft.
Be District Developments*	300 ft.	300 ft.	300 ft.
Comprehensive Plan Amendment	See Section 6.0 of the Loveland Comprehensive Master Plan		
Height Exception	300 ft.	300 ft.	300 ft.
PUD General Development Plan	1,200 ft.	1,200 ft.	1,200 ft.
PUD Preliminary Development Plan	600 ft.	900 ft.	1,200 ft.
Rezoning	600 ft.	900 ft.	1,200 ft.

* For Be District **developments** requiring approval of Planning Commission as indicated in 18.24.050

3. **Public rights-of-way and streets.** Notification distance shall be calculated inclusive of public rights-of-way and public streets.
4. **Lake, golf course and park front notification.**
 - a. Should the subject property front a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 18.05-2. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting beyond the distance

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specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.

5. Reduction in Notification Area. All notification distances in Table 18.05-2 shall be reduced by fifty (50) percent, but shall not be less than three hundred (300) feet for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to existing city limits of the City of Loveland.
6. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 18.05-2 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the public hearing.
7. Mineral Estate Owners. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given by the applicant at least thirty (30) days prior to the public hearing in accordance with the requirements of the Colorado Notification of Surface Development Act (C.R.S. § 24-65.5-101 et seq.)(the “act”). An affidavit of the applicant’s compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of the act.

18.05.070 Posted Notice for Public Hearings.

A. Deadline for Posting. At least fifteen (15) days prior to a public hearing, the applicant shall post a notice on the subject property.

B. Content. The posted notice for public hearings shall include the following:

1. Time, date, and location of the hearing.
2. The application(s) to be considered.
3. Project name.
4. City of Loveland Current Planning Division contact information, including the division phone number.

C. Requirements for Posting.

1. It shall be the applicant’s responsibility to have the sign(s) created by a sign company.
2. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant’s responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the public hearing. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
3. An affidavit of the applicant’s compliance with the posted notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 18.05.120.

PROPOSED**18.05.080 Published Notice for Public Hearings.**

A. Deadline for Publishing. Notice shall be published by the current planning division at least fifteen (15) days prior to a public hearing.

B. Content. The published notice for public hearings shall include the following:

1. Time, date, and location of the hearing.
2. The application(s) to be considered.
3. Project name.
4. Applicant's name.
5. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Current Planning Division office.
6. Description of the proposal for the subject property.
7. City of Loveland Current Planning Division contact information, including the division phone number.
8. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.

C. Requirements for Publishing. Notice of the public hearing shall be published one (1) time in a newspaper of general circulation.

18.05.090 Staff Decisions.

A. Required Notice. Mailed or posted public notice is required for certain staff decisions relating to special review and major home occupation applications. Refer to Code Section 18.40 for requirements applicable to special review application and Section 18.48.020 for requirements applicable to major home occupation application.

B. Optional Notice. Notice of staff decisions authorized under this Title but not otherwise subject to specific notice requirements may be required by the Current Planning Manager when the following circumstances exist:

1. A discretionary decision has been made by staff concerning the application of one or more regulations contained in this Title; and
2. The decision may impact the use or enjoyment of property within the vicinity of the subject site; and
3. There is reason to believe that there may be parties of interest residing or owning property within the vicinity of the affected property.

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C. Type and Distance of Optional Notice. Notice type(s) and distance for optional notice shall be at the discretion of the Current Planning Manager. In no instance shall mailed notice exceed 300 feet from the boundary of the subject property.

18.05.100 Computation of Time.

In computing any period of time prescribed for the purpose of giving notice under the provisions of this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.

18.05.110 Notice Cost.

All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for Published Notice.

18.05.120 Applicant's Certification.

Prior to the neighborhood meeting or public hearing, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant in Sections 18.05.020 and 18.05.050.

18.05.130 Failure to Provide Notice, Defective Notice.

Failure to provide the required affidavit, or evidence of a defective mailing list prior to a neighborhood meeting or public hearing, shall result in termination of the review process until proper notice is provided, meeting all applicable provisions herein.

18.05.140 Continuation of Hearings and Neighborhood Meetings.

A hearing or neighborhood meeting for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing or meeting is announced to the public at the time of continuance.

18.05.150 Notice for Appeals.

Any final decision that is appealed under this chapter is subject to the same notice standards as the original notice.

EXISTING**16.16.070 Public notice requirements.**

- A. Purpose. This section is intended to provide standards for public notice to be given for neighborhood meetings, public hearings, and Director decisions as required under Title 16.
- B. Applicability. Notification shall be given to the public by one (1) or more of the methods provided in Table 16.16.070-1:

Table 16.16.070-1 REQUIRED PUBLIC NOTICE			
	Mailed Notice	Posted Notice	Published Notice
Neighborhood Meetings	Required	Required	Not required
Planning Commission Public Hearings: Preliminary Plat; Obsolete Subdivisions; Vacation (of easements or rights-of-way)	Required	Required	Required
Director Decision: Minor Subdivisions	Required	Required	Not required

- C. Public notice shall not be required for Final Plats for Major Subdivisions, Boundary Line Adjustments, Lot Mergers, or Simple Plats.
- D. Content of Public Notice. Where public notice is required for neighborhood meetings, public hearings, director's decisions, or as otherwise required under this title, the notice shall include the following:
1. Time, date, and location of the meeting or hearing.
 2. The type(s) of application to be considered.
 3. Project name.
 4. Applicant's(s) name.
 5. Description of the location of the subject property by legal description, and general location using street address and/or nearest street intersection.
 6. Description of the proposal for the subject property.
 7. Primary contact (applicant or applicant's consultant(s)) information, including name of individual; name of company; phone number; e-mail address.
 8. Secondary contact (City of Loveland Current Planning Division) information, including name of reviewing planner; phone number of reviewing planner; e-mail address of reviewing planner.
 9. For public hearing notices, a statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
 10. For director decision notices, a statement that interested parties may submit an appeal in accordance with the requirements of Chapter 18.80 of this Code. (Ord. 5581 § 6, 2011)
- E. Mailed Notice. At least fifteen (15) days prior to a neighborhood meeting, public hearing, or the date of the director's decision, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.16.070.E.1 at the address listed for each owner. An affidavit of the applicant's

EXISTING

compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 16.16.070. (Ord. 5581 § 6, 2011)

1. A list certified by the applicant of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the radius distances provided in Table 16.16.070-2 shall be submitted to the Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Clerk and Recorder.
2. For all applications requiring mailed notice, the radius distances specified in Table 16.16.070-2 Area of Public Notice Distance by Application Type and Size, shall be used to determine the area to which such notice shall be given, except as provided in Sections 16.16.070.E. 3 and 4.

Table 16.16.070-2 AREA OF MAILED NOTICE DISTANCE BY APPLICATION TYPE AND SIZE			
Application Type	20 acres or less	21 – 50 acres	Greater than 50 acres
Obsolete Subdivisions	See Chapter 16.36		
Preliminary Plat	500 ft.	750 ft.	1,000 ft.
Minor Subdivision	150 ft.	150 ft.	150 ft.
Vacation (of easements or rights-of-way)	See Chapter 16.36		

(Ord. 5581 § 6, 2011)

3. All notification radius distances in Table 16.16.070-2 shall be reduced by fifty (50) percent, but shall not be less than three hundred (300) feet for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to existing city limits of the City of Loveland. Such radii shall be calculated exclusive of water bodies except as provided below, public rights-of-way except as provided below, and public streets. The right-of-way of Interstate 25 shall be included when calculating notification radius distances. The following lakes shall be included when calculating notification radius distances: Boedecker Lake, Boyd Lake, Horseshoe Lake, and Lake Loveland. The first tier of lots that have frontage on any of these lakes shall be included in the area of public notice regardless of the distance from the subject site should any portion of the lake be within the notification radius.
4. The area of required notification may be expanded up to twice the radius specified in Table 16.16.070-2 if development associated with an approved application would likely impact properties beyond the specified notification radius, as determined by the Current Planning Manager. Development impacts may include but are not limited to vibration, noise, odor, glare or increased traffic. A determination to expand the notification area must be provided in writing to the applicant at least twenty one (21) days prior to the neighborhood meeting.
5. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given in accordance with the requirements of C.R.S. ss 24-

EXISTING

- 65.5-101 et seq. and an affidavit of the applicant's compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 16.16.070.J.
- F. **Posted Notice.** At least fifteen (15) days prior to the neighborhood meeting, public hearing or Director's decision on the proposed application, the applicant shall post a notice on the subject property. Such notice shall be readily visible from each public street or highway adjoining the property and shall meet the provisions of Section 16.16.070.F.1. An affidavit of the applicant's compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 16.16.070.J. Where Posted Notice is required under this Chapter, the following shall apply:
1. The Current Planning Division shall provide the specifications for the notice to be posted on the site, along with an 8-1/2" x 11" example of the wording as it should appear on the sign and the number and location of signs required for the site.
 2. It shall be the applicant's responsibility to have the sign(s) created at a sign company, post the sign(s) on the site, and ensure that the sign(s) remain in place during the period leading up to the public hearing or Director's decision.
- G. **Published Notice.** In addition to the requirements set forth in Sections 16.16.070.E and 16.16.070.F, notice of the time, date and place of the public hearing or Director's decision, along with a statement of the nature of the matter to be considered, including a description of the location of the subject property and the agency or office and telephone number where further information may be obtained shall be published one (1) time in a newspaper of general circulation by the Current Planning Division at least fifteen (15) days prior to any public hearing.
- H. **Computation of Time.** In computing any period of time prescribed for the purpose of giving notice under this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.
- I. **Notice Cost.** All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for the Published Notice.
- J. **Applicant's Certification.** Prior to the neighborhood meeting, public hearing, or Director's decision, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant as provided in Sections 16.16.070.E and 16.16.070.F.
- K. **Failure to Provide Notice, Defective Notice.** Failure to provide the required affidavit or evidence of a defective mailing list prior to a neighborhood meeting or public hearing shall result in termination of the review process until proper notice is provided meeting all applicable provisions under this Chapter.
- L. **Continuation of Hearings.** A hearing for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing is announced to the public at the time of continuance. (Ord 5424 § 4, 2009)

Chapter 18.05

PUBLIC NOTICE REQUIREMENTS

Sections:

18.05.010	Purpose.
18.05.020	Applicability.
18.05.030	Content of Notice.
18.05.040	Mailed Notice.
18.05.050	Posted Notice.
18.05.060	Computation of Time.
18.05.080	Notice Cost.
18.05.090	Applicant's Certification.
18.05.100	Failure to Provide Notice, Defective Notice.
18.05.110	Continuation of Hearings.

18.05.010 Purpose.

This Chapter provides standards for public notice for neighborhood meetings, public hearings, and Director decisions as specified within Title 18.

18.05.020 Applicability.

Notification shall be given to the public by one (1) or more of the methods provided in Table 18.05-1:

Table 18.05-1 REQUIRED PUBLIC NOTICE			
	Mailed Notice	Posted Notice	Published Notice*
Neighborhood Meetings	Required	Required	Not required
Planning Commission	Required	Required	Required
Public Hearings: Annexation, Zoning; Comprehensive Plan Amendment; General Development Plan; Preliminary Development Plan; Rezoning; Special Review; Vacation; Variance; Vested Property Right			
	See Chapter 18.72	See Chapter 18.72	See Chapter 18.72
Director Decisions: Home Occupations; Special Review	Required	Required	Not required

***Does not include notice for City Council meetings**

18.05.030 Content of Notice.

Where public notice is required for neighborhood meetings or public hearings, or as otherwise required under this title, the notice shall include the following:

- A. Time, date, and location of the meeting or hearing.
- B. The type(s) of application to be considered.
- C. Project name.
- D. Applicant'(s) name.
- E. Description of the location of the subject property by legal description, and general location using street address and/or nearest street intersection.
- F. Description of the proposal for the subject property.
- G. Primary contact (applicant or applicant's consultant(s)) information, including name of individual; name of company; phone number; e-mail address.
- H. Secondary contact (City of Loveland Current Planning Division) information, including name of reviewing planner; phone number of reviewing planner; e-mail address of reviewing planner.
- I. For public hearing notices, a statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
- J. For Director decision notices, a statement that interested parties may submit an appeal and the deadlines and requirements for filing an appeal.

18.05.040 Mailed Notice.

- A. **Deadline for Mailing.** At least fifteen (15) days prior to a neighborhood meeting, a public hearing, or the date of the Director's decision, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 18.05.040.B, at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the provisions of Section 18.05.090
- B. **Ownership List.** A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall wholly or partially within the radius distances provided in Table 18.05 -2 shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Clerk and Recorder. This list shall be current to within thirty (30) days prior to the mailing.
- C. **Area of Notification.** For all applications requiring written (mailed) public notice, the radius distances specified in Table 18.05-2 Area of Public Notice Distance by Application Type and Size, shall be used to determine the area to which such notice shall be given, except as provided in Sections 18.05.040.D and E.

Table 18.05-2 AREA OF MAILED NOTICE DISTANCE BY APPLICATION TYPE AND SIZE			
Application Type	20 acres or less	21 – 50 acres	Greater than 50 acres
Radius Distance in Feet- See Section 18.05.040.D			
Annexation, Zoning	1,000 ft.	1,000 ft.	1,000 ft.
Comprehensive Plan Amendment	See Section 6.0 of the Loveland, Colorado Comprehensive Master Plan		
PUD General Development Plan	1,000 ft.	1,000 ft.	1,000 ft.
PUD Preliminary Development Plan	500 ft.	750 ft.	1,000 ft.
Home Occupation	300 ft. See Section 18.48.020		
Rezoning	500 ft.	750 ft.	1,000 ft.
Special Review	500 ft.	750 ft.	1,000 ft.

Variance	150 ft.	150 ft.	150 ft.
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- D. Reduction in Notification Area. All notification radius distances in Table 18.05-2 shall be reduced by fifty (50) percent, but shall not be less than three hundred (300) feet for infill projects that are twenty (20) acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to existing city limits of the City of Loveland. Such radii shall be calculated exclusive of water bodies except as provided below, public rights-of-way except as provided below, and public streets. The right-of-way of Interstate 25 shall be included when calculating notification radius distances. The following lakes shall be included when calculating notification radius distances: Boedecker Lake, Boyd Lake, Horseshoe Lake, and Lake Loveland. The first tier of lots that have frontage on any of these lakes shall be included in the area of public notice regardless of the distance from the subject site should any portion of the lake be within the notification radius.
- E. Expansion of Specified Notification Area. The area of required notification may be expanded up to twice the radius specified in Table 18.05-2 if development associated with an approved application would likely impact properties beyond the specified notification radius, as determined by the Current Planning Manager. Development impacts may include but are not limited to vibration, noise, odor, glare or increased traffic. A determination to expand the notification area must be provided in writing to the applicant at least twenty one (21) prior to the neighborhood meeting.
- F. Mineral Estate Owners. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given in accordance with the requirements of C.R.S. ss 24-65.5-101 et seq. and an affidavit of the applicant's compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 18.05.090.

18.05.050 Posted Notice.

- A. Posting Deadline. At least fifteen (15) days prior to the neighborhood meeting, public hearing or Director's decision on the proposed application, the applicant shall post a notice on the subject property. Such notice shall be readily visible from each public street or highway adjoining the property and shall meet the provisions of Section 18.05.050.B. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 18.05.090
- B. Posting Requirements. The Current Planning Division shall provide the specifications for the notice to be posted on the site, an 8-1/2" x 11" example of the wording as it should appear on the sign, and the number and location of signs required for the site. It shall be the applicant's responsibility to have the sign(s) created at a sign company, post the sign(s) on the site, and ensure that the sign(s) remain in place during the period leading up to the public hearing or Director's decision.

18.05.060 Published Notice.

In addition to the requirements set forth in Sections 18.05.040 and 18.05.050, notice of the time, date and place of the public hearing or Director's decision, along with a statement of the nature of the matter to be considered, including a description of the location of the subject property and the agency or office and telephone number where further information may be obtained shall be published one (1) time in a newspaper of general circulation by the Current Planning Division at least fifteen (15) days prior to any public hearing.

18.05.070 Computation of Time.

In computing any period of time prescribed for the purpose of giving notice under the provisions of this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.

18.05.080 Notice Cost.

All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for the Published Notice.

18.05.090 Applicant's Certification.

Prior to the neighborhood meeting, public hearing, or Director's decision, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant in Sections 18.05.040 and 18.05.050.

18.05.100 Failure to Provide Notice, Defective Notice.

Failure to provide the required affidavit, or evidence of a defective mailing list prior to a neighborhood meeting or public hearing shall result in termination of the review process until proper notice is provided, meeting all applicable provisions herein.

18.05.110 Continuation of Hearings.

A hearing for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing is announced to the public at the time of continuance. (Ord. 5425 § 1, 2009)



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Title 18 Committee Meeting

Discussion Topic: Chapter 18.05 Public Notice Code Amendment

Various chapters within Title 18 require notification of the public as part of the City's procedures for hearings, meetings and staff decisions related to zoning requests. These chapters then refer the reader to Chapter 18.05 for a detailed description of the process and requirements for notifying the public.

Approximately three years ago, Chapter 18.05 was amended to address concerns related to the mailed public notice for development proposals near lakes, and at the same time, the entire chapter was reorganized to improve clarity. After a few years of implementing the lake front notice requirement and working with the reorganized notice provisions, staff believes the notice requirements can be further tweaked to improve the purpose and intent of the public notice provisions.

Background

For meetings and decisions requiring public notice, the determination of which property owners to notify by mail was based (with certain exceptions) on distance from the subject property. For lakes, the notification distance was measured exclusive of the lake, meaning that if the lake fell within the standard notification distance, the measurement would cease at the edge of the water and continue again on land. This was considered to provide adequate notice of owners of lake front properties around smaller lakes, but did not adequately account for the potentially broad impact of developments near the shores of larger lakes.

Recognizing that lake front properties have a uniquely large viewshed that is potentially impacted by any development proposal in close proximity to the lake, a few years ago the City sought to increase the opportunity for such property owners to be notified by mail of such proposals. To address the matter, instead of "jumping" over the four largest lakes (Boyd, Horseshoe, Loveland, and Boedecker) when measuring notice distance, a provision was added requiring all properties on these lakes to be notified by mail in the event that any portion of the lake fell within the standard notification distance.

Implementation

Implementation of the provision requiring mailed notice to all lake front property owners on the four largest lakes has been found to be problematic in a number of zoning requests. A recent and rather noteworthy example concerned a variance request for a property on Boyd Lake. The request was for a setback

encroachment of an existing deck which was not visible from any lake front property beyond those within very close proximity of the subject property. Mailed notification to all owners of property within 150 feet was required. As Boyd Lake fell within the notification distance, all lake front properties on Boyd had to be mailed a hearing notice. That applicant was burdened with a cost for the mailed notification that was disproportionate to the majority of other applicants and excessive given the nature of the request. Also, Boyd Lake property owners receiving the notification may have been unduly concerned about a perceived impact to their property.

Staff envisions encountering more situations in the future involving an exceedingly large number of lake front property mailed notices. Given this, staff has devised a proposed amendment to the Code to more appropriately determine the impacted lake front properties that warrant receiving mailed notice. Staff still considers it appropriate to increase the scale of notification of lake front property owners. However, the measurement can be limited to exclude properties for which it can be reasonably anticipated that no or minimal impact would occur due to distance from the subject property.

Proposed Amendment

Because of the great distance between the far ends of the largest lakes, and also because of the curves to shorelines that limit viewsheds, it is unlikely that all lake front property owners will be impacted by all development applications in close proximity to a lake. Therefore, staff recommends eliminating the requirement to notify all owners of lake front properties when the standard notification distance includes any portion of the lake. Instead, after analysis of a variety of approaches to measuring lake front notification, staff recommends the following distance-based approach to lake front property notification:

Should any portion of any lake be within the notification distance, written notice shall also be mailed to owners of lake front properties that are within two times the distances specified in Table 18.05-2 (Mailed Notice Distance Requirements).

A doubling of the notification distance for lake front properties significantly increases the likelihood (over the standard notification distance alone) that a lake front property will be mailed notice for development proposals in the vicinity of a lake. Unlike the Code's current approach to lake front measurement, this approach also ensures that properties at a great distance from a development proposal will not receive mailed notification. In addition, since the standard notice distance is larger for types of applications that are greater in magnitude (such as Planned Unit Developments), lake front notification with this approach will also be larger for applications of greater magnitude, as it is a doubling of the standard distance. It should be noted that although a lesser number of lake front property owners will receive mailed notice with the proposed amendment over the City's current approach, all property owners can still potentially see the

required posting of a hearing notice on the property, in the newspaper, or at the Civic Building.

In staff's opinion, the standard notification distances specified in Chapter 18.05 and their doubling for lake front properties provide appropriate notice with the exception of the variance distance. At 150 feet, often only adjacent property owners are eligible to receive the variance mailed notice, and at its doubling to 300 feet, few additional lake front property owners would receive the mailed notice for requests near a lake. An increase in the variance mailed notice distance to 200 feet (and respectively to 400 feet for lake front notice) is recommended in the proposed amendment.

Because of the logical approach to lake front notice proposed by this amendment, staff further recommends that no distinction be made between the notification procedures on small lakes and large lakes in the City. As the amendment is written, no lake will be excluded from the notice distance measurement and, in the event that any portion of any lake falls within the standard notice distance, all lake front property owners within double the standard notification distance will be notified.

Additional Changes

Reorganization

While the impetus for the current proposal to amend Chapter 18.05 is the lake front notification provision, staff would like to broadly reorganize the chapter as part of the amendment. The current organization of the chapter groups neighborhood meeting, public hearing, and staff decision notice requirements together. This has caused confusion in how the requirements are interpreted and applied, since in actual practice, the approach and information provided in the public notice for each of these matters varies significantly. Given this complexity, the proposed amendment segments the chapter into type of meeting to clarify the distinction.

The most noteworthy change in this regard is that notification requirements for Director (or staff) decisions, that is, Special Reviews and Major Home Occupations, have been removed in entirety from Chapter 18.05. The information in the public notice and the manner of providing the notice differs significantly for these types of requests versus neighborhood meetings and public hearings. This is because a staff decision public notice occurs after a decision has been made, while the neighborhood meeting and public hearing notice occurs before a decision. Also, additional public notices are required for staff decisions if an appeal is filed. Rather than going into detail about these staff decision notice procedures in 18.05, the proposed amendment refers the reader to the respective Special Review and Major Home Occupation sections of the Code. While referring a reader in the Code to another section of the Code is not ideal, this method is already utilized in Chapter 18.05 for Comprehensive Plan

Amendments and Vested Right hearings, which are noticed in a less straightforward manner than other types of applications.

Measuring Distance

The Code requires notification distance to be measured exclusive of public streets and rights-of-way. This has been a difficult requirement to implement for two reasons: 1) the method of exclusion is unclear for streets/rights-of-way that are configured in manner where the end of the street/right-of-way is far from the subject property. For example, where a street extends in a perpendicular manner from a subject property, it is unclear how to exclude it from the measurement; 2) for applications requiring a large notice distance, there can be an excessive number of streets/rights-of-way to exclude.

It is proposed that the Code be amended to clarify how to measure notice distance and to limit the streets and rights-of-way excluded. Two statements in this regard have been added to the proposed amendment:

- The references to *radius* have been removed and notification distance is instead “measured from the perimeter of the subject property.”
- Only streets and rights-of-way that are “abutting” will be excluded from the distance measurement, eliminating any need to exclude multiple streets/rights-of-way in any single direction or streets/rights-of-way that are perpendicular to a subject property.

In addition to the textual clarification, simple diagrams can be added to the Code to illustrate the measurement methods above.

Conclusion

Attached is a draft of the proposed text amendment to the Public Notice Requirements chapter of the Municipal Code. Because of the extensive reorganization proposed for this chapter, a strike through version of the proposed changes has not been prepared for the Committee. The attached version is a total replacement of Chapter 18.05.

Proposed changes to the Chapter center on: 1) method of measuring the lake front property mailed notice requirement; 2) specifying the method of measuring the standard mailed notice distance, and 3) clarifying the Chapter's requirements through a reorganization of the text.

Substantive changes proposed for Chapter 18.05 include:

- Changing the lake front notification procedures to reduce the required mailed notification area while still keeping the lake front notice distance larger than the standard notice distance.
- Expanding the mailed notice distance for variances.

- Including public streets and rights-of-way in the notification distance unless the street or right-of-way directly abuts the subject property.

Clarifying changes proposed include:

- Specifying that the notice distance requirements are measured from the property boundary.
- Moving the public notice requirements and procedures for Director decisions (Special Review and Major Home Occupations) from the public notice chapter to their respective chapters.
- Organizing the public notice chapter by type of meeting.
- Assorted minor wording changes in the text.

Staff will be prepared to discuss the text amendment with the Title 18 Committee members at the July meeting. Staff can further analyze the proposed changes with members at the following Committee meeting and then finalize a draft amendment reflecting any Committee changes.

LIST OF ATTACHMENTS:

1. Draft Text Amendment

RECOMMENDED ACTION:

Provide City staff with feedback on the proposed text amendment.



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Title 18 Committee Meeting

Discussion Topic: Chapter 18.05 Public Notice Code Amendment

Zoning Code Chapter 18.05 details the requirements for notifying the public of hearings, meetings and staff decisions related to zoning requests. Approximately three years ago, the Chapter was amended to address concerns related to the public notice for development proposals near lakes, and at the same time, the entire chapter was reorganized to improve clarity. After a few years of implementing the amended chapter, staff believes the notice requirements can be further tweaked to improve the intent of the public notice provisions.

Background

For Chapter 18-related meetings and decisions requiring public notice, the determination of which property owners to notify by mail is based on distance from the subject property. Prior to the amendment of three years ago, the notification distance was always measured exclusive of lakes, meaning that if a lake fell within the standard notification distance, the measurement would cease at the edge of the water and continue again on land.

This “lake jumping” measurement method was considered to provide adequate notice to owners of properties fronting smaller lakes, but there was concern that it did not adequately account for the broad impact of developments near larger lakes. Recognizing that lake front properties have a uniquely large viewshed that is potentially impacted by any development in close proximity to the lake, the City increased the opportunity for such property owners to receive mailed notice of development proposals. Instead of “jumping over” the four largest lakes (Boyd, Horseshoe, Loveland, and Boedecker) when measuring notice distance, a provision was added to Chapter 18.05 requiring all properties on these lakes to be notified by mail in the event that any portion of the lake fell within the standard notification distance.

Implementation

Implementation of the provision requiring mailed notice to all lake front property owners on the four largest lakes has been found to be problematic. A recent and rather noteworthy example concerned a variance request for a property on Boyd Lake. The request was for a setback encroachment of an existing deck which was not visible from any lake front property beyond those within very close proximity of the subject property. Mailed notification to all owners of property within 150 feet was required. As Boyd Lake fell within the notification distance, all lake front properties on Boyd had to be mailed a hearing notice. That applicant was burdened with a cost for the mailed notification that

was disproportionate to the majority of other applicants and excessive given the nature of the request. Also, Boyd Lake property owners receiving the notification may have been unduly concerned about a perceived impact to their property.

Because this has been a recurring issue, staff is proposing a Code amendment to more appropriately determine the impacted lake front properties that warrant receiving mailed notice. Staff still considers it appropriate to increase the scale of notification of lake front property owners. However, the measurement can be limited to exclude properties for which it can be reasonably anticipated that no or minimal impact would occur due to distance from the subject property.

Proposed Amendment

Because of the great distance between the far ends of the largest lakes, and because of the curves to shorelines that limit viewsheds, it is unlikely that all lake front properties will be impacted by all development applications in close proximity to a lake. After analysis of a variety of approaches to measuring lake front notification, staff recommends replacing the requirement to notify all lake front property owners with the following distance-based approach to lake front notification:

Should any portion of any lake be within the notification distance, written notice shall also be mailed to owners of lake front properties that are within two times the distances specified in Table 18.05-2 (Mailed Notice Distance Requirements).

A doubling of the notification distance for lake front properties significantly increases the likelihood (over the standard notification distance alone) that a lake front property will be mailed notice for development proposals in the vicinity of a lake. Unlike the Code's current approach to lake front measurement, this approach also ensures that properties at a great distance from a development proposal will not receive mailed notification. In addition, since the standard notice distance is larger for types of applications that are greater in magnitude (such as PUDs), lake front notification with this "doubling" approach will also be larger for applications of greater magnitude. It should be noted that although a lesser number of lake front properties will receive mailed notice with the proposed amendment over the City's current approach, all property owners can still potentially see the required posting of a notice on the property, in the newspaper, or at the Civic Building.

In staff's opinion, the standard notification distances specified in Chapter 18.05 and their doubling for lake front properties provide appropriate notice with the exception of the variance distance. At 150 feet, often only adjacent property owners are eligible to receive the variance mailed notice, and at its doubling to 300 feet, few additional lake front property owners would receive the mailed notice for requests near a lake. An increase in the variance mailed notice distance to 200 feet (and respectively to 400 feet for lake front notice) is recommended in the proposed amendment.

Because of the logical approach to lake front notice proposed by this amendment, staff further recommends that no distinction be made between the notification procedures on

small lakes and large lakes in the City. As the amendment is written, no lake will be excluded from the notice distance measurement and, in the event that any portion of any lake falls within the standard notice distance, all lake front property owners within double the standard notification distance will be notified.

Additional Changes

Reorganization

While the impetus for the current proposal to amend Chapter 18.05 is the lake front notification provision, staff would like to broadly reorganize the chapter as part of the amendment. The chapter is currently organized by type of notice (posted, mailed and newspaper) and groups neighborhood meeting, public hearing, and staff decision notice requirements together. This has caused confusion in how the requirements are interpreted and applied, since in actual practice, the approach and information provided in the public notice for each of these matters varies significantly. Given this complexity, the proposed amendment segments the chapter into type of meeting instead of type of notice.

The most noteworthy change in this regard is that notification requirements for Director (or staff) decisions, that is, Special Reviews and Major Home Occupations, have been removed from Chapter 18.05. The information in the public notice and the manner of providing the notice differs significantly for these types of requests versus neighborhood meetings and public hearings. This is because a staff decision public notice occurs after a decision has been made, while the neighborhood meeting and public hearing notice occurs before a decision. Also, additional public notices are required for staff decisions if an appeal is filed. Rather than going into detail about these staff decision notice procedures in 18.05, the proposed amendment refers the reader to the respective Special Review and Major Home Occupation sections of the Code. While referring a reader in the Code to another section of the Code is not ideal, this method is already utilized in Chapter 18.05 for Comprehensive Plan Amendments and Vested Right hearings, which are noticed in a less straightforward manner than other types of applications.

A provision has been added to the staff decision subsection specifying that the Current Planning Manager can require public notice for any zoning-related staff decision that is anticipated to impact other properties.

Measuring Distance

The Code requires notification distance to be measured exclusive of public streets and rights-of-way. This has been a difficult requirement to implement for two reasons: 1) the method of exclusion is unclear for streets/rights-of-way that are configured in manner other than parallel to a lot line of the subject property. For example, where a street extends in a perpendicular manner from a subject property, it is unclear how to exclude it from the measurement; 2) for applications requiring a large notice distance, there can be an excessive number of streets/rights-of-way to exclude.

It is proposed that the Code be amended to clarify how to measure notice distance and to limit the streets and rights-of-way excluded. Two statements in this regard have been added to the proposed amendment:

- The references to *radius* have been removed and notification distance is instead “measured from the perimeter of the subject property.”
- Only streets and rights-of-way that are “abutting” will be excluded from the distance measurement, eliminating any need to exclude multiple streets/ rights-of-way in any single direction or streets/rights-of-way that are perpendicular to a subject property.

In addition to the textual clarification, simple diagrams can be added to the Code to illustrate the measurement methods above.

Conclusion

Attached is a draft of the proposed text amendment to the Public Notice Requirements chapter of the Municipal Code. Changes to the Chapter center on:

- 1) method of measuring the lake front property mailed notice requirement;
- 2) specifying the method of measuring the standard mailed notice distance, and
- 3) clarifying the Chapter’s requirements through a reorganization of the text.

Staff will be prepared to discuss the text amendment with the Title 18 Committee members at the August meeting. If the Committee is generally supportive of the text amendment, it can direct Staff to proceed with the matter to a Council study session. The amendment presented to Council can be further altered to reflect any changes requested by the Committee.

LIST OF ATTACHMENTS:

- 1) Draft Text Amendment

RECOMMENDED ACTION:

Provide Staff with feedback on the proposed text amendment and direct Staff to proceed with the matter to a Council study session.



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

Title 18 Committee Meeting

9/20/12

Public Notice Code Amendment – Title 18 Zoning Code and Title 16 Subdivision Code

Attached is a draft amendment to the public notice chapter of the Zoning Code (Title 18) along with an explanatory staff memo. Information on the proposed Title 18 amendment was included in the Committee packets for the July and August Title 18 Committee meetings. Because of the long agendas at each of those meetings, the amendment to the public notice chapter was not discussed. At the September meeting, staff had indicated that, if the Committee was generally supportive of the proposed Zoning Code amendment, staff would proceed with preparing a draft revision of the public notice chapter of the Subdivision Code (Title 16) so that it matches the draft Zoning Code public notice amendment in organizational style. The Committee indicated that they supported staff proceeding with preparing the draft amendment to the Subdivision Code.

Attached is the draft amendment to the public notice provisions within the Subdivision Code. As with the Zoning Code draft amendment, a cross-out version has not been prepared because of the significant amount of reorganization that has occurred. The changes reflected in the Title 16 draft amendment match that of the Title 18 draft amendment. Thus, the explanation of the reorganization, lake front notification method, increased notice distances, and clarified measurement method included in the August Zoning Code amendment cover memo also apply to the Subdivision Code amendment. Changes to the public notice chapters center on:

- 1) method of measuring the lake front property mailed notice requirement;
- 2) simplifying the method of measuring the standard mailed notice distance,
and
- 3) clarifying the Chapter's requirements through a reorganization of the text.

Staff will be prepared to discuss the Title 16 and Title 18 text amendments with the Committee members at the September meeting. If the Committee is generally supportive of the text amendments, it can direct Staff to proceed with the matter to a Council study session. The amendment presented to Council can be further altered to reflect any changes requested by the Committee.

LIST OF ATTACHMENTS:

- 1) Cover memo to Draft Title 18 Text Amendment
- 2) Draft Title 18 Text Amendment
- 3) Draft Title 16 Text Amendment

RECOMMENDED ACTION:

Provide Staff with feedback on the proposed text amendment and direct Staff to proceed with the matter to a Council study session.

MEMORANDUM

To: Title 18 Committee

From: Noreen Smyth, Senior Planner

Date: November 15, 2012

Re: Zoning Code Public Notice Amendment

The attached versions of the Zoning Code public notice chapter have been prepared in response to changes requested by the Planning Commission during their study session review of the matter on October 22, 2012. The Commission had expressed concern that the proposed lake front mailed notice measurement method may not be adequate, and expressed some interest in including properties fronting parks and golf courses in the expanded notice distance.

Staff has proposed changes to three requirements of the chapter to address the Planning Commission's concerns, and has included two different *options* (*a* or *b* below) with each change. It is requested that the Title 18 Committee indicate whether the changes are supported, and if so, indicate which option is preferred for each:

- 1) Including expanded notification for:
 - a) Properties fronting lakes only
 - b) Properties fronting lakes, public parks and golf courses
 - 2) Including a smaller and a larger distance for lake front mailed notice based on the magnitude of the application & the size of the subject property:
 - a) Double the standard notice distance for smaller applications/properties and triple the standard notice distance for larger applications/properties
 - b) Double the standard notice distance for smaller applications/properties and full lake front notice for larger applications/properties
 - 3) Applying the lake front notification requirement:
 - a) When the standard notice distance for the subject property includes a lake, whether or not the subject property itself fronts a lake
 - b) Only when the subject property fronts a lake
-



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Planning Commission Staff Report October 22, 2012

Agenda #: **Study Session - 1**

Title: Public Notice Code Amendment

Applicant: City of Loveland Development
Services Department

Request: Code Amendment to Titles 18 & 16

**Staff
Planner:** Noreen Smyth, Senior Planner

Staff Recommendation:

Staff recommends that the Planning Commission instructs staff to schedule a public hearing on the proposed amendment.

Summary of Analysis

This is a study session to consider a staff-initiated text amendment to the public notice sections of Title 18, the Zoning Code, and Title 16, the Subdivision Code. The Code amendment was pursued in response to challenges applicants have experienced in meeting the lake front mailed notification requirement. In addition to tweaking the lake front notification provision, changes are proposed to certain other aspects of the public notice sections of the Code. These other changes center on simplifying the method of measuring mailed notice distance, clarifying the chapter through a reorganization of the text, and allowing for public notice for applications and director decisions that had not previously been included in the public notice chapters.

The proposed amendment has undergone a thorough review by the Title 18 Committee, which has instructed staff to forward the matter to the Planning Commission with a recommendation that the amendment be adopted. The attached draft text amendment reflects changes required by both the Title 18 Committee and the City Attorney. Staff believes that all key issues have been resolved.

I. ATTACHMENTS:

- 1) Title 18 Committee memo concerning draft Title 18 Text Amendment
- 2) Draft Title 18 Text Amendment
- 3) Draft Title 16 Text Amendment

II. BACKGROUND/TITLE 18 COMMITTEE REVIEW:

Attached for the Planning Commission's review is the staff memo that went to the Title 18 Committee concerning the draft public notice Code amendment. It explains in detail the proposed changes to the public notice provisions and the reasoning behind the changes.

The draft amendment to Zoning Code Chapter 18.05 was first presented to the Title 18 Committee at their July 2012 meeting. Concern over the Code's extensive lake front notification requirement, which had been enacted through a Code amendment approximately three years ago, prompted staff to initiate a modification to this provision. The lake front notice provision required all owners of lake front properties on the four largest lakes in the City to be notified by mail of a public hearing, neighborhood meeting or director's decision whenever the lake fell within the standard notice distance requirement. Applicants impacted by this provision felt that the number of property owners to whom they had to mail notification was too large. Also, some recipients of such notices complained that they had received notice for a project that had no relationship to their property. This issue and other minor concerns with the public notice provisions were explained to the Committee at the July meeting, and a draft text amendment addressing these issues was presented for their consideration. The Committee expressed general support for pursuing improvements to this chapter of the Code, gave initial feedback on the draft, and instructed staff to put the item on the August Title 18 Committee agenda for a more thorough analysis.

At their August meeting, the Committee agreed that the current lake front requirement was excessive and that other changes clarifying the method of measuring notification distances were useful. However, the Committee expressed concern that the changes may result in too significant a decrease in the number of property owners receiving mailed notice. The Committee instructed staff to address this matter come back to them at their September meeting.

For the September meeting, the amendment was further refined to modestly increase the standard mailed notification distance. This was done to make up for a potential decrease in the distance that could result from the changes to method of measuring distance. In addition, a draft amendment of the public notice section of Title 16, the Subdivision Code, matching the changes proposed for Title 18, was presented. The Committee supported the latest version of the amendment and referred the proposal to the Planning Commission with a recommendation of approval. However, because the Committee wants to further ensure the appropriateness of both the standard and the lake front notification distances, it has put the matter on their October 18 agenda for a further review. Staff will present additional recommendations, if any, that result

from the October Title 18 Committee meeting to the Planning Commission at their October 22 meeting.

V. SUMMARY:

Attached is both the Title 18 and Title 16 draft amendments to the public notice provisions. Cross-out versions have not been prepared because of the significant amount of reorganization that has occurred. The attached texts, if the amendment is approved, will represent complete replacements of their respective sections in Titles 18 and 16.

A detailed list of changes to the public notice provisions is provided at the top of the Title 18 draft. The changes center on:

- 1) Method of measuring both the lake front and standard mailed notice requirement;
- 2) Inclusion of public notice for applications and staff decisions not currently referenced in the chapter, and
- 3) Clarifying the Chapter's requirements through a reorganization of the text.

Staff will be prepared to discuss the amendment with Commission members at the October study session meeting.

V. KEY ISSUES:

Staff believes that all key issues have been resolved through the Title 18 Committee and staff review processes.

Action to be taken by the Planning Commission

Provide staff with feedback on the proposed amendment. If the Commission is supportive of the amendment and seeks no changes or only minor changes to the amendment, it can instruct staff to schedule a public hearing on the amendment.

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
February 11, 2013**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on February 11, 2013 at 6:30 p.m. Members present: Chairman Meyers; Vice Chairman Middleton; and Commissioners Molloy, Ray, Dowding, Crescibene, Krenning and Prior. City Staff present: Kerri Burchett, Current Planning; Noreen Smyth, Current Planning; Karl Barton, Community and Strategic Planning; 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.

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

There were no staff matters.

APPROVAL OF THE MINUTES

Commissioner Meyers commented that he would abstain from voting on the January 14, 2013 minutes due to his absence.

Vice Chair Middleton made the following correction to the January 14, 2013 minutes, page 4 lines 3 and 4 as follows:

The amendment proposes to change the land use designation of the property west of I-25, east north of County Road 60, and ~~north~~ east of County Road 7.

The minutes were tabled.

Commissioner Molloy made a motion to approve the January 28, 2013 meeting minutes. Upon a second by Commissioner Ray the minutes were unanimously adopted (Chairman Meyers abstained).

Chairman Meyers reported staff requested Item 2. **2012 Accomplishments and Goals** be moved to Item 1, on the Regular Agenda.

1
2 **REGULAR AGENDA**

3
4 **2. 2012 Accomplishments / 2013 Goals.**

5
6 At the beginning of each year, the Planning Commission reviews its accomplishments from the
7 previous year and establishes goals for the new year. This effort is designed to ensure that
8 Commission agendas and related Commission activities reflect established priorities. This
9 matter is administrative.

10
11 **Vice Chair Middleton** stated he would like to table the item until Current Manager Robert
12 Paulsen was present. He made a motion to table the discussion to a future date.

13
14 **Commissioner Krenning** questioned if City Council needed this item finalized for its packet.

15
16 **Kerri Burchett, Current Planning**, stated Mr. Paulsen indicated the goals needed to be forward
17 to the Director of Development Services by the end of the week but was not aware if that was a
18 deadline needed for City Council. She reported she and Karl Barton, Community and Strategic
19 Planning were available to facilitate the discussion. **Mr. Barton** stated he was available to
20 discuss issues and goals related to the 402 Corridor Plan.

21
22 **Vice Chair Middleton** stated he was not aware of a deadline for completing the item.

23
24 **Deputy City Attorney, Judy Schmidt** commented the Planning Commission could discuss the
25 item and offer recommendations that could be discussed further and finalized at the next
26 meeting.

27
28 **Commissioner Molloy** supported going forward.

29
30 After a brief discussion about the amount of time involved in going through the accomplishments
31 and goals, **Mr. Barton, Community and Strategic Planning** explained that the initial
32 discussion regarding the 2011 Comprehensive Plan implementation and process was the timely
33 process they were referring to.

34
35 **Commissioner Krenning** stated he would support the motion to continue the item.

36
37 *The vote on the original motion was adopted 7-1. Yeas: Commissioners: Crescibene,*
38 *Dowding, Middleton, Meyers, Ray, Krenning and Prior. Nays: Commissioner Molloy.*
39

1 **1. Code Amendment.**

2
3 This is a public hearing for the review and consideration of amendments to the public notice
4 provisions of Title 16 (the subdivision code) and Title 18 (the zoning code). Working with the
5 City's Title 18 Committee, Planning staff has developed amendments adjusting and clarifying the
6 notification requirements concerning specified subdivision and zoning applications. As directed
7 by the Planning Commission at the October 22, 2012 study session, the amendments include
8 expanded notification distances for sites bordering lakes, parks and golf courses. Upon
9 conclusion of its review of this legislative matter, the Planning Commission must forward a
10 recommendation to the City Council for final action.

11
12 **Noreen Smyth, Current Planning**, gave a staff presentation on this item. She noted that the
13 proposed changes would impact both the subdivision and zoning codes. Ms. Smyth responded to
14 Commissioner comments and clarified that staff has emailed the proposed amendment to area
15 developers and development consultants as well as posting the amendment on the City's website.
16 She clarified the requirements would not impact mineral rights owners.

17
18 **Commissioner Dowding** commended staff for their ability to understand and capturing the
19 Planning Commissions thoughts and intentions on this amendment.

20
21 **Commissioner Crescibene** concurred with Commissioner Dowding's comments.

22
23 **Commissioner Molloy** supported the amendment commenting it was beneficial to everyone.

24
25 **Vice Chair Middleton** thanked staff and the Title 18 Committee for their work.

26
27 **Chairman Meyers** spoke in support of the amendment.

28
29 ***Vice Chairman Middleton recommended that the Planning Commission recommend approval***
30 ***of the proposed amendment to City Council. The vote was unanimous.***

31
32 **Commissioner Molloy** reported on the study session February 12, 2013 regarding oil and gas
33 regulations.

34
35 **Vice Chair Middleton** stated it was not his original intent to postpone the Goals and
36 Accomplishments and stressed his frustration that the City Council has not given the Planning
37 Commission clear direction on what they want or where they are going.

38
39 After further discussion **Chairman Meyers** stated that he would like to work more with other
40 Commissions and learn more about the 402 Corridor Plan. He asked the Commissioners to send

1 their suggestions to him regarding their goals and he would compile them without prioritizing
2 them.

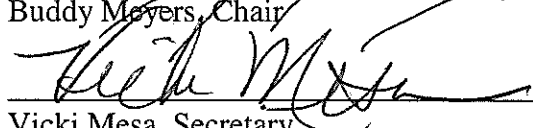
3
4 **Commissioner Molloy** reported that the goals and objectives need to be completed prior to the
5 Boards and Commissions summit. After a brief discussion he stated he would also like to
6 interact with other boards and commissions.

7
8 **Commissioner Ray** stated a few of his goals would be to have more scheduled field trips
9 (Mehaffey Park), walking tour of downtown and more engagement with the City Council.

10
11 **ADJOURNMENT**

12
13 *Vice Chair Middleton made a motion to adjourn, the motion was unanimously adopted.*

14
15
16 
17 Buddy Meyers, Chair

18
19 
20 Vicki Mesa, Secretary
21

Members of the Loveland Planning Commission:

I moved to Loveland in June of 1970, so I have considered Loveland my home for a long time. I owned my own business here for 35 years, retiring just last year. I have tried to be an active community member during my tenure. I have been a member of the Chamber, a Loveland High Plains Arts Council board member, Museum board member and a Loveland Senior Police Volunteer. However, this is not about me, but to let you know that my love and concern for this community runs deep.

It looks at this time that you are not considering whether to allow or not allow fracking, but only on working with Anadarko Petroleum on a deal. I believe this to be very unfair to the people of Loveland you are to be representing. Have you done your homework? Have you read any of the information regarding the danger in the truck traffic that is part of the fracking business? What of the damage to the roads? What of the influx of outside men seeking jobs and the rise in rents and lack of housing? And are we, the residents to settle for higher water rates and with the drought we are experiencing are we to be under restrictions, while you work a deal with the oil company to use thousands of gallons for their operation.

I was in Texas just this last fall and I saw first hand the impact that Fracking has on a community. I saw the damage done to the local roads and highways. Heard of the auto accidents and deaths caused by the added truck traffic. I have talked with someone who was raised in North Dakota. I am asking that you do your homework. Look at the towns that have allowed this. Study the facts. We do not owe Anadarko or any other oil company. We do not owe the few who may benefit from this procedure. But we do owe our families and our future. The oil company will complete their work, move out and leave us the lasting scar of damage to our community, our water and our soil. You must consider the long lasting damage that will be done. . Please, please, consider your vote on this very carefully. I ask you to do your study and then vote with your conscience and your heart. This issue is extremely important and may be the legacy you leave from your position representing the people of Loveland.

Donna Rye

Vicki Mesa

From: Robert Paulsen
Sent: Monday, February 25, 2013 1:51 PM
To: massaror2001@yahoo.com
Cc: Judy Schmidt; Vicki Mesa
Subject: FW: Request to revise Loveland Oil and Gas draft ordinance - Groundwater Monitoring

Commissioner: comments provided by Ms. Fortune are being emailed to others on the Planning Commission. These comments will also be provided to the Commissioners tonight in hard copy. Additional copies will be available to the audience.

Bob Paulsen, AICP
 Current Planning Manager
 Development Services Department
 City of Loveland, Colorado
 (970) 962-2670
 (970) 962-2945 FAX

HOW DID WE DO? Please take a few minutes to complete a brief Customer Service Survey. Thanks!
<http://www.zoomerang.com/Survey/WEB22AZ23TYBLE>

From: Irene Fortune [mailto:Irene_Fortune@msn.com]
Sent: Monday, February 25, 2013 1:07 PM
To: Robert Paulsen
Cc: Greg George; Bob Massaro
Subject: Request to revise Loveland Oil and Gas draft ordinance - Groundwater Monitoring

Dear Mr Paulsen,

Would you please forward this email to all Planning Commissioners in advance of tonight's meeting?

I would like to see serious consideration of this requested change. I regret that I can't attend February 25 Planning Commission meeting. I am moderating a League of Women Voters forum at exactly the same time as your meeting.

I request that Loveland Rule Section 18.77.065 require Oil and Gas Operators to comply with COOGCC statewide rule for groundwater baseline sampling and monitoring, (COOGCC Rule 609), rather than the Commission's exception for Greater Wattenberg Area, (COOGCC Rule 318Ae4)

I attended COOGCC meetings for groundwater rulemaking and gave public comment at each meeting that I attended, based on my work experience of almost 30 years in chemical manufacturing and familiarity with the groundwater well monitoring required of facilities where I worked. Chemicals are chemicals, regardless which industry uses them. If there is a risk of leaking chemicals into the groundwater, a sound monitoring program should be mandatory. In Loveland's case, the Thompson River and wetlands are likely down-gradient of new drilling locations. Personally, I have high value for remediation before chemicals reach the river, wetlands or agricultural fields.

First thing to recognize is that groundwater/aquifers flow and that gradient direction may change depending on season and weather. The need for thorough understanding of underground hydrogeology in region below oil/gas wells was a common theme among those testifying to the Commission in support of a rigorous

monitoring program. Companies such as Shell Oil joined many County Local Government designees and environmental NGO's in justifying rigorous monitoring.

The intent and value of the statewide rule is that at least two groundwater samples are taken at the same time – one from upgradient and the other downgradient of the oil/gas well, to the extent possible [609 b (3)]. Rule 318Ae4 does not have bring the value of comparing downgradient with upgradient. Given natural variation and without an up-gradient sample to compare to, it will not be possible to detect any but the most serious leak. If I were there in person, I could explain this better...

Another value of the statewide rule is sampling frequency. Rule 318Ae4 requires one baseline sample within 60 months and one sample within 12 months of drilling, per quarter section. Given the variation in groundwater overtime, this timing will yield too few data points to provide a meaningful baseline. Nor will a single post-drilling sample at 12 months provide much information as the well casing ages.

I expect Rule 609d will be more protective of regional groundwater by adding more baseline samples, especially if drilling continues for more a year, and by adding the 60-month post-drilling sample. The purpose of the 60-month sample, according to an Oil and Gas Commissioner with many years' experience in remediation, is to detect a leakage plume when directly down-gradient wells may not be available for monitoring, or the gradient flow has shifted direction.

Why does an exception exist for Greater Wattenberg anyway?

In my mind, it exists solely because of pressure from Weld County. I took pages of notes during the November 14, 2012 COGCC hearing on groundwater monitoring. There was much support for 609 sampling frequency and location. Additionally, many attributes were requested that did not make it into the final rule, such as requiring using a certified laboratory. By contrast, a lawyer representing Weld County did not support any additions over the existing version of Rule 318 which had been working fine, according to him. In addition to decrying the waste and expense of such onerous new rules on oil and gas industry, here are some quotes from his testimony to Oil and Gas Commissioners:

(Considering Weld's thousands of wells, water contamination has not been a problem.) "Until 2010, there was not one call complaining about a water well. Only 15 complaints in Weld County regarding groundwater. Found no connection with Oil and Gas. Organics were present for some other reason."

"Weld County Dept of Public Health offers groundwater testing for 62 volatile organic chemicals. Tested 46 wells between September (and November 14) and there have been no hits. Zero." (IF note: I am skeptical. Weld's new \$150,000 instrument is a mighty temperamental piece of equipment. Personally I question whether it's being maintained and operated correctly and whether the volatile chemicals might escape during sampling.)

"COGCC should write 609 to reflect what Weld County is doing."

Weld County personnel evidently can be relied upon to pressure against any new rules. Weld County Commissioner Kirkmeyer was even more pressuring in her testimony regarding setbacks at the December COGCC meetings. To hear her talk, one might believe there has not been one problem of any kind with oil/gas drilling in Weld. It was notable that the oil/gas Commissioners did not ask any questions to Commissioner Kirkmeyer; they seemed to all know her very well.

At January 2013 COGCC hearing, after the revised Rule 318Ae4 was published, the Local Government Designee from Boulder County requested an exception to the Greater Wattenberg exception. He requested that Rule 609 apply to his county because there is not the high density of wells in Boulder as there is in Weld. I have

called Boulder Planning Dept, trying to learn whether this request is succeeding but I have not been able to talk to anyone who knows. I believe that Loveland, if not all of Larimer, should follow Rule 609.

Thank you,

Irene Fortune

Retired Chemist, Lab Manager and Chemical Regulations Consultant



Public Notice Code Amendment

City Council Public Hearing
April 2, 2013



Public Notice Code Amendment

Initial issue: Lake front property owner mailed notice

Owners of all lots fronting the four largest lakes are sent a mailed hearing/meeting/decision notice should any portion of the lake fall within the standard mailed notice distance

- Lack of nexus between impact of development proposal and recipients of mailed notice
- Expensive to applicant
- Annoyance to recipients



Public Notice Code Amendment

Additional issues:

- Code is unclear on how to measuring mailed notice distance
- Difference between neighborhood meeting, public hearing and staff decision notice procedure is not clear
- Silent on notification of certain staff decisions and other applications



Public Notice Code Amendment

Title 18 Committee Review:

- Series of meetings in later half of 2012

Planning Commission Review:

- Study session in October 2012
- Public hearing in February 2013
- Unanimous recommendation of approval



Public Notice Text Amendment

Changes Related to Lake Front Mailed Notice Requirement:

- Application of the lake front expanded mailed notice distance to properties on golf courses and public parks
- Application of the expanded mailed notice distance to all lakes in the city
- Application of the expanded mailed notice distance *only* when the subject property fronts a lake/park/golf course
- Measurement of the lake/park/golf course notice distance at double the standard notice distance, allowing the Current Planning Manager discretion to extend it to full lake/park/golf course notification



Public Notice Text Amendment

Changes Related to Standard Notice Distance:

- Inclusion of public streets/rights-of-way when determining notice distance
- Expanded standard mailed notice distances
- Greater specification on how to measure the notice distance
- Modification of the small application size category from *Under 20 acres* to *Under 5 acres*



Public Notice Text Amendment

Changes Related to Types of Applications Requiring Notice:

- Public notice for staff decisions not standardly required to be noticed but anticipated to impact other properties
- Inclusion of a notice distance for BE District site development plans requiring a public hearing
- Inclusion of a notice distance for height exceptions requiring a public hearing



Public Notice Text Amendment

Clarifying changes:

- Organizing the chapter by type of meeting instead of type of notice
- Minor wording changes in the text to improve clarity

Other:

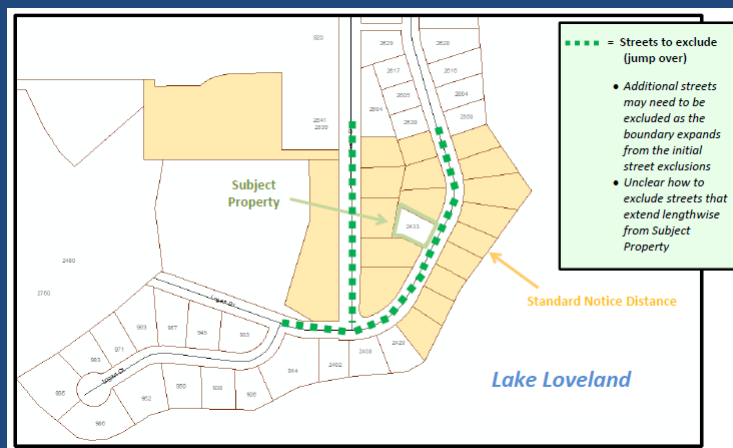
- Expanded time period for obtaining the property owners list for the mailed notice



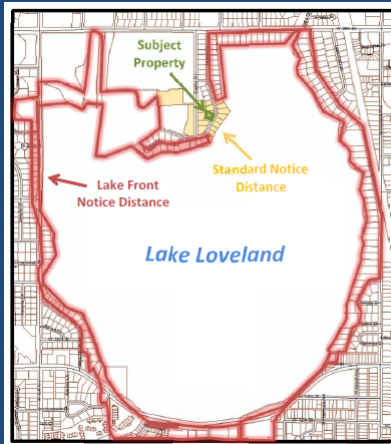
Public Notice Text Amendment

Amends notice requirements in both
Title 16 (Subdivision Code) and Title 18 (Zoning Code)

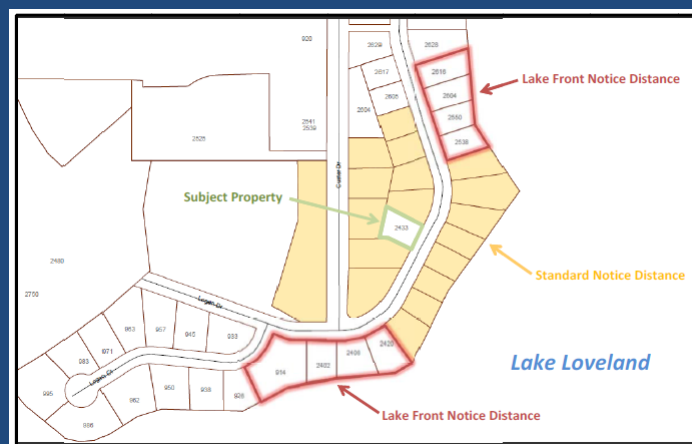
Existing Standard Mailed Notice Requirement



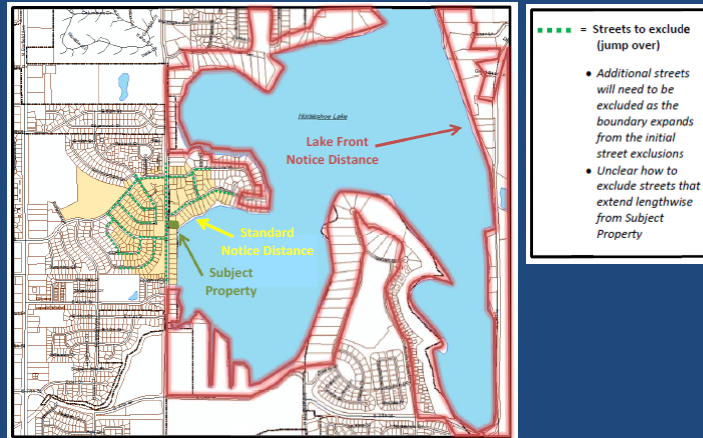
Existing Lake Front Mailed Notice Requirement



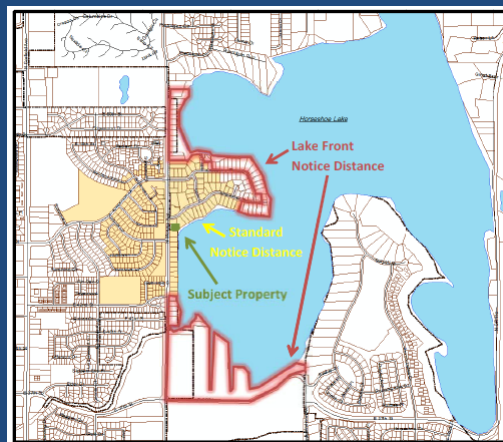
Proposed Mailed Notice Requirement



Existing Mailed Notice Requirement



Proposed Mailed Notice Requirement



**CITY OF LOVELAND****ECONOMIC DEVELOPMENT OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 4
MEETING DATE: 4/2/2013
TO: City Council
FROM: Economic Development Department
PRESENTER: Mike Scholl, Economic Development Manager

TITLE:

A resolution approving an exception to the adequate community facilities ordinance pursuant to Section 16.16.050(c) of the Loveland Municipal Code for a proposed building to be constructed at 541 N. Lincoln Ave., Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Adopt 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:

This is an administrative action. The resolution would approve an exception from the Adequate Community Facilities (ACF) ordinance. The exemption would allow for the final approval of the Site Development Plan on the Brinkman North Catalyst project. The ACF exemption is required because the parking will be accessed from the public alley. The current standard for alleys are twenty trips per day at peak hour, the project increases the peak trips to thirty. The slight increase in traffic will not cause significant impact to the alley or require additional capital improvements by the City.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

Since the final approval of the Development and Disposition Agreement, the Brinkman Partners are pursuing their permit approvals. Pending approval of the ACF exception, staff will complete the approval of the Site Development Permit. As part of the project, improvements will be made to the alley by the Brinkman Partners at Lincoln Avenue and Cleveland Avenue to ensure pedestrian safety.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Resolution

RESOLUTION #R-24-2013

A RESOLUTION APPROVING AN EXECEPTION TO THE ADEQUATE COMMUNITY FACILITIES ORDINANCE PURSUANT TO SECTION 16.16.050(C) OF THE LOVELAND MUNICIPAL CODE FOR A PROPOSED BUILDING TO BE CONSTRUCTED AT 541 N. LINCOLN AVE., LOVELAND, COLORADO

WHEREAS, 541 N. Lincoln, L.L.C., a Utah limited liability company (the “Applicant”), has filed an application for approval of a site development plan (“SDP”) in connection with construction of a 70-unit mixed-use building containing four live-work units and 66 residential apartments (the “Project”) as a use by right in the BE district at 541 N. Lincoln Avenue, Loveland, Colorado, which is legally described as Lots 1-8, inclusive, Block 12, Original Plat of the City of Loveland, County of Larimer, State of Colorado (the “Property”) and

WHEREAS, Planning Commission held a public hearing on March 11, 2013 and adopted Planning Commission Resolution #13-02 approving the proposed Project, which contains more than 25,000 square feet of gross floor area in the core area of the BE District, as required by Loveland Municipal Code Section 18.24.050(B); and

WHEREAS, in order to obtain approval of the SDP, the Applicant must comply with, or obtain an exception from, the requirements of the Adequate Community Facilities Ordinance set forth in Chapter 16.41 of the Code (“ACF Ordinance”); and

WHEREAS, the Project is forecast to generate traffic on the adjacent alleyways in excess of the alley level of service standard adopted under the Section 16.41.110 of the ACF Ordinance and the Applicant is requesting that City Council grant an exception to the ACF Ordinance for this excess traffic generation; and

WHEREAS, City engineering staff have determined that granting the ACF exception requested by Applicant would not create an unsafe condition on City streets (including alleyways); and

WHEREAS, City Council is authorized by the provisions of Code Section 16.16.050(C) to grant exemptions to the regulations set forth in Title 16 of the Code upon a showing:

1. That there are special circumstances or conditions affecting said property which creates practical difficulties upon the applicant, or the development for which exceptions are sought is of such extraordinary commercial, social or cultural merit that the potential benefits to the community outweigh the tangible and intangible costs to the community created by the exception; and
2. That the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the area in which the Project is situated or in conflict with the purposes and objectives of the Comprehensive Master Plan.

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

Section 1. That the City Council hereby finds and determines that an exception to the requirements set forth Code Section 16.41.110 with respect to the forecast traffic levels on the alleyways adjacent to the Property is warranted for the following reasons:

- A.** there are special circumstances and conditions affecting the Property which creates practical difficulties upon the Applicant in that the Project involves the redevelopment of a small site in the historic Downtown area with limited opportunities for direct ingress and egress to parking areas on the Project site consistent with the City's preferred design constraints in the Downtown district;
- B.** the Project is of significant commercial, social, and cultural merit in that it is forecast to attract residents to the Downtown area, thereby enhancing the potential for additional redevelopment and economic development in the area;
- C.** the tangible and intangible costs to the community created by this exception are minimal and outweighed by the anticipated social, commercial and cultural merit; and
- D.** the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the area in which the Project is situated and does not conflict with the purposes and objectives of the City's Comprehensive Master Plan.

Section 2. That pursuant to Code Section 16.16.050(C), the City Council hereby grants to the Applicant the following exception to the provisions of Section 16.41.110 of the Loveland Municipal Code: for the purposes of the SDP, the transportation level of service requirements applicable to the east-west and north-south alleyways adjacent to the Property shall not apply to the Project and the Project shall be entitled to generate alleyway trips to the levels anticipated in the Traffic Impact Study for the Project dated January 28, 2013, prepared by Eugene G. Coppola P.E., and submitted by the Applicant.

Section 3. That the ACF exception set forth herein shall expire if the Project is not developed in accordance with the SDP and a certificate of occupancy issued on or before December 31, 2014.

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

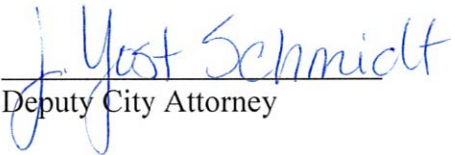
ADOPTED this 2nd day of April, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Deputy City Attorney



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: 5
MEETING DATE: 4/2/2013
TO: City Council
FROM: Keith Reester, Public Works Director
Gary Havener, Parks & Recreation Director
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 Department of Transportation, For Design and Construction of new sidewalk, curb and gutter and street lights along the east side of Madison Avenue from the intersection of East 29th Street and Madison Avenue north to Seven Lakes Drive.
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 a state grant to construct sidewalk, street and gutter improvements and street lights along the east side of Madison Avenue from 29th Street north to Seven Lakes Drive.

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing, adopt the resolution, and the ordinance on first reading.

Options:

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

DESCRIPTION:

This is an administrative action. The Resolution authorizes the City Manager to execute a grant agreement with the State of Colorado. This grant will partially fund the replacement of the bridge on Madison Avenue at the Chubbuck Ditch. The ordinance appropriates the grant funds.

BUDGET IMPACT:

- ☒ Positive
☐ Negative
-

☐ Neutral or negligible

The estimated cost of this project is \$97,000.00. Award of a federal Safe Routes to School grant in 2012 will provide \$90,000.00. The local match is estimated at \$7,000. The local funds will come from the the Public Works Department 2013 budget for street capital improvement projects.

SUMMARY:

The need for this capital project was identified in 2011 when Mary Blair Elementary and Conrad Ball Middle School families were informed that busing would no longer be provided to the Seven Lakes neighborhoods. Many years ago the City constructed an asphalt path and 6 inch curb barrier along the east side of Madison Avenue for students traveling to and from these schools. As the path fell into disrepair, parents protested the safety of students along this walkway and the Thompson School District reimplemented bus service to the Seven Lakes neighborhoods. This project will remove the asphalt walk and provide a new concrete sidewalk. Project completion is targeted for August, 2013.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

- 1) Resolution
 - A) Larimer County correspondence (Exhibit A)
 - B) Intergovernmental Agreement (Exhibit B)
- 2) Ordinance

RESOLUTION #R-25-2013**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 PEDESTRIAN IMPROVEMENTS ALONG MADISON AVENUE BETWEEN 29TH STREET AND SEVEN LAKES DRIVE**

WHEREAS, the City of Loveland maintains that portion of Madison Avenue between 29th Street and Seven Lakes Drive, which is located outside of the City of Loveland but within the City's Grown Management Area, by agreement with Larimer County; and

WHEREAS, the City desires to design and construct a new sidewalk, curb, and gutter and install new street lights along the east side of Madison Avenue between 29th Street and Seven Lakes Drive (the "Project"); and

WHEREAS, Larimer County has expressed its support for the Project in a letter dated November 22, 2011, a copy of which is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, federal funds administered and made available through the State of Colorado, acting by and through the Colorado Department of Transportation ("CDOT"), are available for the Project in the amount of Ninety Thousand Dollars (\$90,000); 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 Intergovernmental Agreement with City of Loveland, Colorado," attached hereto as Exhibit B 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 2nd day of April, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Assistant City Attorney



ENGINEERING DEPARTMENT

Post Office Box 1190
Fort Collins, Colorado 80522-1190

(970) 498-5700
FAX (970) 498-7986

November 22, 2011

Re: Safe Routes to School Project on Madison Avenue

For Your Consideration:

As Larimer County Engineer, I would like to voice strong support for the Safe Routes to School grant application for sidewalk along Madison Avenue in north Loveland, Colorado that will provide an important connection between a neighborhood and its schools.

School aged children that live in the Seven Lake neighborhood and attend their nearby elementary and middle school are forced to navigate a rugged dirt path or use the bus in order to get to school. This grant application will provide funding to construct a safe and efficient route between a residential area and schools.

Some portions of the proposed sidewalk are in unincorporated Larimer County. We look forward to working with Loveland on the sidewalks construction, including necessary permitting such as right-of-way construction permits.

The City of Loveland currently maintains these sections of Madison Avenue and the County will cooperate with Loveland to ensure continued maintenance of the facility.

Larimer County is looking forward to being a partner for this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Peterson", is written over the "Sincerely," line.

Mark Peterson, P.E.
County Engineer

(FMLAWRK)
PROJECT SAR M830-064 (19073)
REGION 4/(rp)

Rev 11/28/12
Routing # 13 HA4 52202
ID 331000633

STATE OF COLORADO
Department of Transportation
Intergovernmental Agreement
with
City of Loveland, Colorado

TABLE OF CONTENTS

1. PARTIES.....	2
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.....	2
3. RECITALS.....	2
4. DEFINITIONS.....	2
5. TERM and EARLY TERMINATION.....	3
6. SCOPE OF WORK.....	3
7. OPTION LETTER MODIFICATION.....	7
8. PAYMENTS.....	8
9. ACCOUNTING.....	10
10. REPORTING - NOTIFICATION.....	11
11. LOCAL AGENCY RECORDS.....	11
12. CONFIDENTIAL INFORMATION-STATE RECORDS.....	12
13. CONFLICT OF INTEREST.....	12
14. REPRESENTATIONS AND WARRANTIES.....	13
15. INSURANCE.....	13
16. DEFAULT-BREACH.....	14
17. REMEDIES.....	15
18. NOTICES and REPRESENTATIVES.....	17
19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE.....	17
20. GOVERNMENTAL IMMUNITY.....	17
21. STATEWIDE CONTRACT MANAGEMENT SYSTEM.....	18
22. FEDERAL REQUIREMENTS.....	18
23. DISADVANTAGED BUSINESS ENTERPRISE (DBE).....	18
24. DISPUTES.....	18
25. GENERAL PROVISIONS.....	19
26. COLORADO SPECIAL PROVISIONS.....	22
27. SIGNATURE PAGE.....	24
28. EXHIBIT A – SCOPE OF WORK.....	1
29. EXHIBIT B – LOCAL AGENCY RESOLUTION.....	1
30. EXHIBIT C – FUNDING PROVISIONS.....	1
31. EXHIBIT D – OPTION LETTER.....	ii
32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST.....	1
33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS.....	0
34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE.....	1
35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES.....	1
36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS.....	1
37. EXHIBIT J – FEDERAL REQUIREMENTS.....	1
38. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS.....	1

1. PARTIES

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

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

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

3. RECITALS

A. Authority, Appropriation, And Approval

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

i. Federal Authority

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

ii. State Authority

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

B. Consideration

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

C. Purpose

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

D. References

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

4. DEFINITIONS

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

A. Agreement or Contract

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

B. Agreement Funds

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

C. Budget

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

D. Consultant and Contractor

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

E. Evaluation

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

F. Exhibits and Other Attachments

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

G. Goods

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

H. Oversight

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

I. Party or Parties

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

J. Work Budget

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

K. Services

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

L. Work

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

M. Work Product

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

5. TERM and EARLY TERMINATION.

The Parties' respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after ten (10) years of state controllers signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

6. SCOPE OF WORK**A. Completion**

The Local Agency shall complete the Work and other obligations as described herein in **Exhibit A**. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

B. Goods and Services

The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed hereunder by the Local Agency, or any Consultants or Contractors shall be considered the Local Agency's, Consultants' or Contractors' employee(s) for all purposes and shall not be employees of the State for any purpose.

D. State and Local Agency Commitments

i. Design

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Local Agency shall comply with and be responsible for satisfying the following requirements:

- a) Perform or provide the Plans to the extent required by the nature of the Work.
- b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e) Stamp the Plans produced by a Colorado Registered Professional Engineer.
- f) Provide final assembly of Plans and all other necessary documents.
- g) Be responsible for the Plans' accuracy and completeness.
- h) Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

ii. Local Agency Work

- a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**.

If the Local Agency enters into a contract with a Consultant for the Work:

- (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
- (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
- (3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

(4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.

(5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).

(6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

(b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

(c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. **Construction**

If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

a) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

b) The Local Agency shall be responsible for the following:

(1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.

(2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

- (a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions 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.

E. State's Commitments

- a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, Exhibit E,

F. ROW and Acquisition/Relocation

- a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.
- b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted

Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.

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

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

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

G. Utilities

If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.

a) Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:

b) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.

c) Obtain the railroad's detailed estimate of the cost of the Work.

d) Establish future maintenance responsibilities for the proposed installation.

e) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.

f) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

H. Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

I. Maintenance Obligations

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

7. OPTION LETTER MODIFICATION

An option letter may be used to authorize the Local Agency to begin a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

A. Option to begin a phase and/or increase or decrease the encumbrance amount

The State may authorize 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 as shown on **Exhibit C** remaining the same. The State may increase or decrease the encumbrance amount for a particular phase by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc.). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

B. Option to transfer funds from one phase to another phase.

The State may permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. Any transfer of funds from one phase to another is limited to an aggregate maximum of 24.99% of the original dollar amount of either phase affected by a transfer. A bilateral amendment is required for any transfer exceeding 24.99% of the original dollar amount of the phase affected by the increase or decrease.

C. Option to do both Options A and B.

The State may authorize the Local Agency to begin a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

8. PAYMENTS

The State shall, in accordance with the provisions of this §8, pay the Local Agency in the amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Agreement set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner, approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. The Local Agency shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

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

iv. Erroneous Payments

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

C. Use of Funds

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

D. Matching Funds

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

E. Reimbursement of Local Agency Costs

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§8**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the

Local Agency shall comply with all such principles. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

i. Reasonable and Necessary

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

ii. Net Cost

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

9. ACCOUNTING

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

A. Local Agency Performing the Work

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

B. Local Agency-Checks or Draws

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

C. State-Administrative Services

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

D. Local Agency-Invoices

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

E. Invoicing Within 60 Days

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

F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds shall be payable from the State Highway Supplementary Fund (400) until CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail

the reimbursable costs incurred, the dates incurred and the amounts thereof, and shall not be submitted more often than monthly.

10. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

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

B. Litigation Reporting

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

C. Noncompliance

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

D. Documents

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

11. LOCAL AGENCY RECORDS

A. Maintenance

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

B. Inspection

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

C. Monitoring

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities

conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

D. Final Audit Report

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

12. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. Confidentiality

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

B. Notification

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

C. Use, Security, and Retention

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

D. Disclosure-Liability

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

13. CONFLICT OF INTEREST

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

statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

14. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

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

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

C. Licenses, Permits, Etc.

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

15. INSURANCE

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

A. The Local Agency

i. Public Entities

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

ii. Non-Public Entities

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance

coverage and policies meeting the same requirements set forth in **§15(B)** with respect to subcontractors 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.

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.

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.

Damages and Withholding

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local

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

B. Early Termination in the Public Interest

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by §17(A) or as otherwise specifically provided for herein.

i. Method and Content

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

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

i. Suspend Performance

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

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

18. NOTICES and REPRESENTATIVES

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

A. State:

Long Nguyen
CDOT Region 4 Resident Engineer
1420 2nd Street
Greeley, Colorado 80631
(970) 350-2126

B. Local Agency:

Shelley Aschenbrenner
City of Loveland Project Manager
410 E. 5 th Street
Loveland, Colorado 80537
(970) 962-2558

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

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

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

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

22. FEDERAL REQUIREMENTS

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

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State-approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer

of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

25. GENERAL PROVISIONS

A. Assignment

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior written consent of the State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§25(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification - General

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

G. Jurisdiction and Venue

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

H. Limitations of Liability

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect. This includes,

but is not necessarily limited to, limitations on (i) the types of liabilities, (ii) the types of damages, (iii) the amount of damages, and (iv) the source of payment for damages.

I. Modification

i. By the Parties

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

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

J. Order of Precedence

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- 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 contract or incorporated herein by reference shall be null and void.

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

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

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree

with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

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

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

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

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

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

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

SPs Effective 1/1/09

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27. SIGNATURE PAGE

Agreement Routing Number 13 HA4 52202

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

<p style="text-align: center;">THE LOCAL AGENCY City of Loveland, Colorado</p> <p>By: _____ Name of Authorized Individual</p> <p>Title: _____ Official Title of Authorized Individual</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Donald E. Hunt, Executive Director</p> <p>_____ By: Timothy J. Harris, P.E., Chief Engineer</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

<p>STATE CONTROLLER David J. McDermott, CPA</p> <p>By: _____</p> <p style="text-align: center;">Colorado Department of Transportation</p> <p>Date: _____</p>
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28. EXHIBIT A – SCOPE OF WORK

COLORADO DEPARTMENT OF TRANSPORTATION DESIGN DATA Page 1 to 3 Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised		Orig. Date: 05/02/2012		Project Code # (SAR): 19073		STIP#: SR47001	
		Rev. Date:		Project #: SAR M830-064			
		Revision #: 0		PE Project Code:			
		Region #: 04		Project Description: North Madison Ave Trail Connector-SRTS			
Submitted By PM: TUTTLET		Approved by Program Engineer:		County: 069			
Date:				Municipality: Loveland			
Revised by:				System Code: Z-Not on any Federal-Aid Highway			
Date:				Oversight By: Delegated/Locally Administered			
				Planned Length: 0.150			
Geographic Location: NORTH MADISON AVENUE IN LOVELAND							
Type of Terrain: Rolling							
Description of Proposed Construction/Improvement (Attach map showing site location) CONSTRUCT MULTI-USE TRAIL							
1 Project Characteristics (Proposed) <input checked="" type="checkbox"/> Lighting <input checked="" type="checkbox"/> Handicap Ramps <input type="checkbox"/> Curb and Gutter <input type="checkbox"/> Curb Only <input checked="" type="checkbox"/> Sidewalk Width= <input type="checkbox"/> Bikeway Width= <input type="checkbox"/> Parking Lane Width= <input type="checkbox"/> Detours <input type="checkbox"/> Landscaping requirements (description):				Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input type="checkbox"/> None <input type="checkbox"/> Traffic Control Signals <input type="checkbox"/> Striping <input type="checkbox"/> Left-Turn Slots <input type="checkbox"/> Continuous Width= <input type="checkbox"/> Right-Turn Slots <input type="checkbox"/> Continuous Width= Signing <input type="checkbox"/> Construction <input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Other (description): Improve Pedestrian facilities along Madison Avenue in the City of Loveland			
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: None		Approved On: / /		Project Code # Cleared Under:		Project # Cleared Under:	
Comments:							
6 Coordination <input type="checkbox"/> Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office Irrigation Ditch Name: <input type="checkbox"/> New Traffic Ordinance Required <input type="checkbox"/> Modify Schedule of Existing Ordinance Municipality: Loveland Other:							
7 Construction Method		Advertised By: None NoAd Reason: Design		Entity / Agency Contact Name: Shelley Aschenbrenner Phone #: 970-962-2558			
8 Safety Considerations		Project Under:		Guardrail meets current standards: Yes		Comments: No Guardrail within project limits.	
<input type="checkbox"/> Variance in Minimum Design Standards Required <input type="checkbox"/> Justification Attached <input type="checkbox"/> Request to be Submitted <input type="checkbox"/> Bridge (see item 12) <input type="checkbox"/> See Remarks		<input type="checkbox"/> Safety project not all standards addressed					
<input type="checkbox"/> Stage Construction (explain in remarks)		3R projects					
Safety Evaluation Complete (date):							

Page 2 of 3		Project Code # (SAR): 19073		Project #: SAR M830-064		Revise date:	
Use Columns A, B, C, D and/or E to identify facility described below							
A =		B =		C =		D =	
E =							
9 Traffic							
Current Year	ADT						
	DHV						
DHV % Trucks							
Future Year	ADT						
	DHV						
Facility Location	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other
10 Roadway Class							
Route							
Refpt	0.000						
Endpt	0.000						
Functional Classification	M						
Facility Type	U						
Rural Code	2						
Design Standards	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed
Design Variance Required (substandard items are identified with an * in 1 st column & clarify as design variance with CDOT Form #464)							
Width of Travel Lanes							
Shoulder width I/Outside							
Shoulder width I/Inside							
Design Speed							
Cross Slope							
Max. superelevation rate							
Min. Radius							
Min. Horizontal SSD							
Min. Vertical SSD							
Max Grade							
Design Decision Letter Required (substandard items are identified with an * in 1 st column & clarify with decision letter)							
Typical Section Type							
# of Travel Lanes							
Side Slope Dist (x')							
Median Width							
Posted Speed							

Page 3 of 3	Project Code #(SA#): 19073	Project #: SAR M830-064	Revise Date:	
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12	Major Structures	S= to stay, R= to be removed, P= proposed new structure									
Structure ID#	▼	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built	
Proposed Treatment of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):											
13	Remarks	<p>Madison Avenue Path Scope of Work (10/2/12)</p> <p>The Colorado Department of Transportation (CDOT) will oversee the City of Loveland (city) when the city designs and constructs pedestrian related improvements on Madison Avenue between Seven Lakes Drive and East 29th Street in Loveland, CO, to improve pedestrian facilities and promote traffic calming/pedestrian crossing safety. This work may contain the following features: street lighting, sidewalks, asphalt pathways, crosswalks, median barriers and pedestrian refuge islands.</p> <p>Safe Routes to School federal funds have been awarded to this project along with overmatch funds from the city. CDOT and the city believe it will be beneficial to perform this work because school busing to the Seven Lakes neighborhoods will be eliminated the 2013/14 school year. The existing temporary asphalt pathway is almost entirely disintegrated and there is no pedestrian link between the neighborhood and the intersection at East 29th Street and Madison Avenue making travel along this high speed roadway is challenging for school children.</p> <p>This work will conform to the American with Disabilities Act and the Larimer County Urban Area Street Standards. The design phase of this work is already underway as it is funded separately from this contract by the city. 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 spring/early summer 2013 (design approval is expected well in advance) and is anticipated to take approximately one month.</p>									

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 \$90,000.00, which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds				\$90,000.00
(100% of Participating Costs)				
b. Local Agency Matching Funds				\$0.00
(0% of Participating Costs)				
TOTAL BUDGETED FUNDS				\$90,000.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share				\$0.00
(0% of Participating Costs)				
b. Local Agency				
Local Agency Share of Participating Costs	\$0.00			
Non-Participating Costs (Including Non-Participating Indirects)	\$0.00			
Estimated to be Billed to Local Agency				\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$90,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$90,000.00
FOR CDOT ENCUMBRANCE PURPOSES				
Total Encumbrance Amount				\$90,000.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				\$90,000.00
NOTE: The funding will be made available after federal authorization and execution of an Option Letter (Exhibit D).				
WBS Element 19073.10.30	Design	3020		\$0.00
WBS Element 19073.20.10	Const	3301		\$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 100% federal-aid funds (CFDA #20.205) to 0% Local Agency funds, it being understood that such ratio applies only to the \$90,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$0.00, 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 \$0.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$90,000.00 (For CDOT accounting purposes, the federal funds of \$90,000.00 and the Local Agency matching funds of \$0.00 will be encumbered for a total encumbrance of \$90,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ***NOTE: The funding will be made available after federal authorization and execution of an Option Letter (Exhibit D).*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving more than \$500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$500,000

If the Local Agency expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure exceeding 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.	Option Letter CMS Routing #
			Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____**SUBJECT:**

- A.** Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts(a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).
- B.** Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).
- C.** Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS. 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 authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*)is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for **Exhibit C** shall be labled as follows: C-2, C-3, C-4, etc.*).

Option B (*Insert the following language for use with Option B*):

In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: C-2, C-3, C-4, etc.; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be*

made using an formal amendment)..

Option C *(Insert the following language for use with Option C):*

In accordance with the terms of the original Agreement *(insert CMS routing # of original Agreement)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include *(describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from *(describe phase from which funds will be moved)* to *(describe phase to which funds will be moved)* based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. *(The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2, C-3, C-4**, etc.; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using an formal amendment).*

(The following language must be included on ALL options):

The total encumbrance as a result of this option and all previous options and/or amendments is now *(insert total encumbrance amount)*, as referenced in **Exhibit (C-1, C-2, etc., as appropriate)**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: *(indicate total budgeted funds)* as referenced in **Exhibit (C-1, C-2, etc., as appropriate)** of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:

John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
David J. McDermott, CPA

By: _____

Date: _____

Form Updated: December 19, 2012

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. SAR M830-084		STIP No. SR47001.015	Project Code 19073
		Region 04	
Project Location North Madison Ave – E29th Street to Seven Lakes Dr			Date 11/7/2012
Project Description Loveland – North Madison Ave Trail			
Local Agency City of Loveland		Local Agency Project Manager Shelley Aschenbrenner	
CDOT Resident Engineer Long Nguyen		CDOT Project Manager Tim Tuttle	
<p>INSTRUCTIONS:</p> <p>This checklist shall be utilized to establish the contract administration responsibilities of the Individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2-1	Review Project to ensure 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 484	X	#
5-14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5-15	Ensure Authorization of Funds for Construction		X

CDOT Form 1243 09/06 Page 1 of 4

Previous editions are obsolete and may not be used

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> Is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Long Nguyen 11/6/2012 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	X	
	• Monumentation	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." Long Nguyen 970-350-2126 Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	

CDOT Form 1243 09/06 Page 2 of 4

Previous editions are obsolete and may not be used

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8-6	Approve Shop Drawings	X	
8-7	Perform Traffic Control Inspections	X	X
8-8	Perform Construction Surveying	X	
8-9	Monument Right-of-Way	X	
8-10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	
	Provide the name and phone number of the person authorized for this task.		
	<u>Shelley Aschenbrenner</u> <u>970-962-2558</u> Local Agency Representative Phone number		
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.		X
	<u>Long Nguven</u> <u>970-350-2126</u> CDOT Resident Engineer Phone number		
MATERIALS			
9-1	Conduct Materials Preconstruction Meeting	X	
9-2	Complete CDOT Form 250 - Materials Documentation Record		X
	• Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project	X	
	• Update the form as work progresses	X	
	• Complete and distribute form after work is completed	X	
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products	X	
	Inspection of structural components:		
	• Fabrication of structural steel and pre-stressed concrete structural components	X	
	• Bridge modular expansion devices (0" to 6" or greater)	X	
	• Fabrication of bearing devices	X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/>		X
	• Generate IAT schedule	X	
	• Schedule and provide notification	X	
	• Conduct IAT	X	
9-8	Approve Mix Designs		
	• Concrete	X	
	• Hot Mix Asphalt	X	
9-9	Check Final Materials Documentation	X	
9-10	Complete and Distribute Final Materials Documentation	X	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10-1	Fulfill Project Bulletin Board and Pre-construction Packet Requirements	X	
10-2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	X
10-3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10-4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" requirements	X	
10-5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10-6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10-7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11-1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11-2	Write Final Project Acceptance Letter	X	
11-3	Advertise for Final Settlement	X	
11-4	Prepare and Distribute Final As-Constructed Plans	X	
11-5	Prepare EEO Certification		
11-6	Check Final Quantities, Plans and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11-7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11-8	Obtain CDOT Form 17 - Contractor DBE Payment Certification from the Contractor and submit to the Resident Engineer	X	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		NA
11-10	Process Final Payment	X	
11-11	Complete and Submit CDOT Form 950 - Project Closure	X	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 F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

Required by 23 CFR 635.112

33. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 23. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request:

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 23.41

34. 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.

35. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

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

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/easa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 308 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.

1. 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 contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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.

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.

EXHIBIT J – FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

C. Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

D. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

F. Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

G. Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

H. OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

I. Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

J. Nondiscrimination

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

K. ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

M. Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

N. Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. 23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

P. 23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

Q. 23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions:

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical

handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance.

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

T. Incorporation of Provisions§22

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

36. 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:

37. 7.1.1 Subrecipient DUNS Number;

38. 7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

39. 7.1.3 Subrecipient Parent DUNS Number;

- 40. 7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 41. 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:

- 42. 7.2.1 Subrecipient's DUNS Number as registered in CCR.
- 43. 7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

- 44. 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.
- 45. 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 April 2, 2013

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR A STATE GRANT TO CONSTRUCT SIDEWALK, STREET AND GUTTER IMPROVMENTS AND STREET LIGHTS ALONG THE EAST SIDE OF MADISON AVENUE FROM 29TH STREET NORTH TO SEVEN LAKES DRIVE

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 \$90,000 from a State Safe Routes to School Grant in the Transportation Fund 211 are available for appropriation. Revenues in the total amount of \$90,000 are hereby appropriated for sidewalk and street improvements and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Transportation Fund 211**

Revenues

211-23-232-1701-32100-TS1202	State Grant	90,000
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Total Revenue	90,000
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Appropriations

211-23-232-1701-49360-TS1202	Construction	90,000
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Total Appropriations	90,000
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Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

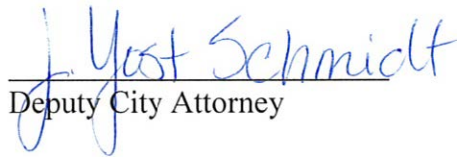
ADOPTED this ____ day of April, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



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: 6
MEETING DATE: 4/2/2013
TO: City Council
FROM: Mick Mercer, Solid Waste Division, Public Works
PRESENTER: Keith Reester

TITLE:

A motion to approve Recyclebank Agreement for Solid Waste Program

RECOMMENDED CITY COUNCIL ACTION:

Move to approve a five-year agreement with Recyclebank, which contains an exit clause if certain performance benchmarks for recycling and waste diversion are not achieved.

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:

Costs and benefits of partnering with Recyclebank were discussed during the September 2013 study session. City Council directed staff to prepare an agreement with Recyclebank for the City Manager's signature, under the terms presented during the study session. This agenda item formalizes that Council direction.

This partnership is designed to increase community recycling tonnages and divert more recyclable materials from the landfill, by rewarding citizens for their recycling efforts. The program includes a sophisticated marketing and education program encouraging city residents to do business with local merchants who choose to partner with Recyclebank at no cost.

BUDGET IMPACT:

- ☐ Positive
☒ Negative
☒ Neutral or negligible

Net annual cost will be ~\$62,000. No rate impact is anticipated to occur as a result of this change.

SUMMARY:

Recyclebank offers a service which rewards citizens for their environmentally friendly actions like recycling, water, and power conservation. The program supports the City's long term efforts at diverting waste from the landfill and creating commodities diversion. The rewards consist of banked e-points which can then be redeemed for discounts at numerous local and national businesses who participate as program partners. There is also a significant educational outreach component to Recyclebank's Loveland-specific website.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Agreement
Three-year Forecast



Rewards Program Services Agreement

Index

1. Client Information Form**3**

2. Service Overview**4**

3. Terms and Conditions**9**

4. Schedule A “Municipality”**18**

5. Schedule B “Standard Reporting Format Examples”**19**

6. Schedule C “Loveland, CO Recyclebank Program Forecast”**25**

Client Information Form

Please complete this form in full. Each party will promptly notify the other in writing if any of the information below changes.

Client Information				
Name of Entity:	-input-			
Street Address	Suite/Room	City	State	Zip Code
Contact Name:	-input-		Phone Number:	-input-
e-mail Address:	-input-		Fax Number:	-input-

Client Billing Contact				
Name of Entity:	-input-			
Street Address	Suite/Room	City	State	Zip Code
Contact Name:	-input-		Phone Number:	-input-
e-mail Address:	-input-		Fax Number:	-input-

Duplicate or additional agreement notification				
Name of Entity:				
Street Address	Suite/Room	City	State	Zip Code
Contact Name:	-input-		Phone Number:	-input-
e-mail Address:	-input-		Fax Number:	-input-

Notices to Recyclebank should be sent to:
RECYCLEREWARDS, INC., 95 Morton Street, 7 th Floor, New York, NY 10014

By signing below, the Parties agree to be bound by the terms of this Client Information Form, the Service Overview and the Terms and Conditions which together comprise the Rewards Program Services Agreement, and you represent and warrant that you have read, understood and agree to be bound by the Rewards Program Services Agreement, you are authorized to sign on behalf of the party identified below and further all the information you provide as part of this Agreement is true and accurate.

<client name>	RecycleRewards, Inc.
Name:	Name:
Signature:	Signature:
Printed Name:	Printed Name:
Printed Title:	Printed Title:
Date:	Date:
<u>Effective Date:</u>	

SERVICE OVERVIEW

I. General Overview

Recyclebank, as defined in the Terms and Conditions, offers a rewards and loyalty program that encourages individuals to take every day environmentally-preferred actions, such as recycling at their homes, and in turn earn reward points ("**Recyclebank Points**" or "**Points**") that can be redeemed for various rewards through Recyclebank with national brand companies or local retailers (the "**Rewards Program**").

The Rewards Program is offered by Recyclebank in conjunction with its vast network of partnerships - municipalities, waste collectors, recycling companies, manufacturers, national and local retailers, and other third parties. The Rewards Program is accessible to registered participants (the "**Recyclebank Member(s)**" or "**Member(s)**") via our website, www.recyclebank.com (the "**Site**"). To become a Member, an individual must contact Recyclebank either online or by telephone and complete the membership registration. Recyclebank Membership is provided in accordance with the **Recyclebank Membership Agreement** (<https://www.recyclebank.com/about-us/membership-agreement1>) and **Recyclebank's Privacy Policy** (<https://www.recyclebank.com/about-us/privacy>). The Rewards Program includes a "**Home Recycling Program**" available in select communities wherein the community's recycling program is provided to local residents along with Recyclebank's Rewards Program intended to incentivize them to recycle. In order to participate in a Home Recycling Program, an individual on behalf of his/her household must subscribe to the specific Home Recycling Program available in that individual's community. Subscription is required for participation in a local Home Recycling Program and is deemed membership to the Rewards Program under the Recyclebank Membership Agreement and Recyclebank's Privacy Policy. For purposes of this Agreement, the term Rewards Program and Home Recycling Program herein will have the same meaning.

You, the Client, enter this Rewards Program Services Agreement with Recyclebank in order for Recyclebank to provide the Rewards Program to you and the "**Eligible Households**", understood to be the individual resident households located within the geographic region identified in Schedule A (the "**Municipality**") who are eligible to participate. Recyclebank will provide the management of the Rewards Program in accordance with this Agreement. Recyclebank will commence its services under the Agreement by assisting you with community outreach efforts to a) inform residents on their local recycling program and thereby b) drive participation through subscription to Recyclebank's Home Recycling Program, and c) ensure that all residents within the Municipality who recycle and are subscribed to participate in the Home Recycling Program with Recyclebank are rewarded for doing so through Recyclebank Points that they can redeem for rewards with Recyclebank.

To participate in the Home Recycling Program, an individual residing in an Eligible Household within the Municipality must subscribe to the Home Recycling Program either through the Site or by contacting Recyclebank's Customer Service Department by telephone. Each Eligible Household is limited to one (1) subscription. Individuals within the household, however, may register as Members directly with Recyclebank to engage in the Rewards Program separately from the Home Recycling Program. Subscription allows earning Points for the recycling conducted in the household and can also include additional Points earned by actively engaging through the Site which offers additional Point-earning opportunities, for example but not limited to, taking educational quizzes or pledging to do certain green action(s). All subscribed households receive a "**Recyclebank Account**" administered by Recyclebank. Those subscribed online can access their Recyclebank Account through the Site, view their Points, engage in Recyclebank's eCommerce platform as described herein for additional Points and redeem earned Points. Those subscribed outside of the Site can access their Recyclebank Account by calling the Customer Service Department or by other methods which may be made available at that time with notice to You and the subscribed households.

Each subscribed household will have access to Recyclebank's network of retailers and brand manufacturers (the "**Reward Partners**") offering rewards in exchange for earned Points through Recyclebank's "**Reward Catalog**". A complete listing of Reward Partners can be found at <http://www.Recyclebank.com/rewards>. This list is subject to change from time to time in Recyclebank's sole discretion. Recyclebank is responsible for all reward fulfillment services.

II. Home Recycling Program Specifications

Under the Home Recycling Program, you will independently collect and communicate to Recyclebank the net weight of the recycled materials collected in each Route within the Municipality during each collection period. A "**Route**" is defined as a pick-up of recyclables within the Municipality conducted and completed within one (1) calendar day by a single truck. Prior to commencement of the Home Recycling Program in the Municipality, you will communicate a) the frequency of collections to determine collection periods in addition to b) Routes within the Municipality to be used during the Term of this Agreement. In the event you require amending the collection period(s) and/or the Route(s) for the remaining duration of the Term, you will provide Recyclebank five (5) business days' prior notice of the changes and any information necessary to support Recyclebank in updating its records to ensure subscribed household experience continuity and accurate reporting.

Upon receiving net weight for a specific collection period for each Route, Recyclebank will determine the amount of Points earned within that Route and credit a portion of the Route's collective Points to each subscribed household within that Route. Subscribed households can also choose to report their individual recycling activity via the Site, the Recyclebank mobile application or by calling Recyclebank's Customer Service Department. If a subscribed household self-reports, Recyclebank will provide the subscribed household additional Points for each self-reporting activity in addition to the portion of Points received from Recyclebank's standard Point calculation described herein.

III. Recyclebank Responsibilities:

Recyclebank will administer the Home Recycling Program in keeping with this Agreement by providing the following services:

1. Recyclebank Points

Recyclebank will track Recyclebank Points through the administration of the Rewards Program. Recyclebank will calculate and credit Recyclebank Points on a scheduled basis. Calculations will be based on the route based weight of the recyclables collected when available, or using a best estimate determined solely at Recyclebank's discretion. The "**Participating Household**", understood to mean an Eligible Household which has subscribed to the Home Recycling Program, will receive the appropriate Points corresponding to the recycling activity in accordance with the Rewards Program specifications of this Agreement. The method of calculation of Recyclebank Points under the Home Recycling Program and generally the Rewards Program is proprietary to Recyclebank, determined solely by Recyclebank, and for purposes of the Home Recycling Program available in the Municipality calculated in accordance to the specifications detailed in this Agreement.

2. Reward Partner Set-up and Relations

Recyclebank will provide Participating Households access to rewards through its Rewards Catalog which may be redeemed by using accrued Points and in turn received from the Reward Partners. Recyclebank will be responsible for contacting and setting up all Reward Partners including organizing and developing Reward parameters with each Reward Partner as follows:

- a. Recyclebank will determine potential third party retailers to include in Recyclebank's Reward Catalog as Reward Partners; and

- b. Recyclebank will prepare and execute the required agreement to on-board those Reward Partners and their respective reward offers in the Reward Catalog; and, when applicable,
- c. If the Municipality has 10,000 or more Eligible Households, Recyclebank will include local Reward Partners specifically tailored to the Municipality. To do so, Recyclebank will contact and explain the reward/redemption component of the Program to local businesses, such as community retailers/restaurants/entertainment and cultural venues.

3. Marketing Material

- a. Registration Mailer. Recyclebank will print and mail to each Eligible Household a “**Registration Mailer**” intended to notify the Eligible Household of the Rewards Program, and provide registration instructions which include a registration code intended to simplify the registration process. The Registration Mailer will be produced and mailed by Recyclebank as part of the Service Fee under the Agreement. From time to time during the Term, Recyclebank may at its sole and absolute discretion conduct additional notifications (e.g. a letter or postcard) to remind unregistered Eligible Households to subscribe.
- b. E-newsletter & e-mail notifications. Recyclebank will provide Participating Households a monthly e-newsletter and weekly account updates via e-mail notifications to the e-mail address used to subscribe. Weekly e-mail updates may be transactional in nature indicating recent Point earning(s) and redemption, or informative regarding new Point earning opportunities available on the Site and recent efforts by Recyclebank.
- c. Marketing Material. Recyclebank will provide you with standardized, designed marketing templates, including approved artwork and copy (“**Marketing Material**”) for you to use in conducting additional communication campaigns within the Municipality independently of Recyclebank’s efforts under this Agreement. Any use of the Marketing Materials by you or your agent in any marketing campaign will require Recyclebank’s prior approval.
- d. Additional Marketing Support. If you require additional customization and marketing support in addition to the standard Marketing Materials, you may request for additional services. Upon review, Recyclebank will communicate whether it will be able to provide the requested additional marketing services at the additional fee of One Hundred Fifty Dollars (\$150) per hour (“**Marketing Fee**”).
- e. Upon your written approval, Recyclebank will commence providing these agreed upon additional marketing services and include the Marketing Fee as a reoccurring or one-time fee (depending on the services) in the monthly invoice(s) to you. Recyclebank does not guarantee personnel availability for additional customization beyond the standard materials provided within the Marketing Materials. You will be held accountable for only those additional costs and expenses, under this or any other provision of this Agreement, expressly authorized by you in writing.
- f. Final Approval. You may consult with Recyclebank on specific marketing methods, programs or community outreach ideas which may be available to promote the Rewards Program. Recyclebank expressly reserves the right to review and provide final approval on all marketing methods and materials used to promote the Rewards Program if its company name, registered trademark(s), trade dress, logo or any part of the Marketing Materials, in whole or in part, is included.

4. Account Management

- a. Training. Recyclebank will provide training to your designated personnel on the Rewards Program, its process and procedures and all related materials. This designated personnel shall be identified and agreed upon by the Parties before training commences.
- b. Customer Service. Recyclebank will provide customer service made available to Participating Households via e-mail, internet and telephone.

5. Reporting.

Recyclebank will provide you on a quarterly basis during the Term standard reporting that reflects the performance of the Rewards Program in the Municipality under this Agreement. The reporting will be in the format provided under Schedule B herein which is provided strictly for informational purposes. All Participating Household data contained in the reporting is the exclusive property of Recyclebank and is provided to you under a limited, non-exclusive, non-transferable, non-revocable license during the Term of this Agreement. You will maintain all such data strictly confidential in keeping with this Agreement and will use the data for internal purposes only. You will not be entitled to receive, nor will Recyclebank be required to provide, any additional information Participating Households submit to Recyclebank which Recyclebank collects through its standard business practice in keeping with the Recyclebank Membership Agreement and its Privacy Policy. Recyclebank may from time to time update or modify its standard reporting provided under Schedule B at its sole discretion without any requirement to provide prior notification or seek prior approval. Reporting may at times be delayed due to system updates, reporting updates, the late reception of data from you or your agent (e.g. hauler), or otherwise. Recyclebank will communicate outages or scheduled reporting updates within a reasonable time and use best commercial efforts to minimize disruption in the reporting delivery and availability. If you wish to receive further information in addition to the information provided as part of the standard reporting, or amend the standard reporting to tailor to your specific qualifications, you may submit a detailed request to Recyclebank for prior review and approval. Upon review, Recyclebank will communicate whether it will be able to accommodate the reporting request and the additional fee associated with implementing the request ("**Additional Reporting Fee**") in writing or as a one-time fee if the additional reporting request is isolated to a limited one-time reporting delivery.

6. Program Promotion and Material.

You will work with Recyclebank to develop a joint marketing plan which may utilize joint resources to promote the Rewards Program. This effort will include, but not be limited to, developing promotional materials and participation in media and community events. Where Recyclebank secures a third party corporate sponsor for the Home Recycling Program under this Agreement, you agree to include the corporate sponsor of the Rewards Program in your promotional efforts and acknowledge and agree all references to such corporate sponsors and use of their respective trade names, trademarks, trade dress (collectively "**Corporate Sponsor IP**") is subject to those third parties' prior review and approval. When a third party sponsorship becomes available, it does not affect your Service Fee. The corporate sponsorship is intended to provide additional resources to promote the Home Recycling Program without any cost to you, the Client. If the corporate sponsorship requires certain engagement and/or effort by you, Recyclebank will seek your prior approval.

You will actively promote the Rewards Program no less than four (4) times a year. This effort should include, but not be limited to, printing and distributing promotional materials to each Eligible Household informing them of the Rewards Program, new participating Reward Partners (if any), and earn opportunities. The initial communication should be a letter by the Municipality's mayor to announce the Rewards Program. This requirement for quarterly promotions of the Rewards Program may include the use of newsletters, e-mails, social media and internet properties within the Municipality in an effort to inform Eligible Households. You may include within such notifications a prominent disclosure surrounding the Rewards Program, such as, participation in the Program being voluntary and

Recyclebank using the name and address information of Eligible Households solely for the purpose of encouraging participation. Recyclebank will design and approve all promotional material to support this effort with such prior approval not being unreasonably delayed or conditioned.

7. Customer Service Support.

You will make available to Recyclebank all of your necessary personnel, programs and materials for Recyclebank to provide adequate training to your designated personnel to allow them to in turn provide accurate information on the Rewards Program as part of your customer service, if applicable. You or your agent agree to promptly and courteously handle customer calls originating from Participating Households relating to the Rewards Program. You will cooperate with Recyclebank in connection with providing Eligible Households a copy of Recyclebank's Membership Agreement upon request.

IV. Client Responsibilities

You are responsible for collecting the recycling weight data within the Municipality and communicating it to Recyclebank in a timely manner in order for Recyclebank to administer the Rewards Program.

1. Eligible Household Address Information.

- a. Address List. Within thirty (30) days following the Effective Date, you will provide Recyclebank with a complete, current and accurate address list in electronic format of all Eligible Households. This list will be used by Recyclebank to notify each Eligible Household of the Rewards Program as detailed under the "Marketing Material" Section. If, upon review Recyclebank determines the Address List not to be complete and/or accurate, Recyclebank will notify you in writing and may, at its sole discretion, purchase a supplemental address list and invoice you thereafter. Recyclebank reserves the right to make all appropriate amendments to the Address List to ensure accuracy and exclude certain individual addresses if upon a good faith review the information relating to these addresses is unverifiable in relation to a physical mailing address within the Municipality.
- b. Address List Format. Recyclebank will provide you a list format in order for you to complete. The list will be a single .csv or .xls file, with header values for United States Postal Service standard, formatted address fields, Route ID / value per address, and any container ID, in a designated file field.
- c. Moves/Additions/Changes. You or your agent is responsible for communicating to Recyclebank's Customer Service Department during the Term on a weekly basis any and all new and terminated Eligible Households within the Municipality. The weekly report shall be provided in a FTP transfer using the same format as the Address List.
- d. Returned Mail. In the event 5% or more of total subscription mailers to Eligible Households be returned to Recyclebank following a mailing campaign by Recyclebank which is conducted based on this mailing list, Recyclebank will invoice you \$1.00 per returned mailing piece ("**Mailing Fee**").
- e. Route changes. In furtherance of sub-section (c) above, you will promptly notify Recyclebank if there are any anticipated recycling pick-up Route changes following the launch of the Rewards Program or at any time during the Term of the Agreement to allow for proper administration of the Program.

2. Refuse & Recycling Data.

- a. Total Verified Weight. You agree to provide Recyclebank with certain refuse and recycling data collected within the Municipality. At the commencement of this Agreement, you will provide Recyclebank the total refuse and recycling tons collected within the Municipality for the fiscal year prior to Effective Date of this Agreement ("**Total Verified Weight**"), and thereafter, on the fifth (5th) business day of each calendar month during the Term the preceding calendar month's total refuse and recycling tons collected within the Municipality ("**Monthly Total Verified Weight**"). The Total Verified Weight should be provided in a

manner whereby the information is presented on a month to month basis similar to Monthly Total Verified Weight.

- b. **Platform Weight.** In addition to the above, you will provide Recyclebank all recycling truck's activity per each Route and collection ("**Platform Weight**") conducted (weekly, biweekly, etc.) used to pick-up recycling in the Municipality. You will provide the Platform Weight within five (5) business days from the actual pick-up date.
- c. The Total Verified Weight, Monthly Total Verified Weight and Platform Weight will be delivered to Recyclebank in either .csv, .xls, or .txt file format via FTP transfer.

	Truck	Route	Ticket	Net Wt	Unit	Collection Date	Ticket Date	Ticket Time (EST)	% RB
Description	truck number	route(s) run by truck	ticket number associated with dump	total net weight of dump	unit of weight measure	date recycling material on truck was collected	date of dump	time of dump; gross or tare time is fine	percentage of load that was from Recyclebank route(s)
Format	numeric	numeric or alphanumeric, depending on client's naming convention	alphanumeric	numeric	either tons or lbs	m/d/yyyy or mm/dd/yyyy	m/d/yyyy or mm/dd/yyyy	Military hh:mm	numeric; default to 100
Sample Entry	2	FRI-3A	463862	2.36	T	11/4/10	11/5/10	6:00	100

- d. **Data Transfer.** You or your agent will be responsible for all monthly connectivity costs associated with the wi-fi or cellular Internet access necessary for storing, transmitting and downloading Recyclebank collected data.
 - e. **Data Reconciliation.** You shall provide Recyclebank with all data reflecting the recycling activity during the preceding month as detailed under subsection (a), (b) and (c) above. In addition to the data, you will provide Recyclebank copies of all tickets associated with the Platform Weights entered by you or your agent(s). Recyclebank shall use Platform Weights to credit Participating Households' Accounts reflecting their participating in the Home Recycling Program. Recyclebank reserves the right to use Monthly Total Verified Weight to credit participation provided this will not negatively impact the Participating Households.
 - f. **No or missing data.** In the event that Recyclebank receives incomplete, inaccurate, or undeterminable refuse and recycling data due to a technical issue, or does not receive any data from you under this provision, Recyclebank will (i) promptly notify you to immediately address the issue and (ii) proceed to credit Points to Participating Households to make-up for recycling that is not recorded due to any operational or maintenance issue outside of Recyclebank's control. Should such manual Points exceed 5% of the total Points issued in any month during the Term, Recyclebank will invoice you \$0.02 for each Point issued "manually" during that month on the following monthly invoice ("**Manual Fee**").
3. **Sub-contracting.** You or your agent cannot subcontract any Recyclebank related-work described herein without prior written approval by Recyclebank.

Terms and Conditions

1. These Terms and Conditions along with the Client Information Form and Service Overview collectively form the "**Rewards Program Services Agreement**" or the "**Agreement**" setting forth the terms and conditions governing the business arrangement between RecycleRewards, Inc., a Delaware corporation with a principal office located at 95 Morton Street, 7th Floor, New York, New York 1014 along with its wholly-owned subsidiary, Recyclebank, LLC, ("**Recyclebank**") and the party first indicated under the Client Information Form ("**the Client**") whereby Recyclebank shall provide its Rewards Program to the Client. Recyclebank and the Client may be hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".

2. **Definitions.** As used in this Agreement, "**you**" or "**Client**" refers to the party that is identified in the Client Information Form and signs this Agreement with Recyclebank, and "**we**" or "**us**" refer to Recyclebank. All

other terms capitalized in the Services Overview and the Terms and Conditions shall have the meaning set forth herein.

3. **Effective Date.** The “**Effective Date**” of this Agreement shall be the effective date indicated on the Client Information Form upon both Parties having signed.

4. **Term.** This Agreement will commence on the Effective Date and shall continue for one (1) year (“**Initial Term**”) unless sooner terminated pursuant to the provisions of this Agreement, by operation of law, or otherwise. This Agreement shall then automatically renew on a year-to-year basis for up to four (4) additional consecutive years (each a “**Renewal Term**”) following completion of the Initial Term. Recyclebank reserves the right, in its sole discretion, to review and amend the Service Fee following completion of the Initial Term for any subsequent Renewal Term to be agreed upon by the Parties in a separate writing signed by both Parties. The Initial Term singularly and thereafter if applicable any Renewal Term shall collectively be referred to as the “**Term**”.

5. **Fees.**

The service fee payable by the Client to Recyclebank during the Term shall be \$0.35 per Eligible Household for the number of Eligible Households indicated in Schedule A per month during the Term of the Agreement (the “**Service Fee**”). Recyclebank will invoice you on a monthly basis. Payment of the Service Fee in addition to any applicable fee which may arise in accordance with the Agreement shall be made to Recyclebank within thirty (30) days of the date of the invoice. You agree and acknowledge the Service Fee will increase each fiscal year during the Term effective each January 1st by one hundred (100%) of the percentage increase in the Annual Consumer Price Index published by the U.S. Government’s Bureau of Labor Statistics, rounded up to the next whole cent.

Any additional service fees, penalties, assessments or other charges including, without limitation, Marketing Fees, Additional Reporting Fees, Mailing Fees (with the exception of Manual Fees) sought by Recyclebank in relation to its performance under this Agreement must be approved by Client in writing.

6. **Performance.**

Client has established general performance benchmarks for Recyclebank for the first three (3) years of this Agreement as set forth in Schedule C, entitled “**Loveland, CO Recyclebank Program Forecast**” and incorporated herein by reference. The benchmarks include (a) registration of Eligible Households in the Rewards Program and increase membership over time (“**Activation**”), (b) increased amounts of recycled solid waste in the Municipality (“**Recycling**”); (c) decreased amounts of solid waste sent from the Municipality to the landfill (“**Landfill**”); and (d) increased diversion (“**Diversification**”) for each of the first three years. In the event Recyclebank does not substantially meet such annual performance benchmarks for each year by the end of that year, this Agreement may be terminated at that time at the election of Client in accordance with Section 16 (D) below. Performance benchmarks for subsequent years following completion of the third year shall be mutually agreed upon by the Parties and set forth as a written addendum signed by both Parties to this Agreement.

7. **Confidentiality; Rights in Data.**

A. Except as permitted by the Colorado Open Records Act, each Party shall keep confidential and not disclose to any third party and will not use, except for the purposes of this Agreement, all business, financial, technical, customer, pricing and other proprietary information, and data (including customer data) that it receives or has received from the other Party (“**Confidential Information**”). For any

information to be deemed “Confidential Information,” the same must be in written form and appropriately marked “CONFIDENTIAL” at the time of disclosure to the receiving party or, alternatively, if the information is disclosed orally, the same must be summarized in writing and marked “CONFIDENTIAL” by the disclosing party within ten (10) days after such disclosure. Notwithstanding the foregoing, all data that is gathered and stored by Recyclebank about Eligible Households and Participating Households is subject to Recyclebank’s Privacy Policy and all applicable state and federal laws and, as such, no such data regarding recycling or online activities of Participating Households need to be specifically marked as “Confidential” to be considered “Confidential”. The Client hereby expressly acknowledges Recyclebank’s Privacy Policy prior to deploying the Rewards Program to any Participating Household.

B. The obligation set forth in Section 7(A) does not apply to any materials or information of the types specified above to the extent that a Party can document that such materials or information: (i) are known to the Party prior to the receipt of such materials or information from the other Party; (ii) are in the public domain other than as a result of a breach of this Agreement; (iii) were furnished to a third party by the disclosing party with no restriction on disclosure; or (iv) information which the receiving Party developed independently of any disclosures of such information by the disclosing Party.

C. Each party will own all right, title, and interest, including any copyrights or other intellectual property rights, in and to any data or information that it collects, compiles or creates regarding Participating Households. As between the Parties, the owner of such rights will have the right to use as it wishes any such information, subject to applicable law and its own privacy policy, with no duty to give the other party notice, gain the other party’s consent, account to the other party or share royalties with the other party.

D. Recyclebank will use any and all information it receives from Client relating to the Eligible Households for the sole purpose of informing them of the Recyclebank Rewards Program and, if an Eligible Households registers with Recyclebank to participate in the Program, Recyclebank will use such information solely for the purpose of offering the Program to them in keeping with its Membership Agreement and Privacy Policy.

8. **Recyclebank IP.**

A. **Grant of License.** The Client acknowledges that Recyclebank owns certain valuable intellectual property used in connection with, relating to, and/or derived from the Rewards Program. Such intellectual property includes without limitation all of Recyclebank’s sales, marketing, informational and other materials relating to the Program and all copyrights therein, all resident, and other data derived from operation of the Rewards Program, all Recyclebank know-how, trade secrets, and technology relating to the Program, including without limitation as may be disclosed in Recyclebank’s patent applications or patents and those Recyclebank trademarks, service marks and logos on the Site, Marketing Material or marketing efforts (said trademarks, service marks and logos and the goodwill associated therewith are referred to collectively herein as the “**Marks**”). The foregoing is collectively referred to herein as the “**Recyclebank IP**.” Subject to the terms and conditions of this Agreement, Recyclebank hereby grants to Client a limited, nonexclusive, nontransferable license during the Term to use the Recyclebank IP within the Municipality solely in connection with the promotion and implementation of the Rewards Program. The Client shall have no right to sublicense any of the Recyclebank IP.

B. **Ownership of Recyclebank IP.** The Client acknowledges that Recyclebank is the sole owner of the Recyclebank IP and agrees that it will do nothing inconsistent with such ownership. The Client

further agrees that nothing in this Agreement shall give the Client any right, title or interest in the Recyclebank IP other than the right to use the Recyclebank IP in accordance with this Agreement, and that all use by you and all goodwill associated therewith shall inure to the benefit of Recyclebank. The Client agrees that it will not at any time during the Term of this Agreement or after its termination (i) register or use any mark or other term confusingly similar to the Marks, or (ii) challenge the title of Recyclebank to any of the Recyclebank IP.

C. Quality Standards. The Client agrees that the nature and quality of all services rendered by you in connection with the Marks; all services provided and goods sold by you under the Marks; and all related advertising, promotional and other related uses of the Marks by you (together, the “Uses”) shall conform to quality standards set by and under the control of Recyclebank.

D. Quality Maintenance. The Client agrees to cooperate with Recyclebank in facilitating Recyclebank’s control of the nature and quality of Municipality’s Uses, and further agrees that Recyclebank shall have the right to request, review, and approve or disapprove copies or samples of all written materials and demonstrations of all other Uses, at any time, and shall be entitled to require that Municipality modify any of the Uses to conform to Recyclebank’s quality standards.

E. Form of Use. The Client agrees that it will not use the Recyclebank IP for any purpose whatsoever, other than as contemplated herein in connection with the Rewards Program. The Client further agrees to use the Marks only in the form and manner and with appropriate legends as prescribed from time to time by Recyclebank in accordance with customary trademark practices, and not to use any other trademark or service mark in combination with the Marks without prior written approval of Recyclebank.

F. Infringement Proceedings. The Client agrees to notify Recyclebank of any unauthorized use by others of the Recyclebank IP as soon as such use comes to the Client’s attention. The Client shall also forward any evidence it obtains of any unauthorized use to Recyclebank. Recyclebank shall have the sole right and discretion (but not the obligation) to bring infringement or unfair competition proceedings involving the Recyclebank IP. The Client agrees to assist Recyclebank with all such proceedings upon request by Recyclebank.

G. No Modification. The Client agrees and acknowledges that, except as expressly permitted herein, it has no right to, and that it will not (and will not permit any third party to (i) use, modify, copy, or otherwise reproduce the Recyclebank IP in whole or in part, (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Recyclebank IP, (iii) distribute, sublicense, assign, timeshare, sell, rent, lease, grant a security interest in, or otherwise transfer the Recyclebank IP or the Client’s rights hereunder, or (iv) remove any Recyclebank proprietary notices embedded in or placed on any Rewards Program materials, except as expressly provided herein. Any attempted distribution, sublicense, assignment, timesharing, sale, renting, lease, or other transfer the Recyclebank IP or any of Client’s rights hereunder in breach of the terms of this Agreement shall be null and void and shall be deemed a material breach by the Client hereunder. The Client will limit access to the Recyclebank IP to its employees who require such access in connection with the permitted use hereunder and who have agreed in writing to observe the Client’s obligations hereunder.

9. Recyclebank Indemnification. Recyclebank shall defend any action, suit, or proceeding brought against Client alleging that the Recyclebank IP infringes any United States patent, trademark or copyright, and Recyclebank shall indemnify and hold the Client, its officers, directors and employees, harmless against damages finally awarded against the Client, costs, expenses, and losses (including, without limitation, court costs and reasonable attorneys’ fees and expenses) in connection with any such action, suit or proceeding; provided, that (i) Client notifies Recyclebank promptly in writing of the claim in question, (ii) Recyclebank has sole control of the defense and all related settlement negotiations, and (iii) Client provides Recyclebank with all commercially

reasonable assistance, information and authority to perform the above at Recyclebank's expense. In the event that Client's use of the Recyclebank IP is enjoined by a court of competent authority, Recyclebank shall, at its sole option and at its expense, either (I) procure for Client the right to continue using the Recyclebank IP, or (II) modify the Recyclebank IP to avoid infringement without material impairment of its functionality. If neither of the foregoing remedies can be obtained upon commercially reasonable terms, this Agreement shall terminate and the Client shall cease using all Recyclebank IP. The foregoing indemnity shall not apply to the extent the alleged infringement is attributable to the combination of the Recyclebank IP with products or services not provided by Recyclebank, or to the extent the Recyclebank IP is modified or altered by any person other than Recyclebank or its agents, or if the Recyclebank IP is used outside the scope of this Agreement (any such combination, modification, alteration, or use is collectively referred to herein as a "**Client Modification**"). THIS SECTION STATES RECYCLEBANK'S SOLE LIABILITY HEREUNDER WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS.

10. **Client Indemnification Prohibition.** The Parties acknowledge that there are legal constraints imposed upon Client by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States and imposed upon Client by its Charter and Code, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall either of the parties be required to exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

11. **Disclaimer of Warranties.** ALL RIGHTS, GOODS, AND SERVICES PROVIDED BY RECYCLEBANK HEREUNDER ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, REGARDING OR RELATING TO THE REWARDS PROGRAM, THE RECYCLEBANK IP OR TO ANY OTHER MATERIALS, GOODS OR SERVICES FURNISHED TO CLIENT HEREUNDER OR IN CONNECTION HERewith. RECYCLERE BANK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE REWARDS PROGRAM, WHETHER MADE BY RECYCLEBANK REPRESENTATIVES OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT, SHALL BE DEEMED TO BE A WARRANTY BY RECYCLEBANK FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF RECYCLEBANK WHATSOEVER. MUNICIPALITY HEREBY ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE REWARDS PROGRAM AS APPROPRIATE TO ACHIEVE THE RESULTS INTENDED BY CLIENT.

12. **Limitation of Remedies and Liabilities.** CLIENT'S SOLE REMEDY AND RECYCLEBANK'S SOLE OBLIGATION WITH RESPECT TO ANY CLAIMS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT SHALL BE GOVERNED BY THIS AGREEMENT, AND IN ALL CASES CLIENT'S REMEDY SHALL BE LIMITED TO MONEY DAMAGES NOT EXCEEDING THE UNAMORTIZED PORTION, IF ANY, OF SERVICE FEES PAID TO RECYCLEBANK PRIOR TO THE DATE OF SUCH CLAIM. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL RECYCLEBANK OR ITS SUPPLIERS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE PERFORMANCE OF THIS AGREEMENT ON BEHALF OF RECYCLEBANK, INCLUDING ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SHAREHOLDERS, DIRECTORS, OR SUBCONTRACTORS, BE LIABLE FOR ANY (I) INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY, COVER OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST BUSINESS OPPORTUNITIES, LOST SAVINGS, LOST DATA, LOSSES CAUSED BY DELAY OR THE DOWNTIME OF COMPUTERS OR SERVERS, OR LOSSES FROM INTERRUPTION, TERMINATION, OR FAILED OPERATION OF THE INTERNET OR THIRD-PARTY TELECOMMUNICATION SERVICES, EVEN IF RECYCLEBANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (II) CLAIMS AGAINST CLIENT BY ANY THIRD PARTY EXCEPT AS PROVIDED IN SECTION 8 ABOVE, OR (III) DAMAGES, INCLUDING PRODUCT LIABILITY DAMAGES, CAUSED BY ANY NON-

RECYCLEBANK PRODUCT. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO RECYCLEBANK'S DUTY OF INDEMNIFICATION UNDER SECTION 8 ABOVE.

13. **Insurance.** During the Term both Parties shall maintain, at their own expense, with an insurer having a Best's rating of A or better, a commercial general liability insurance policy providing at least One Million U.S. Dollars (\$1,000,000) of coverage (including coverage for products liability), and an excess liability insurance policy providing an annual aggregate of Two Million U.S. Dollars (\$2,000,000) insuring against events involving the Rewards Program (collectively, the "Required Policy"). The Required Policy must be written on either an occurrence basis or on a claims-made basis and shall name the other party as an additional insured. The Required Policy shall endeavor to provide for at least thirty (30) days' prior written notice to the other party of the cancellation or any substantial modification thereof (including, without limitation, any reduction of the aggregate limit of coverage). If either party cancels or substantially modified the Required Policy or fails to keep the Required Policy in full force and effect, the other party shall have the right, at any time thereafter, without prejudice to its other rights, to terminate this Agreement, effective immediately upon notice to that party of such termination. Each Party shall also maintain, at its own expense, in full force and effect during the Term: (i) worker's compensation insurance, as required by applicable law, providing at least One Million U.S. Dollars (\$1,000,000) of coverage and (ii) umbrella/excess liability insurance providing at least Two Million U.S. Dollars (\$2,000,000) of coverage. Upon execution of this Agreement and as each party may request from time to time during the Term, the other party shall provide certificates of insurance or copies of the policies evidencing the coverage outlined herein. Renewal certificates for such policies shall be issued at least ten (10) days prior to the policy expiration.

14. **Expenses; Disbursements.** Except as otherwise expressly provided herein, both Parties agree to pay all of its own expenses incurred and all disbursements made as a result of complying with the terms and conditions of and performing its obligations under this Agreement.

15. **Force Majeure.** Any delay or inability of Recyclebank in complying with the terms hereof arising from unforeseeable causes or events beyond Recyclebank's control, including, without limitation, Client's failure to supply necessary information or assistance, acts of God, acts of public enemy, acts of the government in either sovereign or contractual capacity, terrorism, fires, floods, internet failure or acts of a third party, shall excuse any resulting or related delay or failure in the performance by Recyclebank. In such event, the date of performance shall be extended for a reasonable period of time following the resolution of the cause of such delay or failure.

16. **Termination.** In addition to other express termination provisions in this Agreement, this Agreement may be terminated as follows:

A. at any time by mutual agreement of the Parties.

B. by Recyclebank, immediately upon notice to Client, in the event Client violates Sections 7 or 8 hereof.

C. by either Party with sixty (60) days' prior written notice provided if the termination is commenced by the Client within the Initial Term or any Renewal Term thereafter, other than the fourth Renewal Term, the Client shall pay Recyclebank an amount equal to the following within thirty (30) days following the effective date of termination:

i. if the Client terminates the Agreement within the Initial Term, the Client will pay Fifty-four Thousand, Nine hundred eighty-five Dollars (\$54,985);

ii. if the Client terminates the Agreement within the first Renewal Term, the Client will pay Forty-seven Thousand, sixty-four Dollars (\$47,064);

iii. if the Client terminates the Agreement within the second Renewal Term, the Client will pay Thirty-nine Thousand, one hundred forty-three Dollars (\$39,143); and

iv. if the Client terminates the Agreement within the third Renewal Term, the Client will pay Recyclebank Thirty-one Thousand, Two hundred twenty-two Dollars (\$31,222).

D. By either Party in the event (i) of a breach of this Agreement by the other Party (the “**Breaching Party**”) that is not cured within ten (10) days for failure to pay the Service Fees or any other additional fee incurred under the Agreement, or thirty (30) days for other breaches, after delivery of notice of such breach to the Breaching Party, (ii) Recyclebank fails to meet the general performance benchmarks in Exhibit C as detailed in Section 6 with you providing sixty (60) days prior written notice to Recyclebank, or (iii) that the other Party ceases doing business, is the subject of a voluntary bankruptcy, insolvency or similar proceeding, is the subject of an involuntary state or federal bankruptcy, insolvency, or similar proceeding that is not dismissed within sixty (60) days of filing, makes an assignment for the benefit of creditors, becomes unable to pay its debts when due, or enters into an agreement with its creditors providing for the extension or composition of debt. Nothing contained herein shall prevent or otherwise limit a Party from obtaining injunctive or other equitable relief pursuant to Section 17 hereof.

E. Termination shall be without prejudice to any rights and obligations of the Parties that have vested prior to the effective date of termination.

17. **Effect of Termination.** Upon termination of this Agreement:

A. Client’s rights, licenses, and privileges granted under this Agreement shall automatically terminate;

B. Client shall promptly pay to Recyclebank any amounts accrued and/or due and owing hereunder;

C. Client shall immediately cease using any and all Recyclebank IP and Recyclebank Confidential Information (including customer data) in its possession and all tangible embodiments thereof;

D. Client agrees and acknowledges Recyclebank retains all right to the Eligible Households and Members under this Agreement; and

E. The Service Overview and Sections 6, 7B, 8 through 13, 16, 17, 19, 23 through 32 of the Terms and Conditions and all provisions herein relating to the confidentiality of customer data will survive termination of this Agreement.

18. **Injunctive Relief.** Client understands and agrees that Recyclebank shall suffer irreparable harm in the event that of a breach by Client of any obligations under this Agreement and that monetary damages shall be inadequate to compensate Recyclebank for such breach. Accordingly, Client agrees that, in the event of a breach or threatened breach of any of the provisions of this Agreement, in addition to and not in limitation of any other rights, remedies or damages available at law or in equity, Recyclebank shall be entitled to a temporary restraining order, preliminary injunction and permanent injunction in order to prevent or restrain any such breach.

19. **Authority.** Each Party hereby represents and warrants to the other that it has full power and authority to enter into this Agreement, and that this Agreement has been duly authorized, executed and delivered by, and constitutes a valid, binding and legally enforceable agreement of, such Party. Concurrently with execution of this Agreement, and as a condition precedent to commencement of the Recyclebank Services hereunder, Client shall deliver to Recyclebank an opinion of counsel in form and substance and from counsel acceptable to Recyclebank stating that this Agreement and all of its terms and conditions (i) have been approved and accepted by the appropriate governing body of Client and executed by an authorized signatory on behalf of Client, (ii) do not violate, and are in accordance with, Client's charter, ordinances or other authorizing and governing documents; and (iii) constitute the valid and binding obligations of Client enforceable against it in accordance with their terms.

20. **Notices.** All notices, requests, waivers, demands or other communication required hereunder shall be in writing and shall be deemed to have been duly given if delivered by postage pre-paid certified or registered air mail, return receipt requested, or sent by telefax and addressed to the proper party at the address provided in the Client Information Form or such other address as shall be specified from time to time in writing by the Party entitled to receive such notices. Any notice sent by telefax shall be deemed to have been given on the date the fax was dispatched or in case of registered mail, return receipt requested, upon the date appearing on the postal receipt of registration witnessing the receipt of the notice.

21. **No Joint Venture.** Nothing contained herein shall be construed to place the Parties in the relationship of partners or joint venturers or principal and agent or employer and employee, and no Party shall have the power to obligate or bind the other Party in any manner whatsoever. Neither Recyclebank nor its employees and agents has any right to Worker's Compensation benefits from Client or its insurance carriers or funds. Recyclebank shall provide any workers' compensation insurance and all other insurance required by any applicable law for any Recyclebank employee or acting under this Agreement.

22. **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

23. **Waiver and Modification.** The waiver of a breach of any of the terms hereof or of any default hereunder shall not be deemed a waiver of any subsequent breach or default, whether of the same or similar nature, and shall not in any way affect the other terms hereof. No waiver, change, alteration, modification or addition to this Agreement shall be effective unless in writing and properly executed by both Parties.

24. **Governing Law.** This Agreement and any disputes relating to this Agreement shall be construed under the laws of the State of Colorado, without regard to conflicts of laws principles. For purposes of any legal action or proceeding arising out of this Agreement, Client submits and consents to the exclusive jurisdiction of the federal and state courts in Colorado. Venue for any state court proceeding shall be exclusively in Larimer County, Colorado.

25. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and terminates and supersedes any prior agreement or understanding, oral or written, between the Parties with respect thereto. The Parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of the Agreement or any representations inducing its execution and delivery except those specifically set forth. Each of the Parties acknowledges that such party has relied on its own judgment in entering into the Agreement.

26. **Headings.** The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any of its provisions.

27. **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any right or remedy by either Party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, relevance or otherwise.

28. **Severability.** Should any paragraph or portion thereof of this Agreement be found invalid or unenforceable by any court of competent jurisdiction, it is the intent of the Parties that the validity of the remaining paragraphs of the Agreement shall not be affected thereby.

29. **Waiver of Governmental Immunity.** The Client hereby waives its governmental immunity, if any, with respect to any contractual actions or suits undertaken by, and any remedy at law or in equity sought by, Recyclebank, its successors or assigns, arising out of, resulting from or involving any alleged default or failure by Client to observe or perform any of its obligations (including its indemnity obligations) hereunder and/or any act or omission of Client relating to the Incentive Recycling Program, it being understood and agreed that such waiver is a material inducement to Recyclebank entering into this Agreement and performing the Services. The parties agree that in the event of any dispute or disagreement hereunder Client shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism. The Client hereby waives any right to withhold, suspend or setoff payments during the pendency of any such dispute.

30. **Counterparts.** This Agreement and any amendments hereto may be executed in several counterparts, and all of such executed documents shall constitute one agreement binding on all the Parties hereto.

31. **Beneficiaries.** This Agreement is for the sole benefit of and binds the parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any party besides Client or Recyclebank receiving services or benefits under this Agreement is only an incidental beneficiary.

32. **Financial Obligations of the City of Loveland.** Client is obligated to provide payment for all services it receives under this Agreement. Any additional financial obligation of Client beyond the Initial Term under this Agreement is contingent upon appropriation, budgeting and availability of specific funds to discharge those obligations. Nothing in this Agreement constitutes a debt, a direct or indirect multiple fiscal year financial obligation, a pledge of Client's credit, or a payment guarantee by Client to Recyclebank. Client has the obligation to promptly notify Recyclebank and terminate the Agreement if it has not received the necessary appropriation and budget to extend the Program beyond the Initial Term for any additional year thereafter.

33. **Governmental Immunity.** Notwithstanding any other provision of this Agreement to the contrary, the parties agree that no term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, of any of the City's immunities, rights, benefits, protections, defenses, limitations of liability, or any other provisions under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* or under any other law other than as expressly agreed upon in this Agreement.

SCHEDULE A

Municipality

The City of Loveland, Colorado.
Eligible Households: 22,713

SCHEDULE B

Standard Reporting Format

The reporting appearing below represents the format and information Recyclebank will provide you, the Client, as its standard reporting under the Agreement. This reporting example is provided strictly for informational purposes only and does not reflect the performance of any specific client nor the anticipated results of the Rewards Program in the Municipality.

Recycling Reporting
Anytown, USA

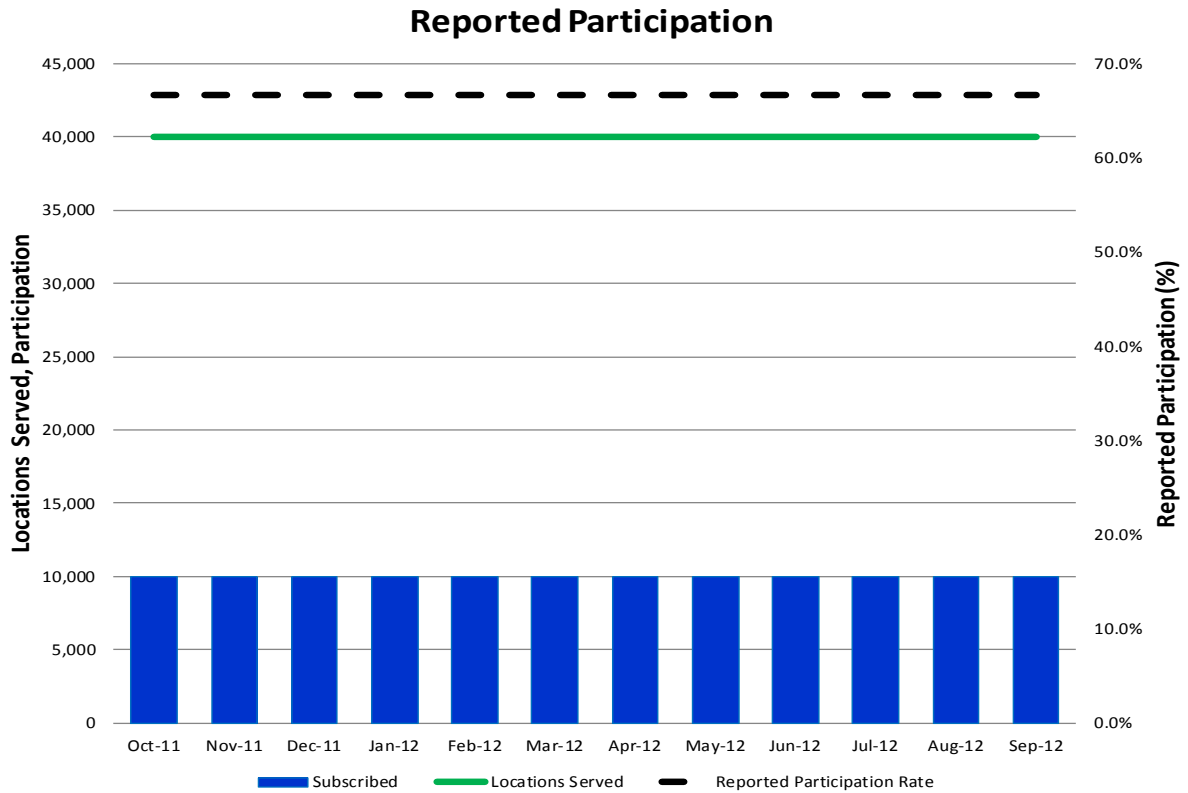
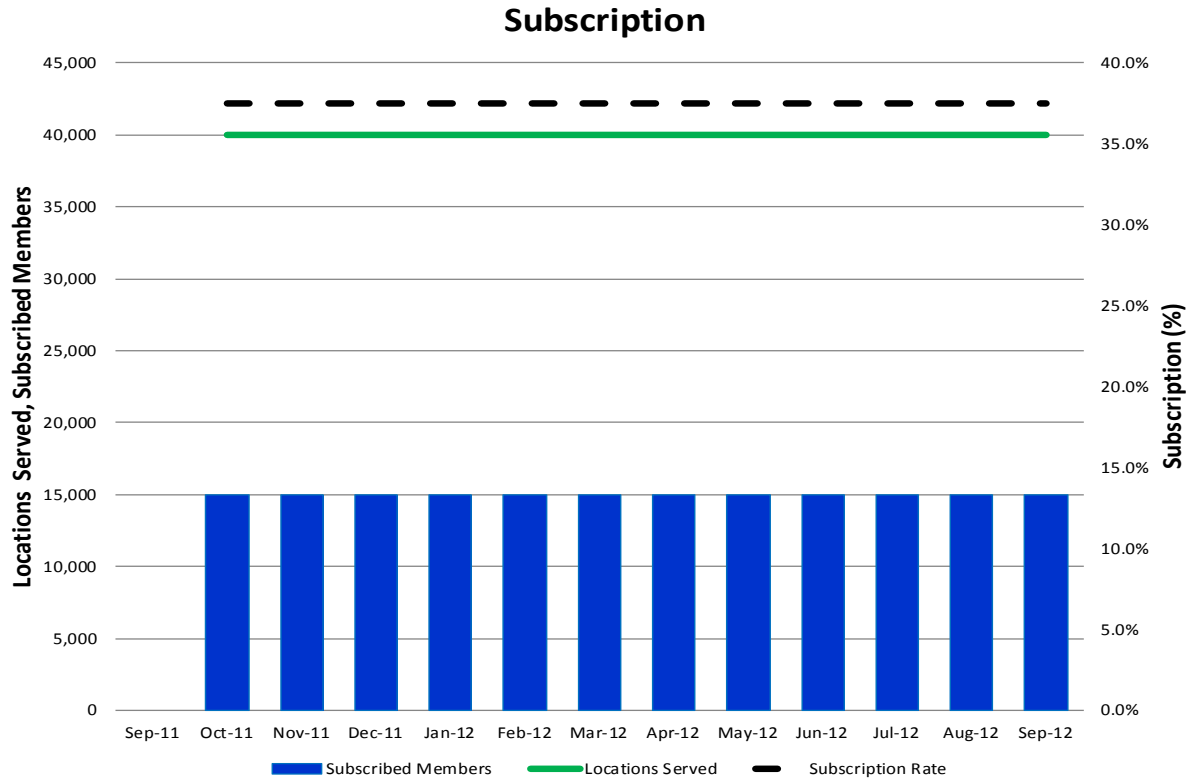
September 2012

Recyclebank®

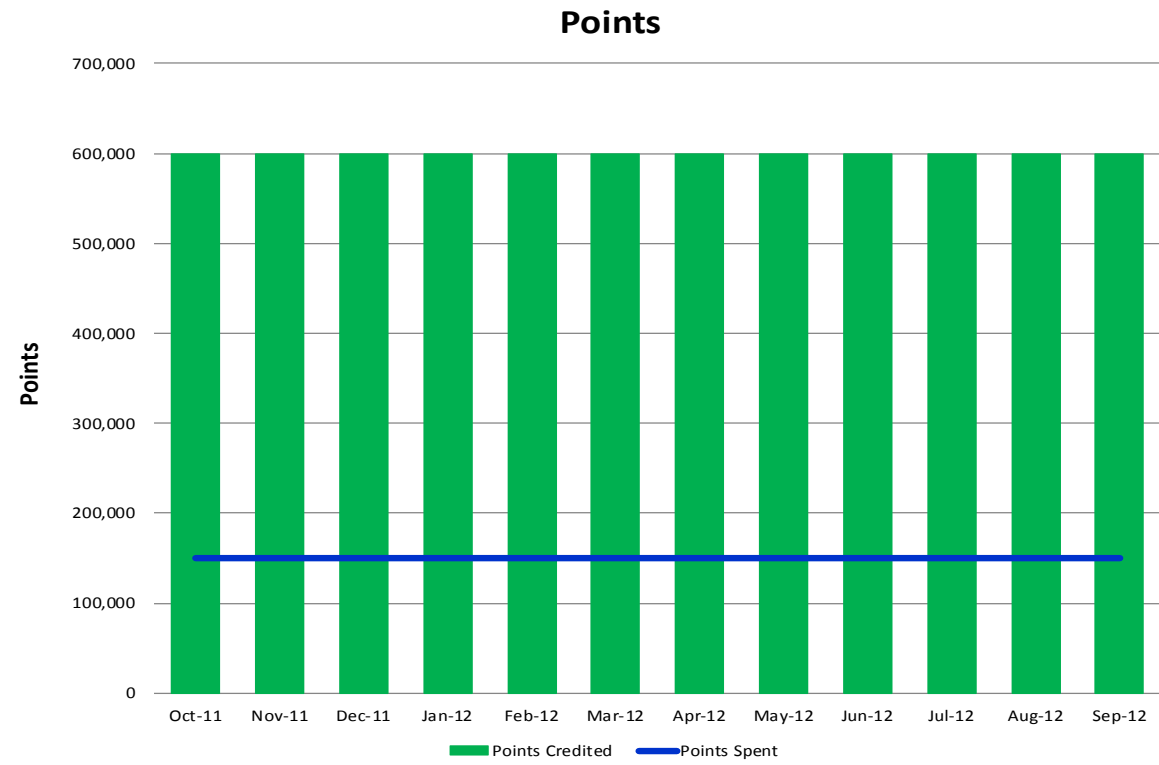
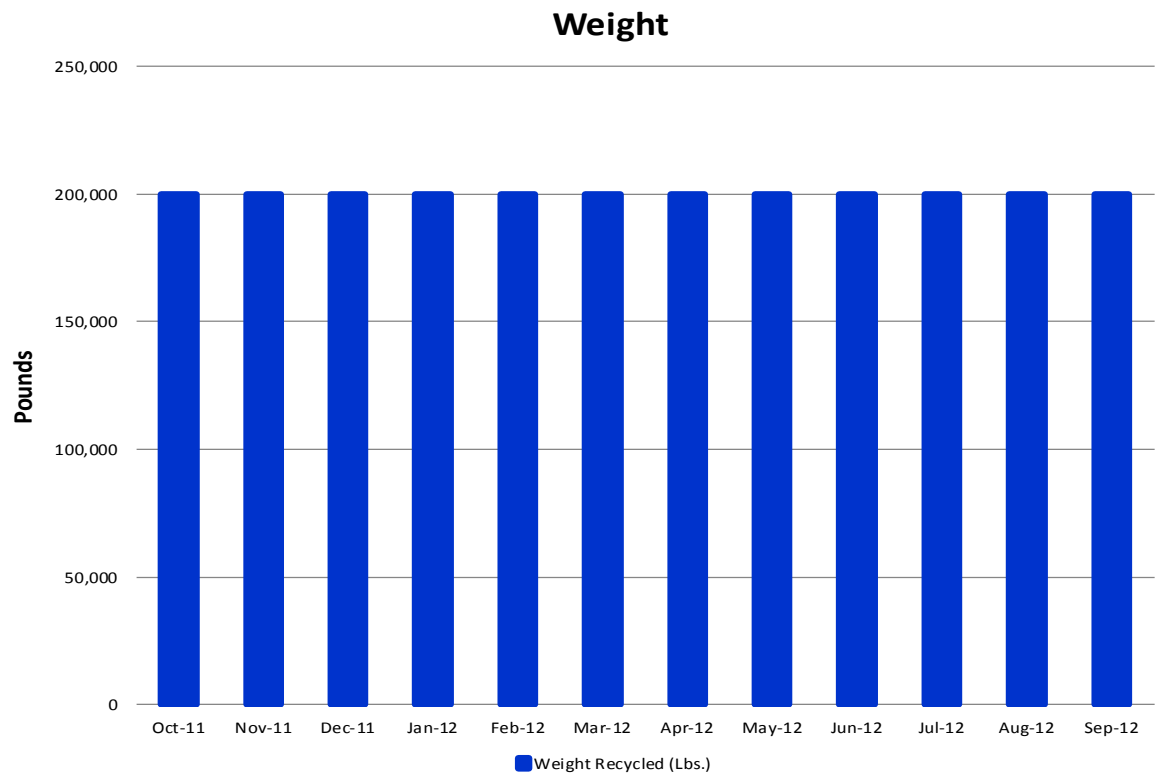
Recyclebank			
Terminology + Definitions			
Anytown, USA			
<u>TERMINOLOGY</u>	<u>MATH</u>	<u>DEFINITION</u>	<u>Sep-12</u>
REACH			
Locations Served	A	Addresses where the Recyclebank Recycling Program is offered	40,000
Subscribed Members	B	Residents signed up for the Recyclebank Recycling Program (max. one per location served)	15,000
Subscription Rate	$B \div A$	Residents signed up as a % of addresses where the Recyclebank Recycling Program is offered	37.5%
OPERATIONS			
Reported Participation			
Subscribed	C	Subscribed Members that reported that they recycled once or more during the month	10,000
Reported Participation Rate	$C \div B$	Percentage Subscribed Members that reported that they recycled once or more during the month	66.7%
Weight Recycled (Lbs.)			
Subscribed Credited	D	Total weight credited to subscribed members	200,000
POINTS			
Points Credited			
Recycling	E	Points earned by Subscribed Members based on weight recycled	500,000
Other	F	Points earned by Subscribed Members based on all other activities	100,000
Total Points Credited	$E + F$		600,000
Points Spent	G	Points spent by Subscribed Members	150,000
ENGAGEMENT			
Logins			
Total Logins	H	Total number of logins by Subscribed Members	2,000
Unique Logins	I	Unique count of Subscribed Members logging in at least once	1,800
% of Subscribed Members Logging-In	$I \div B$		12.0%
Rewards Ordered			
Total Checkouts	J	Number of times Subscribed Members ordered at least 1 Reward	1,100
Unique Members Ordering	K	Unique count of Subscribed Members ordering at least 1 Reward	900
% of Subscribed Members Ordering	$K \div B$		6.0%
Total Rewards Ordered	L	Rewards ordered by Subscribed Members	1,400
Community Impact			
Estimated Dollars Saved	M	Estimated monetary value of actual Rewards Ordered. The potential savings Subscribed Members enjoyed from the Recyclebank Program	\$12,000
Estimated Co-Spend	N	Represents the potential money spent at local and national businesses due to actual Recyclebank Rewards Ordered	\$20,000
NOTE: N/M means "Not Meaningful"			

Recyclebank													
Recycling Reporting by Client - Program Summary													
Anytown, USA													
	Updated through 09/30/2012												
REACH	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Last 12 Months
Locations Served	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	
Subscribed Members	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	
Subscription Rate	37.5%	37.5%	37.5%	37.5%	37.5%	37.5%	37.5%	37.5%	37.5%	37.5%	37.5%	37.5%	#
OPERATIONS													
Reported Participation													
Subscribed	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	
Reported Participation Rate	66.7%	66.7%	66.7%	66.7%	66.7%	66.7%	66.7%	66.7%	66.7%	66.7%	66.7%	66.7%	#
Weight Recycled (Lbs.)													
Subscribed Credited	200,000	200,000	200,000	200,000	200,000	200,000	200,000	200,000	200,000	200,000	200,000	200,000	2,400,000
POINTS													
Points Credited													
Recycling	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	6,000,000
Other	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	1,200,000
Total Points Credited	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000	7,200,000
Points Spent	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	1,800,000
ENGAGEMENT													
Logins													
Total Logins	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	24,000
Unique Logins	1,800	1,800	1,800	1,800	1,800	1,800	1,800	1,800	1,800	1,800	1,800	1,800	11,000
% of Subscribed Members Logging-In	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	# 73.3%
Rewards Ordered													
Total Checkouts	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	13,200
Unique Members Ordering	900	900	900	900	900	900	900	900	900	900	900	900	6,000
% of Subscribed Members Ordering	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	6.0%	# 40.0%
Total Rewards Ordered	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	16,800
Community Impact													
Estimated Dollars Saved	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$144,000
Estimated Co-Spend	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$240,000

Recyclebank
Anytown, USA

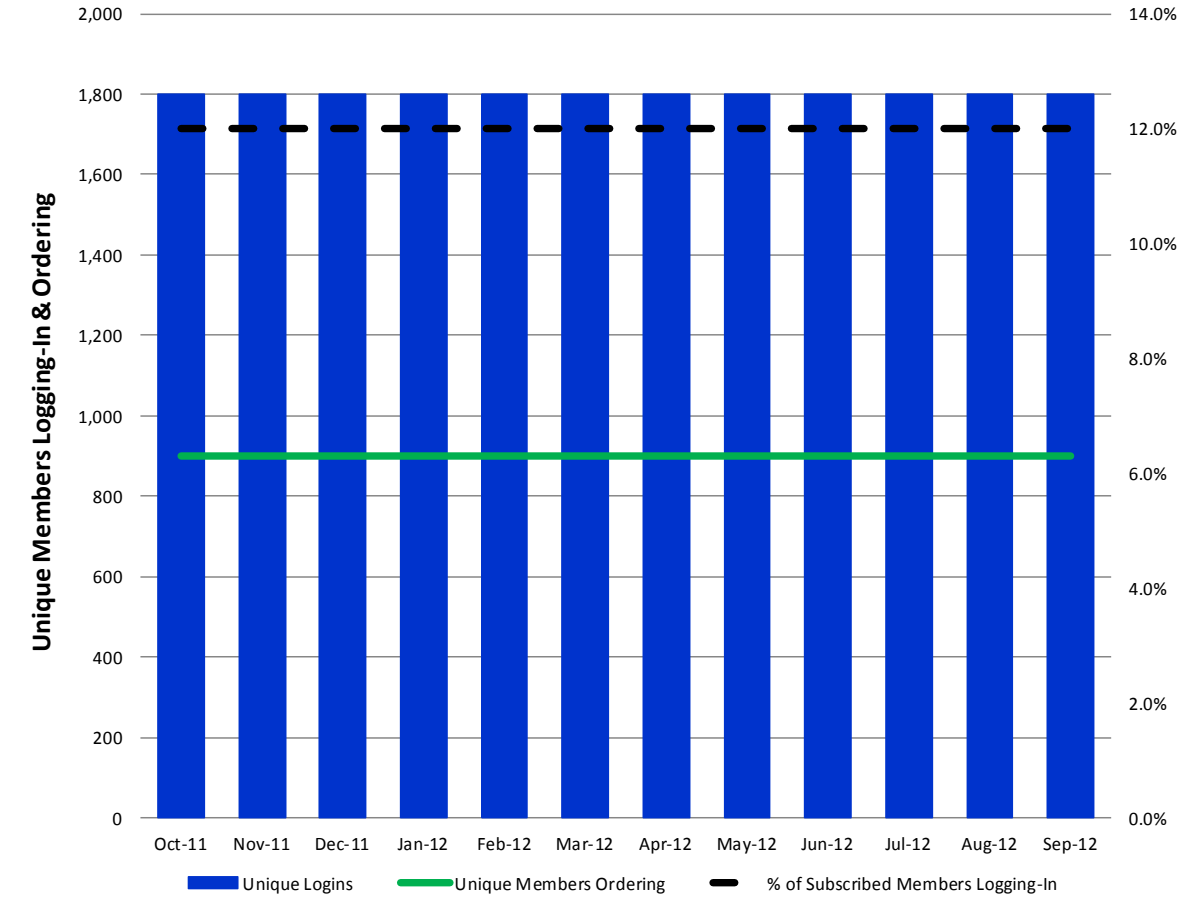


**Recyclebank
Anytown, USA**

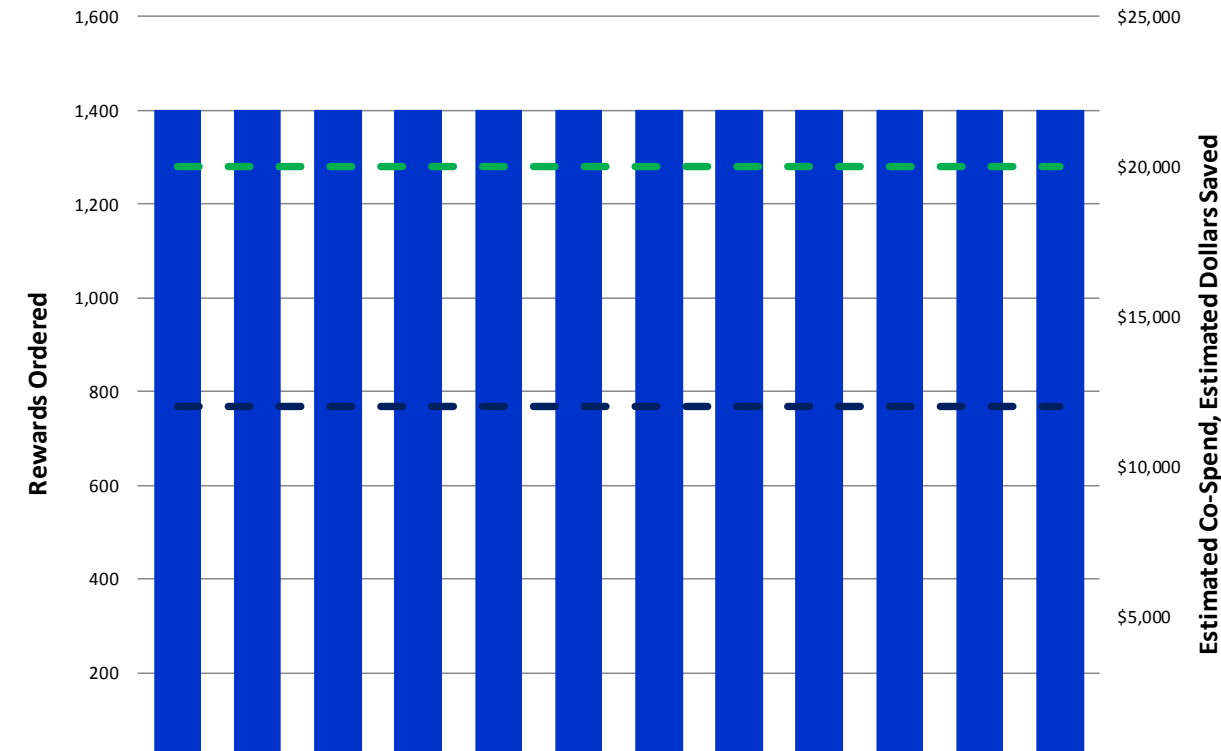


Recyclebank
Anytown, USA

Engagement



Rewards



SCHEDULE C

Loveland, CO Recyclebank Program Forecast

Loveland, CO Recyclebank Program Forecast

Household Deployment & Activation Schedule	Year 1	Year 2	Year 3
Household Deployment			
Single Family HH Deployed, Beginning of Period	0	22,713	22,713
Net New Single Family HH Deployed	22,713	0	0
Single Family HH Deployed, End of Period	22,713	22,713	22,713
Household Activation			
Activated Single Family HH, Beginning of Period	0	4,543	5,678
Net New Single Family HH Activations	4,543	1,136	1,136
Activated Single Family HH, End of Period	4,543	5,678	6,814
Activation Rate	20.0%	25.0%	30.0%
MSW & Recycling	Year 1	Year 2	Year 3
Municipal Solid Waste (tons)			
Recycling with Recyclebank	6,016	6,151	6,232
Recycling without Recyclebank	5,419	5,419	5,419
Recycling Lift with Recyclebank (%)	11.0%	13.5%	15.0%
Landfill with Recyclebank	15,645	15,511	15,429
Landfill without Recyclebank	16,242	16,242	16,242
Landfill Impact with Recyclebank (%)	-3.7%	-4.5%	-5.0%
Total MSW with Recyclebank	21,661	21,661	21,661
Total MSW without Recyclebank	21,661	21,661	21,661
MSW Impact with Recyclebank (%)	0.0%	0.0%	0.0%
Diversion			
Diversion Rate with Recyclebank	27.8%	28.4%	28.8%
Diversion Rate without Recyclebank	25.0%	25.0%	25.0%
Diversion Lift with Recyclebank (pts)	2.8%	3.4%	3.8%

City Council Study Session
March 12, 2013
Page 1 of 1

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, Farley, McKean, Trenary, Taylor, Fogle and Shaffer. Councilor Klassen was absent. City Manager, Bill Cahill was also present.

1. ECONOMIC DEVELOPMENT

Stone Soup Accelerator: A Community Led Economic Development Project
Economic Development Director, Betsey Hale presented this item to Council. Members of the Loveland Development Fund presented a proposal to create a technology accelerator at the Rocky Mountain Center of Innovation and Technology. The accelerator will assist technology companies in the technology readiness stages which are often referred to as second stage companies. This facility is not intended to be an incubator for startup companies. The proposal included information related to the program's leadership, budget, acceleration concept, and staffing request. Members of the Loveland Development Fund Board requested a contribution of \$150,000 annually for five years. The purpose of the funds is to provide resources for hiring the accelerator manager and other office operating expenses for this position. The manager will be a City of Loveland employee in the Economic Development Department. Council discussion ensued. Council directed staff to return to a regular meeting as soon as possible for formal consideration of the budget appropriation.

The study session was adjourned at 8:35 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor



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: 8
MEETING DATE: 4/2/2013
TO: City Council
FROM: Steve Adams, Water and Power Department
PRESENTER: Jackie Sargent, Platte River Power Authority

TITLE:

Introduction of new Platte River Power Authority (PRPA) General Manager, Jackie Sargent and her presentation on PRPA

RECOMMENDED CITY COUNCIL ACTION:

Information only

DESCRIPTION:

The purpose of this item is to introduce the new PRPA General Manager, Jackie Sargent and she will then give a presentation about PRPA.

BUDGET IMPACT:


- ☐ Positive
☐ Negative
☒ Neutral or negligible

Information only for City Council

SUMMARY:

Jackie Sargent's presentation will give a broad overview of PRPA and will consist of the following topics:

- Platte River History
 - Governing Board and Leadership team
 - System overview and resource mix
 - Cost summary
 - 2012 results and accomplishments
 - Planning for the future
 - Legislative update
 - Customer initiatives
-

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

PowerPoint Presentation

The Energy We Live By™



Platte River Power Authority Overview

Loveland City Council

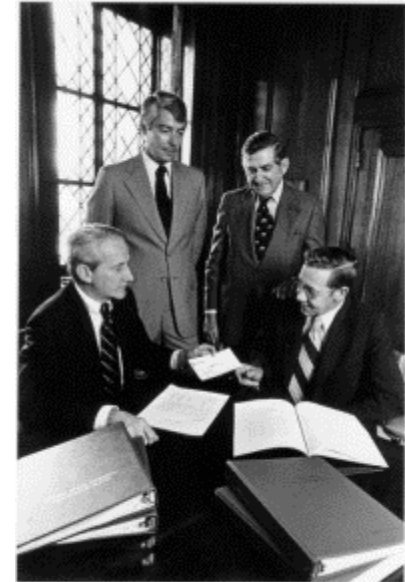
April 2, 2013

Discussion Points

- Platte River History
- Governing Board and Leadership Team
- System Overview and Resource Mix
- Cost Summary
- 2012 Results and Accomplishments
- Planning for the future
- Legislative Update
- Customer Initiatives

Platte River Power Authority's Proud History

- Not-for-profit *joint action agency*
- Generates and delivers reliable, low-cost and environmentally responsible electricity to its owner communities—Estes Park, Fort Collins, Longmont and Loveland
- Formed in 1973 in response to U.S. Bureau of Reclamation announcement that it would be unable to supply enough hydropower to meet cities' future needs



AUGUST 20, 1975
SALE OF PLATTE RIVER POWER AUTHORITY BONDS
\$35,000,000 ELECTRIC REVENUE SERIES A.
l. to r. seated: SWICK, CASE standing: KRAHL, HAMILTON



Board Make-up Assures Local Control & Decision-making

Platte River Board of Directors

Estes Park

Mayor Bill Pinkham



Mr. Reuben
Bergsten



Fort Collins

Mayor Karen Weitkunat



Mr. Gerry Horak



Longmont

Mayor Dennis Coombs



Mr. Tom Roiniotis



Loveland

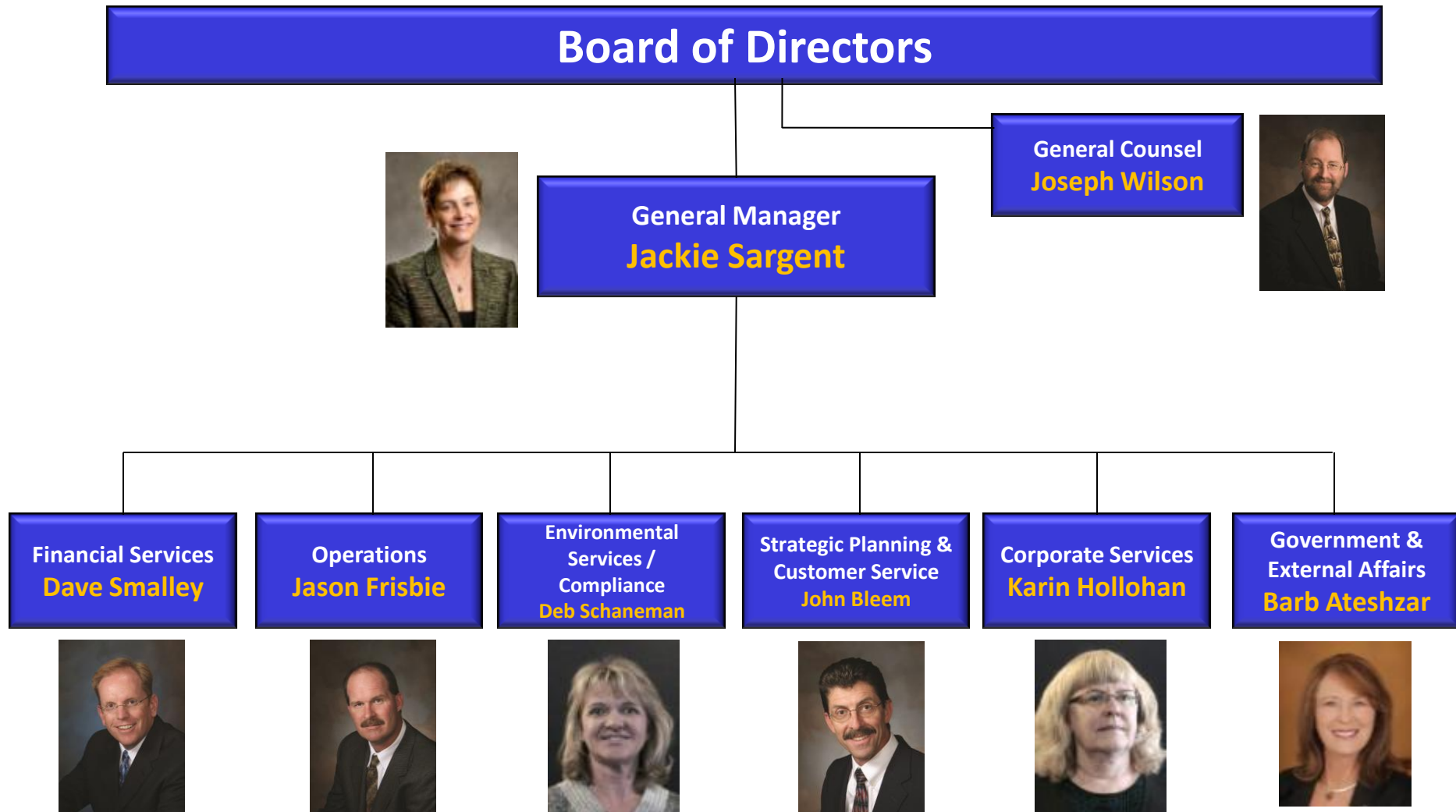
Mayor Cecil Gutierrez



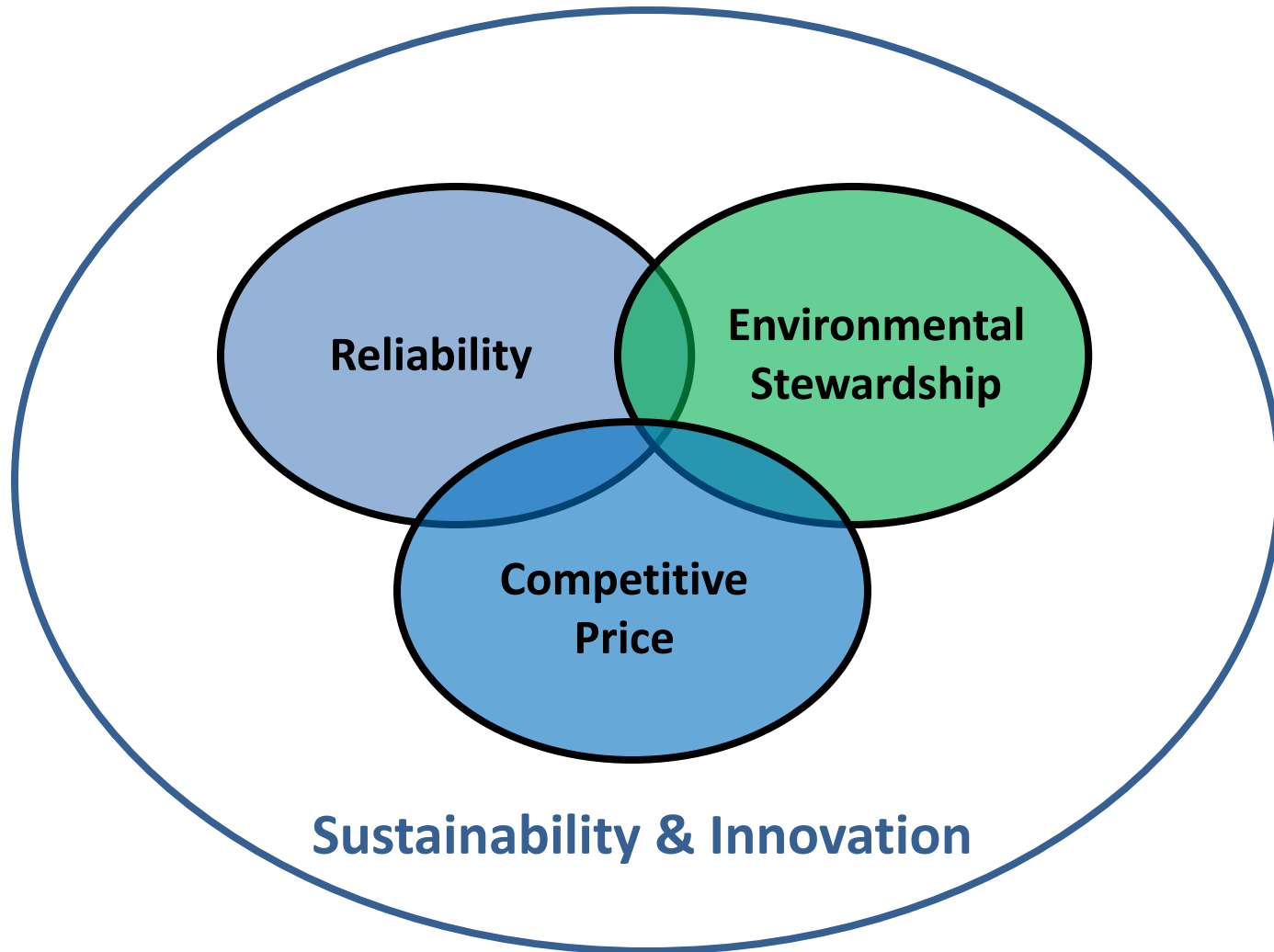
Mr. Steve Adams



Management Team Builds on Strong Foundation



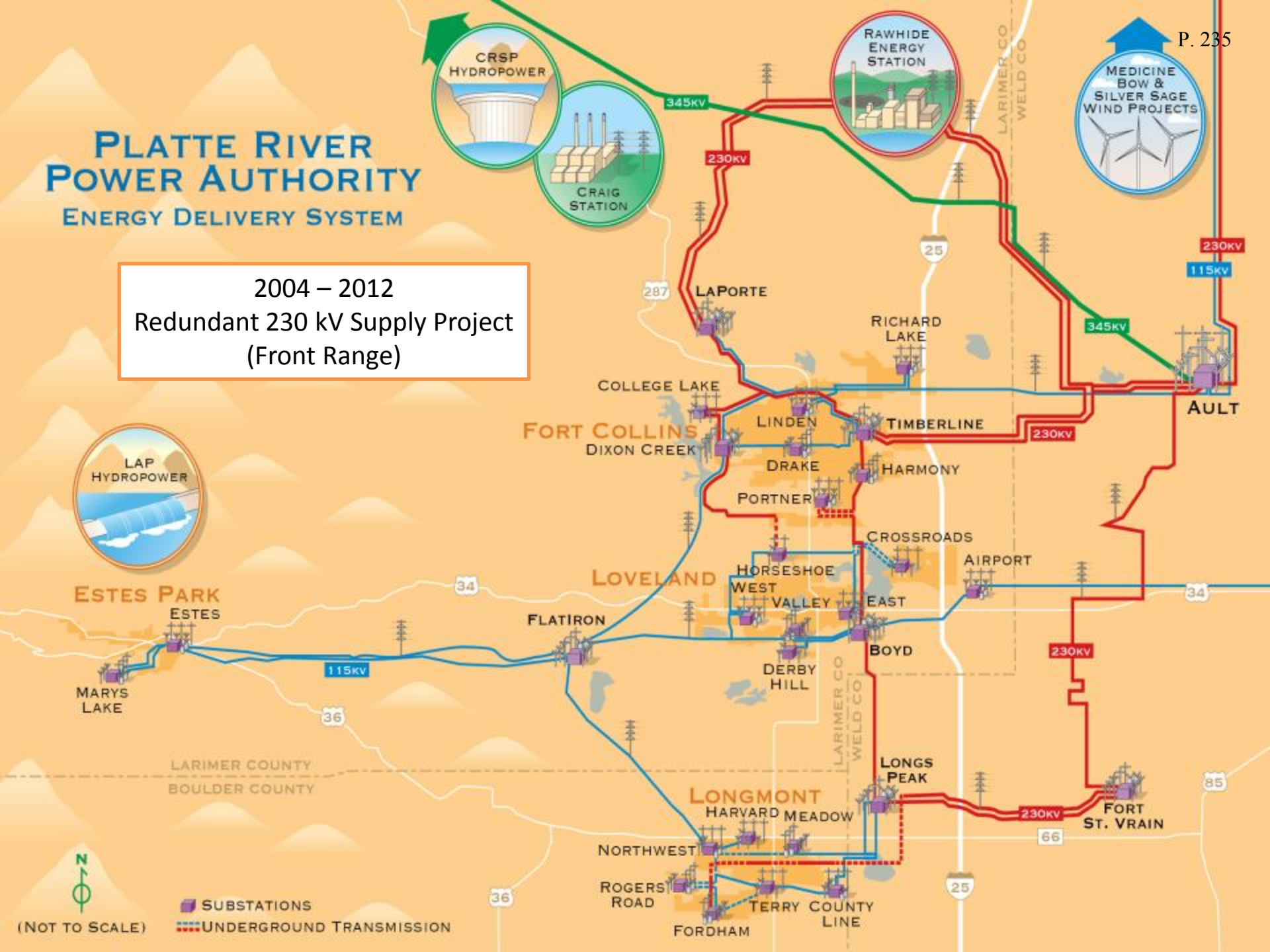
Platte River Works to Achieve Balance



PLATTE RIVER POWER AUTHORITY

ENERGY DELIVERY SYSTEM

2004 – 2012
Redundant 230 kV Supply Project
(Front Range)

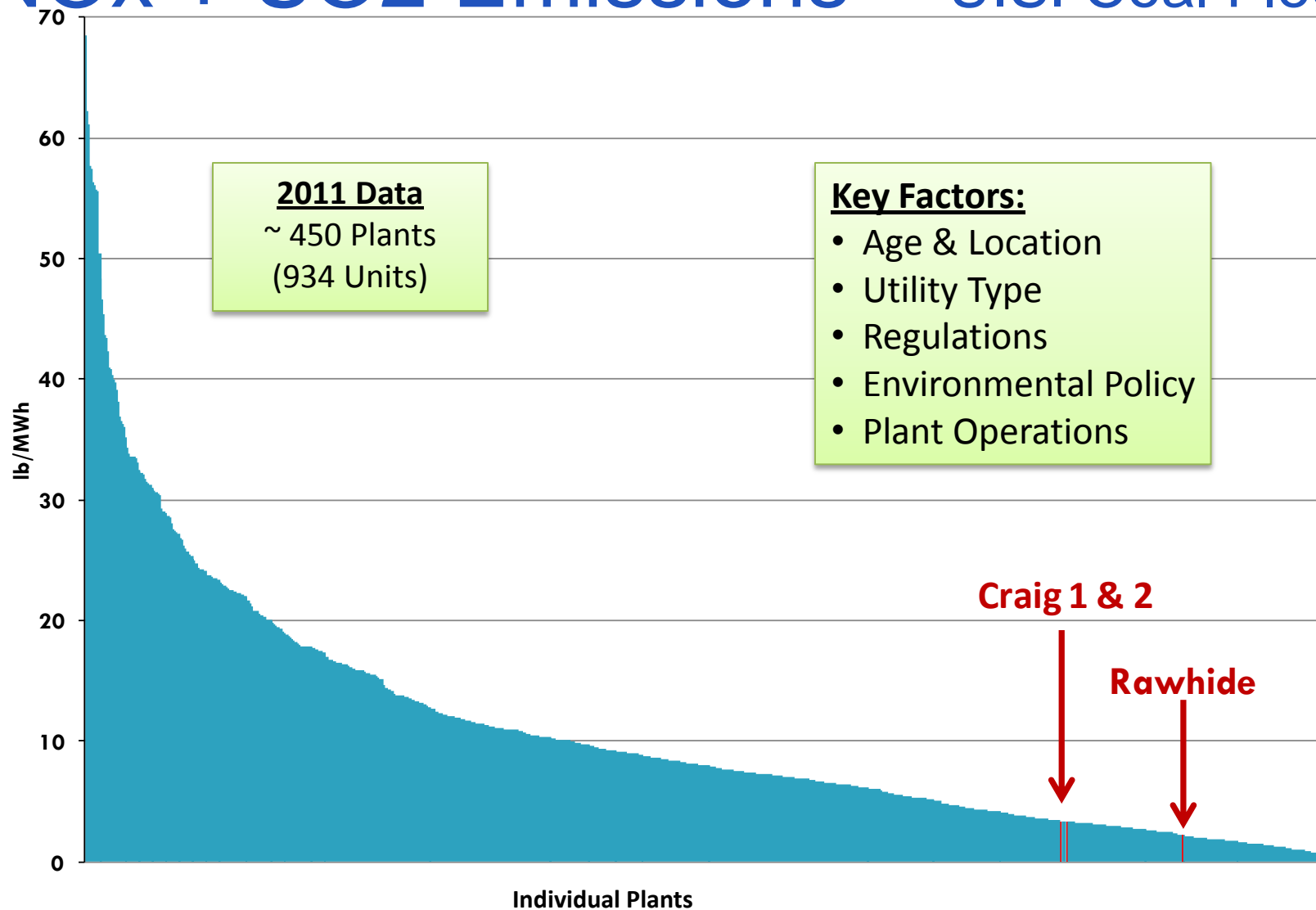


Existing Resources

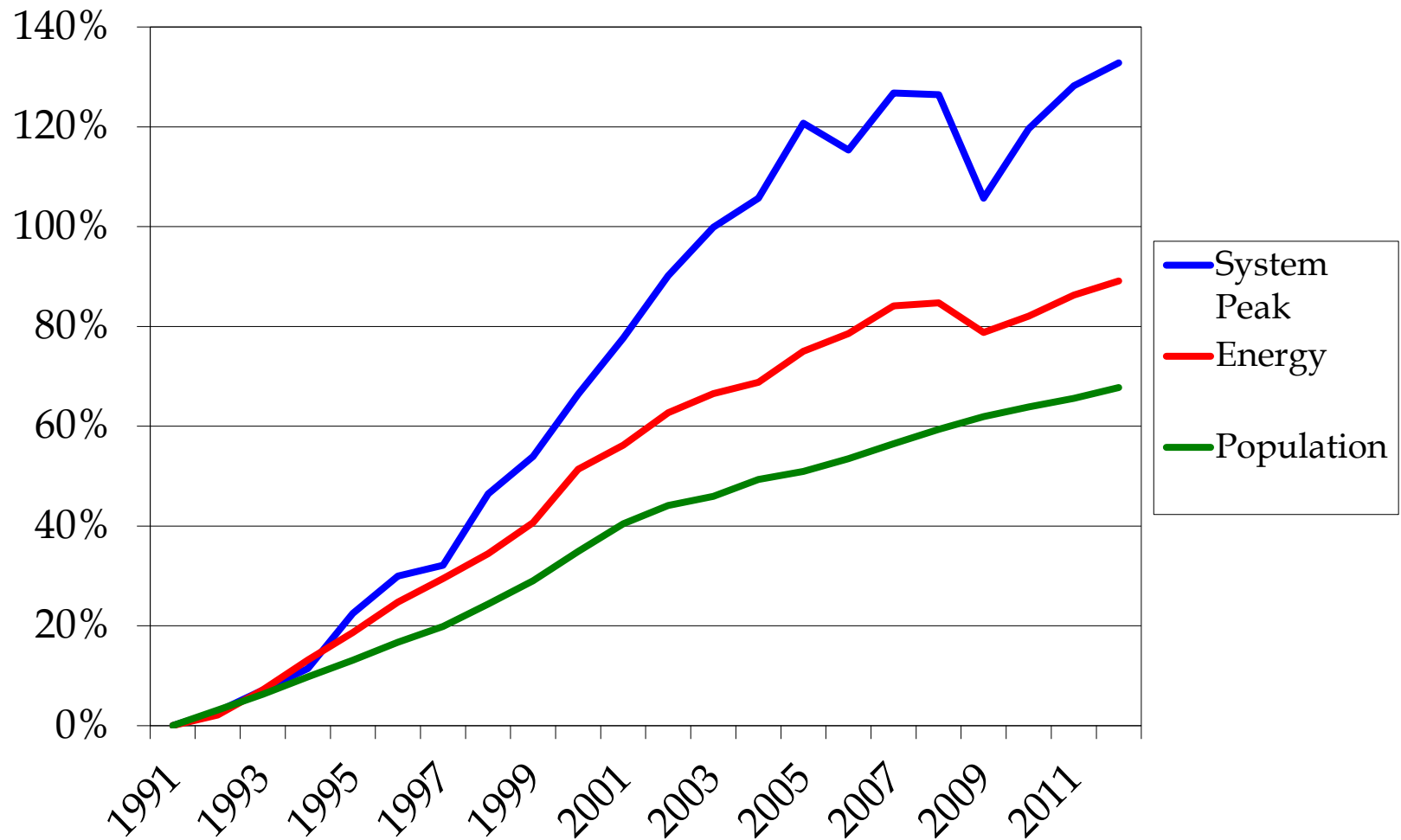


- Hydropower – 90 MW Summer (seasonal variability)
 - Wind – 18 MW (intermittent energy)
 - Rawhide Unit 1 (coal) – 278 MW
 - Rawhide Units A B C D & F
Natural gas – 388 MW total
 - Craig Units 1&2 (coal) – 154 MW total
-
- Total 2012 Load – 653 MW (Peak)
 - Total 2012 Firm Resources – 910 MW

NOx + SO2 Emissions – U.S. Coal Fleet

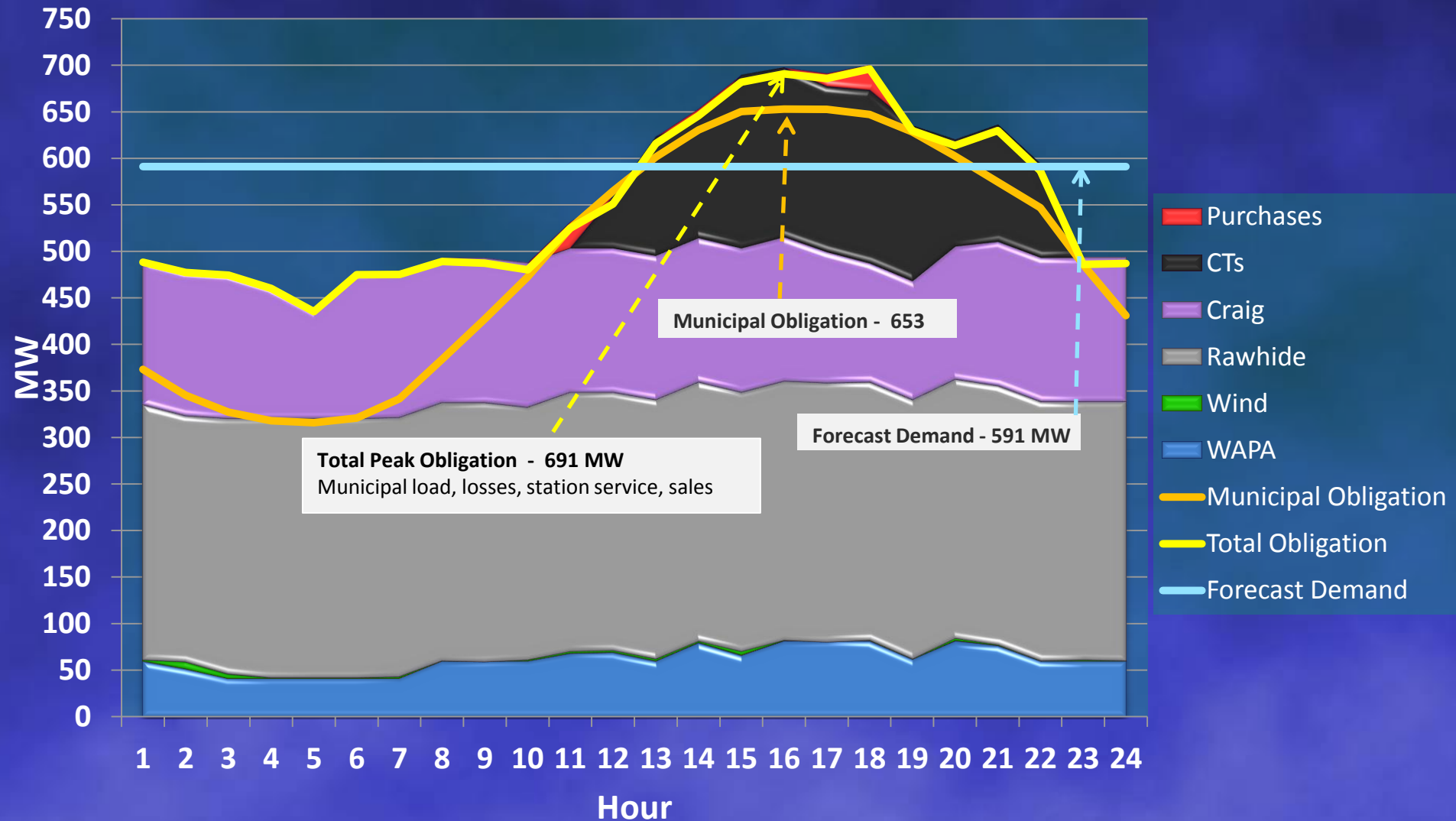


Electric Load Growth Characteristics



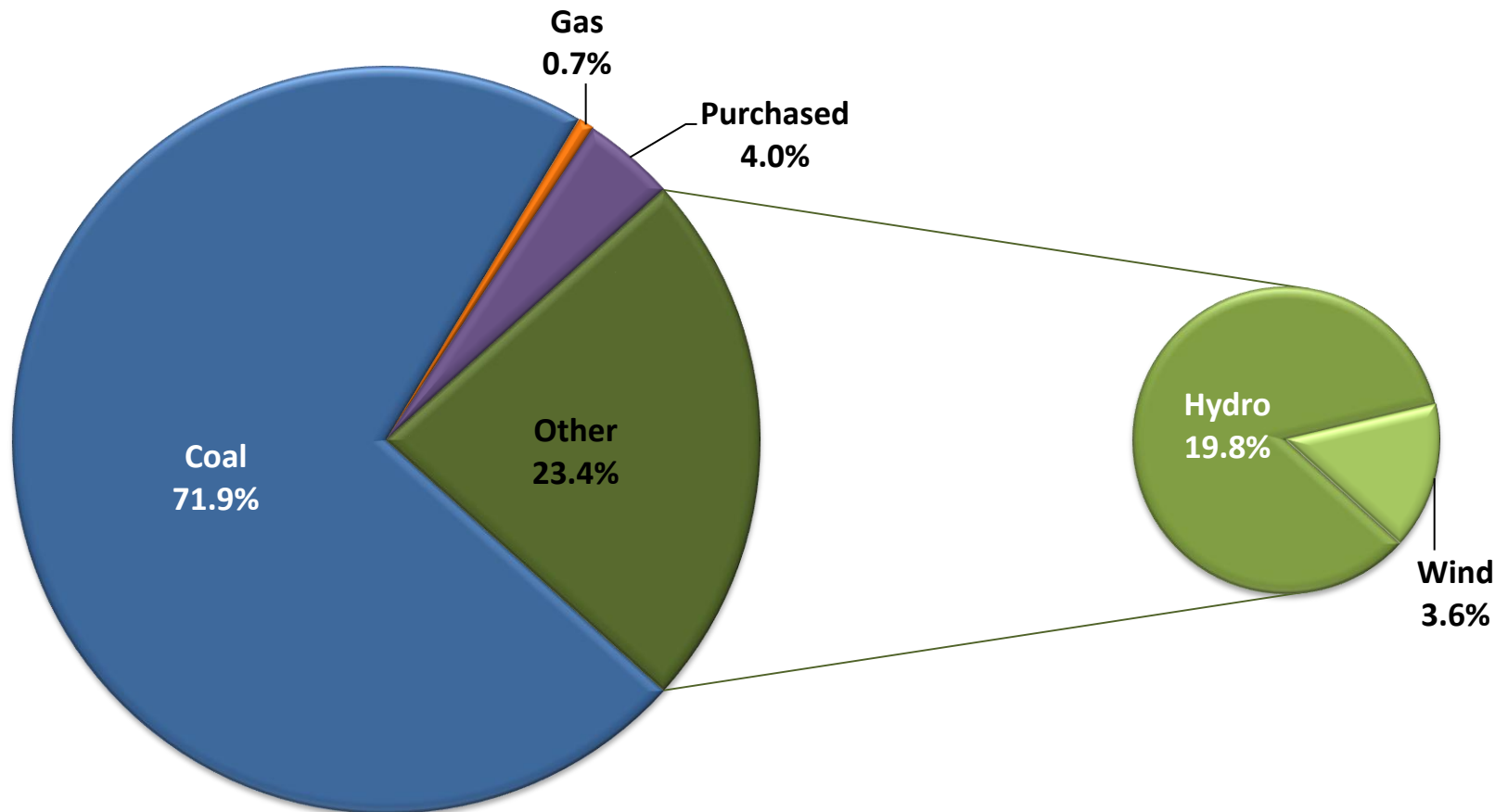
Coincident Peak Total Obligation

Total Peak Day Obligation - June 25, 2012

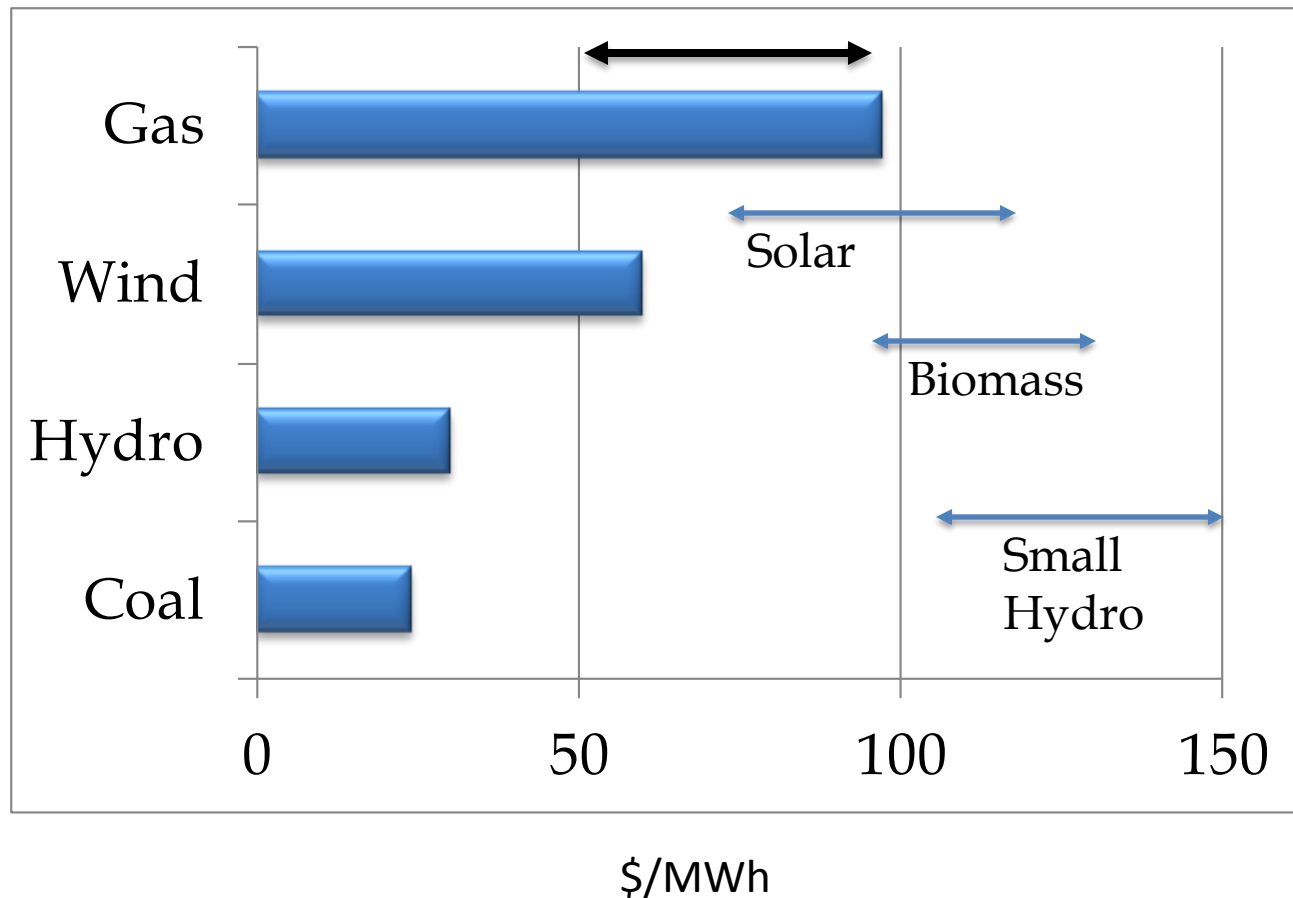


2012 Resource Mix

(Energy Sold to Municipalities)

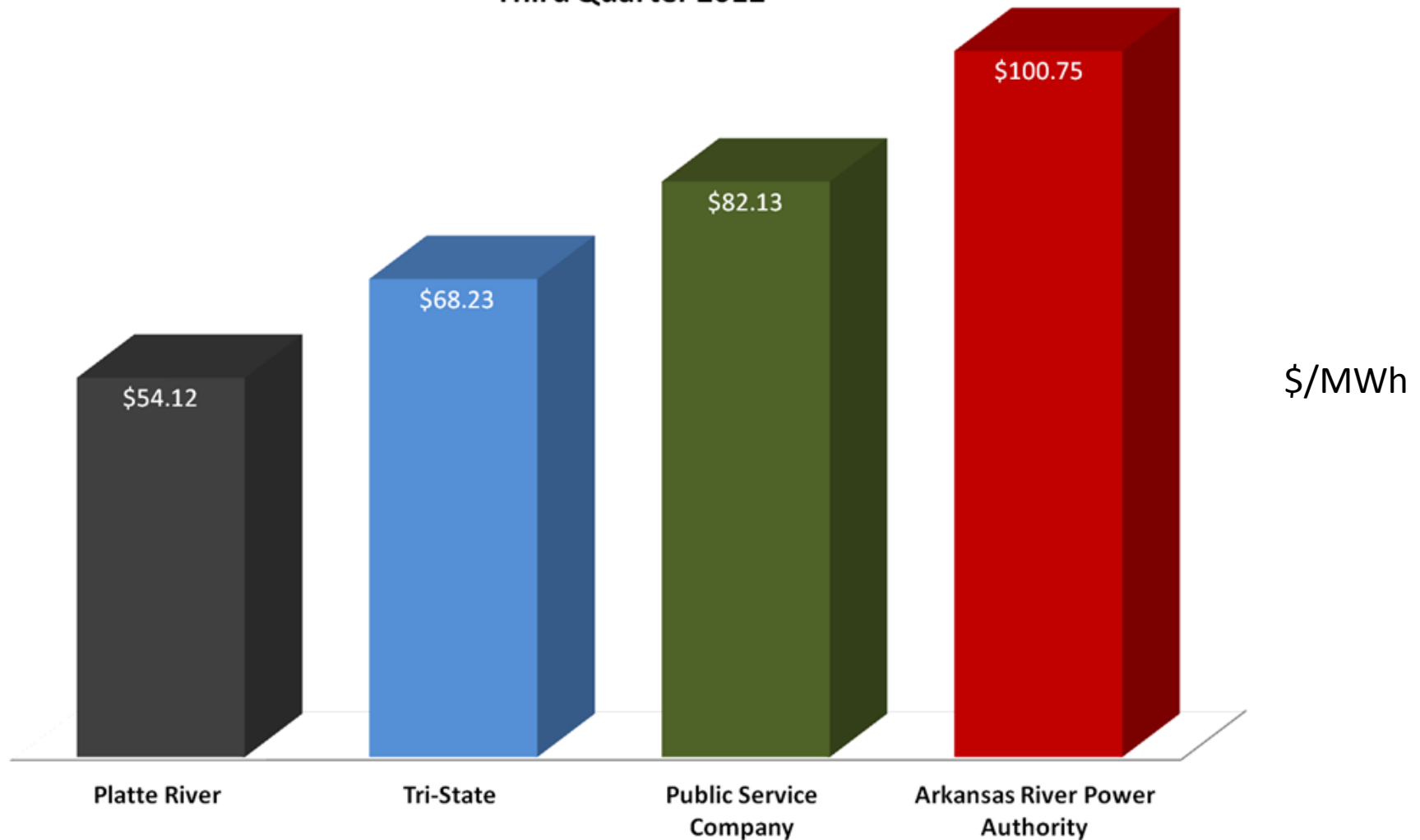


Electricity Resource Cost Comparison

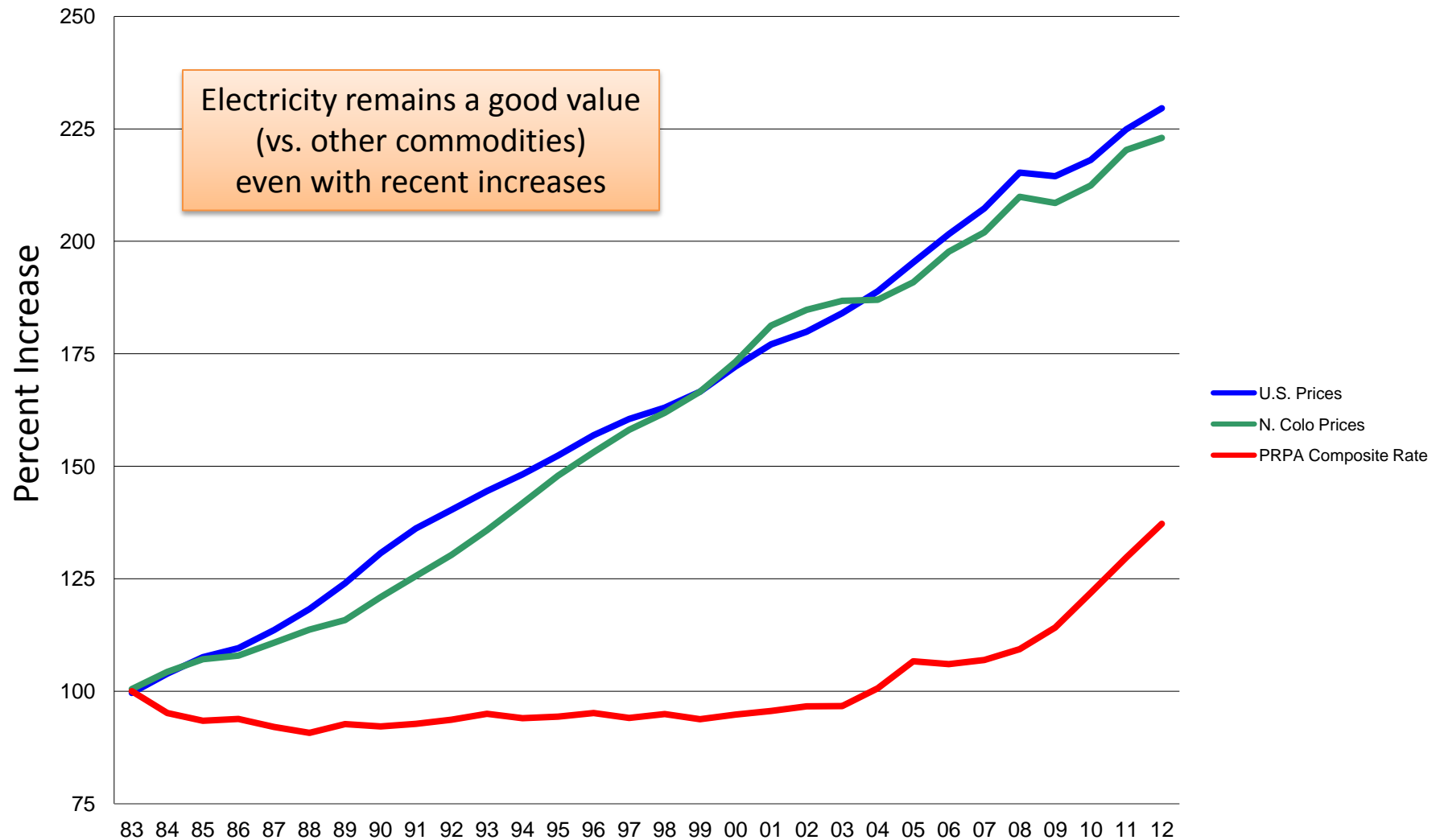


Wholesale Electric Rates to

Average Wholesale Rates (\$/MWh)
Third Quarter 2012

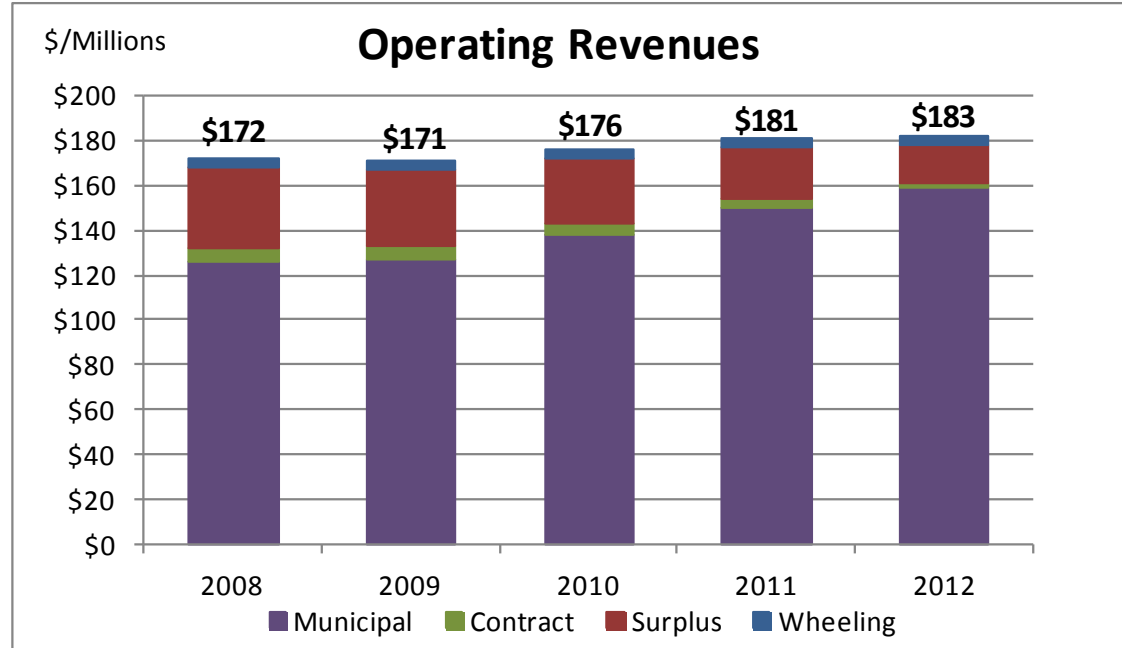


Consumer Price Index Comparison



2012 Operating Revenues

(\$ Millions)	Budget	Actual	Variance	%
Municipal Sales	\$ 161.1	\$ 159.7	\$ (1.4)	-0.9%
Contract Sales	1.4	1.4	-	0.0%
Short Term Sales	19.8	17.5	(2.3)	-11.6%
Wheeling	4.0	4.0	-	0.0%
Total Operating Rev	\$ 186.3	\$ 182.6	\$ (3.7)	-2.0%



2012 Operating Revenues

87% Municipalities
 10% Short-term Sales
 2% Wheeling
 1% Contract Sales

2012 Accomplishments

- Strong financial results
 - Strategic Financial Plan targets all met or exceeded
- Issued Series II Power Revenue Bonds
 - Rating agencies reaffirmed Platte River's credit rating
- Completed Rawhide major maintenance outage
 - Under budget \$0.5 million
- Rawhide recognized in Electric Light & Power Magazine
- Completed the Dixon Creek-Horseshoe transmission project
 - Done one month prior to deadline of June 1st to ensure reliability to City of Loveland before summer loads
- Leadership transition

Platte River's 2013 Goals

- Safety
- Compliance
- Financial integrity
- Operational excellence
- Exceptional customer service
- Employee engagement

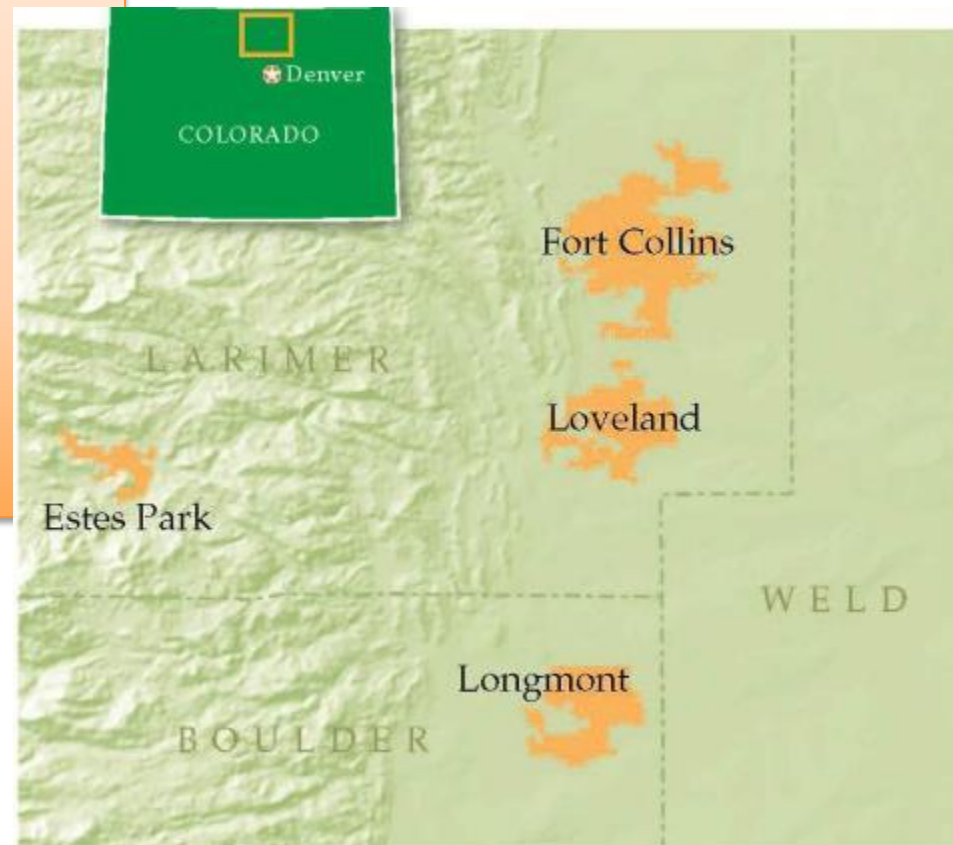


Focus Forward

- Responsive to changing customer needs and expectations
- Integrates new and innovative technologies
- Responsive to changes in political and economic environments
- Ensures long-term sustainability

Joint Action Agency Model Makes Sense

- Local Governance
- Not for Profit
- Economies of Scale
- Financing Opportunities
- Responsive to Owner Communities



QUESTIONS / DISCUSSION





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: 9
MEETING DATE: 4/2/2013
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Karl Barton, Community & Strategic Planning

TITLE:

Loveland/Johnstown Intergovernmental Agreement

RECOMMENDED CITY COUNCIL ACTION:

Provide staff with feedback on a conceptual outline draft of an intergovernmental agreement (IGA) between Johnstown and Loveland and proposed adjustments to Loveland's Growth Management Area boundary.

OPTIONS:

1. Refer back to staff for further development and consideration
-

DESCRIPTION:

This study session item is an informative presentation on a conceptual outline draft of an IGA between Loveland and Johnstown. The IGA would establish a process for the two municipalities to cooperate on matters regarding annexation in the area along the I-25 corridor and to agree on a common Growth Management Area (GMA) boundary. The agreement would establish a process for determining which municipality would annex land within an area that would remain within the GMA boundaries of both municipalities, referred to as the "overlap area". The IGA also contains terms committing the two municipalities to cooperate in the future in infrastructure planning and preserving development opportunities in the Overlap Area.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

The IGA is the first phase of a larger planning effort that will also include Loveland and Johnstown working with Larimer County to achieve recognition of the GMAs of both

municipalities by the County, as well as an extension of the Loveland GMA Overlay Zoning District into the southeasterly quadrant of Loveland's GMA. It is currently Larimer County's position that an agreement between Loveland and Johnstown on our GMA boundary is necessary in order for the County to consider extending the overlay zoning district. Resolving this issue regarding the overlay zoning district is important before undertaking a corridor plan for Highway 402, which is the final piece of this planning effort.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

- A. Staff memorandum with attachments
- B. Slide show

**Community & Strategic Planning**

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2607 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

Memorandum

To: Loveland City Council

From: Karl Barton, Development Services

Through: Greg George, Development Services Director

Date: April 2, 2013

RE: Intergovernmental Agreement with Johnstown

I. Attachments

1. Map showing proposed Overlap Area and Growth Management Area boundaries
2. Map showing additions and subtractions to Growth Management Areas
3. IGA Conceptual Outline Draft

II. Purpose

As Northern Colorado has grown, there have been instances of annexation conflicts between Loveland and Johnstown, as both municipalities pursue the annexation of prime property located along the I-25 corridor, particularly near interchanges. The purpose of this Intergovernmental Agreement (IGA) is to resolve those long standing conflicts by establishing a common Growth Management Area boundary between the two municipalities and a process for the two municipalities to cooperatively address requests from property owner to annex land along the I-25 corridor. This planning effort is the first of a three phase planning strategy to development a corridor plan for Highway 402. The second phase will be a request that Larimer County enter into a three party IGA with Johnstown and Loveland to recognize the common GMA boundary between Loveland and Johnstown and to put in place an overlay zoning district along the I-25 and Highway 402 corridors.

III. History

In 2000, The City of Loveland amended its Future Land Use Map and extended its GMA to include significant land areas extending south to Highway 60 and east of I-25. This amendment created conflicts with Johnstown's GMA and was view by Larimer County Commissioners as being "over aggressive", given the 15-20 year time frame for urban development within a GMA. In fact, the current Loveland/Larimer County IGA designates these conflict areas as "Areas excluded from IGA".

Due to these conflict areas, Larimer County has refused to consider expanding the Loveland GMA Overlay Zoning District into the southeasterly quadrant of Loveland's GMA. This overlay zoning district has been in place in the other four quadrants of Loveland's GMA since the mid 90's. The overlay zoning district is the legal instrument that allows the County to implement the term of the Loveland/Larimer County IGA. The overlay zoning district requires that landowners give the City an opportunity to annex property prior to County approval of a rezoning or a discretionary development plan. Without the zoning in place, none of the terms of the IGA are enforceable. Due to this exclusion from the IGA, several rural conservation plans have been approved by the County in the southeasterly quadrant of Loveland's GMA. These plans allow 2 plus acre rural residential development, including perpetual conservation easements on significant land areas. This type of rural land use plan establishes a land use pattern that will make urban development challenging in the future and are particularly troublesome when located along the I-25 and State Highway 402 corridors.

IV. IGA

The planning staffs from Loveland and Johnstown have taken the lead in a collaborative planning process to prepare the draft IGA and agree on a common GMA boundary. This process has included meetings with the managers and mayors of both Loveland and Johnstown. Johnstown is planning to discuss the draft IGA in a manner similar to this study session at an upcoming Town Council workshop.

The IGA establishes a process for cooperation between the two communities concerning annexations along the I-25 corridor and official recognition of an area that would remain in the GMAs of both municipalities, referred to as the "Overlap Area". Minor amendments are being proposed to the GMA boundaries of both municipalities. **Attachment 1** depicts the proposed Overlap Area as well as the proposed GMA boundary between Loveland and Johnstown. **Attachment 2** depicts the areas proposed to be added to and subtracted from the GMAs of each municipality.

The focus of the IGA is to create a process where the two municipalities consult with each other on annexation proposals received from property owners within the Overlap Area. The process starts when a municipality receives a contact regarding an annexation or receives an annexation petition for property in the Overlap Area. The municipalities agree in the IGA to

meet to discuss the annexation and which city will annex the property. Three way meetings are then held with the property owner to discuss the annexation proposal. It is important to note that nothing in the IGA limits either municipality from exercising their sole discretion to annex land pursuant to State law.

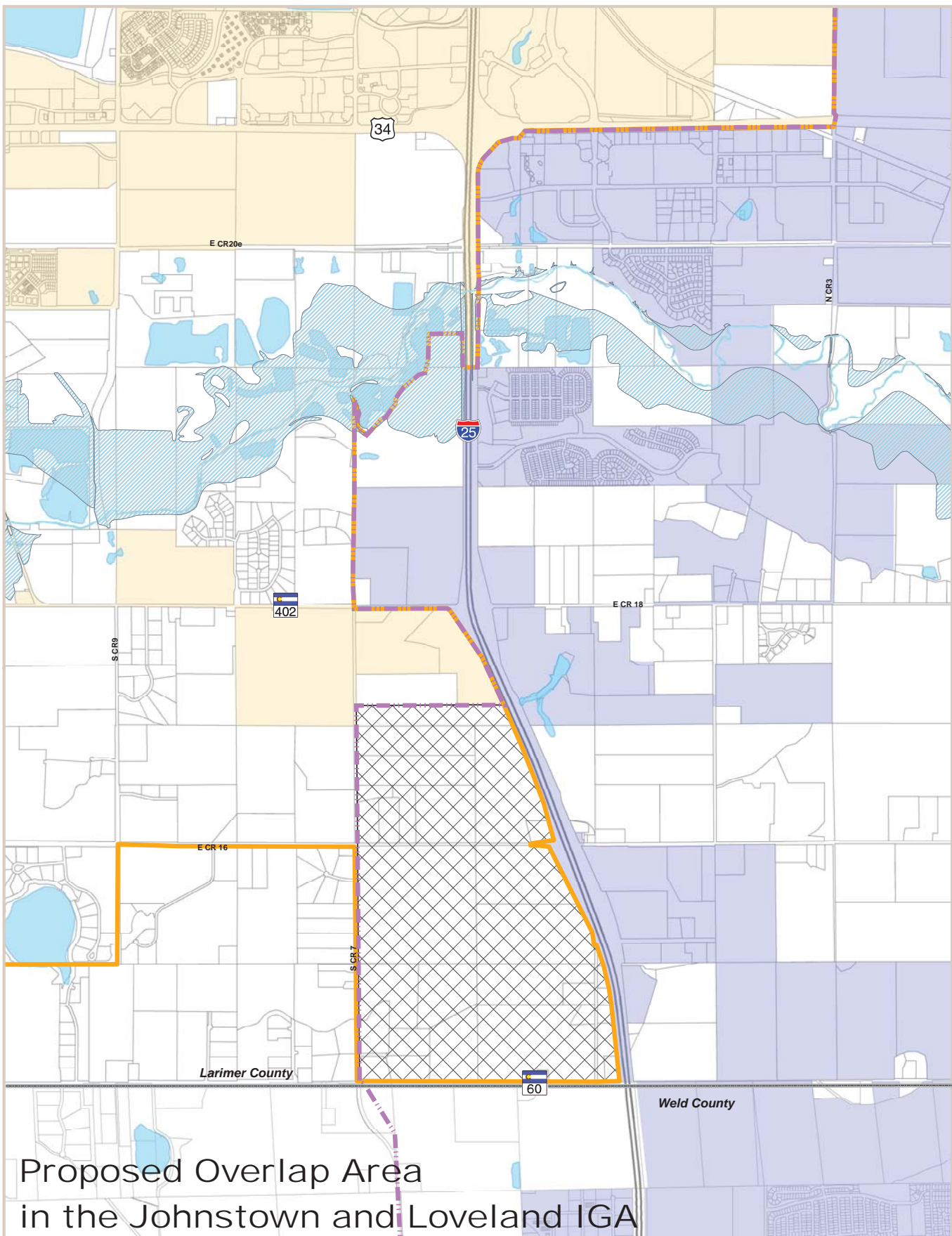
The IGA also contains terms committing Loveland and Johnstown to cooperate in areas of future infrastructure planning and other planning efforts in the Overlap Area, as well as other possible efforts, intended to preserve development opportunities and promote orderly and efficient urban growth.

VI. Next Steps

Loveland legal staff will be converting the IGA conceptual outline draft proposing the terms and conditions into formal legal language and then Johnstown legal staff will review the document before it's presented back to both municipalities for official approval.

The schedule for Loveland's official approval process is to take a resolution to the Planning Commission on May 13th for a recommendation to City Council and then a resolution to City Council for final action on June 4th.

It is staff's intention to hold a public open house for property owners who are impacted by the IGA and GMA boundary adjustments. As of this writing, the open house has not yet been scheduled, but will take place before the May 13th Planning Commission meeting.



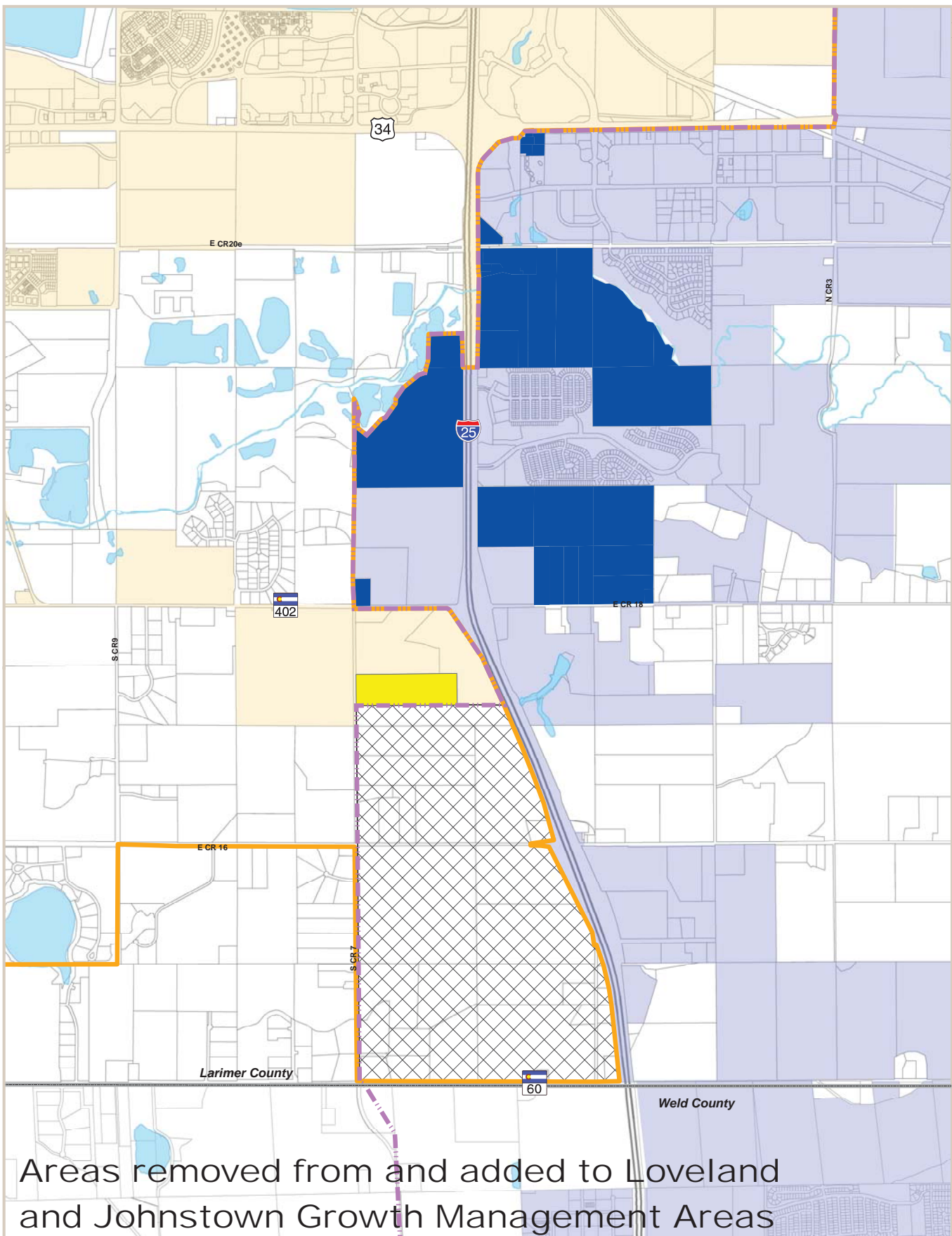
Proposed Overlap Area in the Johnstown and Loveland IGA

and Proposed GMA Boundaries

Legend

- Loveland
- Johnstown
- Area where Loveland and Johnstown Growth Management Areas Overlap
- Proposed Loveland GMA
- Proposed Johnstown GMA
- 100 Year Flood Plain
- County Boundary





Areas removed from and added to Loveland and Johnstown Growth Management Areas

Legend

- Loveland
- Proposed Loveland GMA
- Johnstown
- Proposed Johnstown GMA
- Area where Loveland and Johnstown Growth Management Areas Overlap
- Areas to be removed from Loveland's GMA and to be solely in Johnstown's GMA
- Areas to be removed from Johnstown's GMA and to be solely in Loveland's GMA
- County Boundary



IGA Conceptual Outline

April 2, 2013 Draft

City of Loveland and Town of Johnstown Intergovernmental Agreement for Growth Management

Preamble: This agreement, executed.....

WHEREAS, the management of growth is important to ensure that the benefits are realized and the negative consequences are minimized;

WHEREAS, changes that accompany growth and development in one community necessarily have impacts on adjacent communities;

WHEREAS, when nearby (adjacent) communities cooperate in the planning of urban growth there are benefits in the more efficient provision of public services to both communities for harmonizing land use arrangements;

WHEREAS, the geographical area covered by this intergovernmental agreement is likely to face growth and development pressure due to its location in proximity to a major transportation corridor and planned future development by both the Town of Johnstown and the City of Loveland;

WHEREAS, the geographical area covered by this intergovernmental agreement is located within the growth management areas of both the City of Loveland and Town of Johnstown;

WHEREAS, growth management areas allow municipalities, landowners, community residents and developers to prepare for growth by signaling that a municipality is willing and preparing to extend urban level services;

WHEREAS, future land use plans benefit municipalities, landowners, community residents and developers by providing a framework for decision making related to future growth and development;

WHEREAS, future land use plans benefit landowners by providing options for the long-term use of their property and it is the goal of this agreement to provide land owners with options regarding into which municipality they will annex;

WHEREAS, cooperation between municipalities in the planning of utilities and infrastructure can create efficiencies and reduce costs;

WHEREAS, the goals of this intergovernmental agreement are to:

- Implement the Comprehensive Plans and Future Land Use Plans of the City of Loveland and Town of Johnstown;
- Establish effective means of joint planning and management of urbanization within the Overlap Area of the Growth Management Areas of the City of Loveland and Town of Johnstown;

- Establish procedures for the processing of development applications for annexation and zoning in the Overlap Area including rules for the referral of applications between municipalities and the facilitation of meeting between municipalities and landowners / applicants;
- Provide a mechanism for cooperation and coordination between the City of Loveland and the Town of Johnstown in the arenas of land use and infrastructure planning;
- Establish programs designed to provide benefit to both the City of Loveland and Town of Johnstown when property is annexed into either municipality;
- Prevent annexation conflicts between the City of Loveland and Town of Johnstown;

WHEREAS, pursuant to state law, local jurisdictions are authorized to: regulate the location of activities and developments; phase development of services and facilities; regulate development on the basis of its impact on the community or surrounding areas; plan for and regulate the use of land so as to provide for planned and orderly use of land and protection of the environment; and to cooperate or contract with other units of government for the purpose of planning and regulating the development of land including but not limited to, the joint exercise of planning, zoning, subdivision, building; and related regulations and annexations of property, all in a manner consistent with constitutional rights and statutory procedures;

WHEREAS, planning and regulation of land use within the northern Colorado region is the responsibility of local jurisdictions;

WHEREAS, any provisions in this Intergovernmental Agreement may be implemented only to the extent legally permitted by State Law;

NOW, THEREFORE,

1.0 Definitions

Annexation

Overlap Area

Community Influence Area

Growth Management Area,

Larimer County Growth Management Area Overlay Zoning District,

Loveland Comprehensive Plan

Johnstown Comprehensive Plan

Utilities and Infrastructure

2.0 Delineation of Overlap Area where the IGA applies (Map)

2.1 Procedure for Modification of Boundaries of Overlap Area

3.0 Amendments to City of Loveland and Johnstown Comprehensive Plans

The City of Loveland and Town of Johnstown may amend land use designations in their respective Comprehensive Plans at their sole discretion

4.0 Amendments to Growth Management Area Boundaries

The City of Loveland and Town of Johnstown shall provide notice to and meet with the other municipality to discuss any proposal to extend their Growth Management Area into an area within the Growth Management Area of the other municipality.

Nothing in this IGA shall prevent a municipality from modifying their Growth Management Area boundaries as they see fit.

4.1 Removal of areas from City of Loveland Growth Management Area

The City of Loveland agrees to remove from its growth management area those areas shown in Exhibit XX

4.2 Removal of and addition of areas from Town of Johnstown Growth Management Area

The Town of Johnstown agrees to remove from and add to its Growth Management Area those areas shown in Exhibit XX

5.0 Relationship between Intergovernmental Agreement and other plans

This agreement is intended to further the goals of these other plans and is not intended to conflict with these plans. In a case where this IGA is in conflict with the adopted plans the adopted plan shall hold. Further amendments to these plans may occur. When amendments are made the impact they have on this agreement should be considered and conflict and contradiction should be avoided.

5.1 Loveland Comprehensive Plan and Future Land Use Plan

The Loveland Comprehensive Plan and Future Land Use Plan will be the plan that guides land use decisions for any property annexed into the City of Loveland

5.2 Johnstown Comprehensive Plan and Future land Use Plan

The Johnstown Comprehensive Plan and Future Land Use Plan will be the plan that guides land use decisions for any property annexed into the Town of Johnstown

5.3 Larimer County Master Plan

The Larimer County Master Plan will continue to guide land use decisions for properties in unincorporated Larimer County

5.4 Other plans: open space, community separator, north I-25 EIS

6.0 Growth Management Area Overlay Zoning District

The municipalities agree to work with Larimer County to establish a Growth Management Overlay Zoning District on the properties located within the Overlap Area

7.0 Process for Annexations within Overlap Area (meetings, negotiations, referrals, etc)

The process listed below shall apply whenever a municipality receives a petition for annexation or when a municipality receives a serious or substantive inquiry regarding annexation.

7.1 Process initiation

Applicant contacts a municipality with an inquiry about annexation and zoning or formally applies for same

7.2 Meetings between municipalities

Municipalities meet to discuss annexation proposal and to agree on which municipality should annex the property in question.

7.3 Three way meetings

Municipalities and applicant / property owner meet to discuss annexation and development and agree on which municipality should annex the property in question.

7.4 Opportunity for municipality comment

After application is formally submitted to a municipality, the other municipality has the opportunity to comment on the application

7.5 Annexation agreements

Annexation agreement is drafted

7.6 Final approval authority by municipality

Municipality receiving annexation and zoning application has the final authority on whether or not to approve the application

8.0 Annexations within Overlap Area

Each municipality agrees to notify the other if they are approached by a property owner seeking the annexation of property located within the Overlap Area. Additionally, the municipalities agree to meet for the purpose of discussion and comment on the proposed annexation. This meeting shall occur prior to any public hearing on the annexation while providing for sufficient time for discussion and drafting of comments.

Nothing in this agreement shall prohibit a municipality from annexing property at their discretion in accordance with State law.

9.0 Right and responsibilities of municipalities and property owners

9.1 Decision to pursue annexation

The decision to apply for annexation and zoning rest solely with the property owner.

9.2 Ultimate approval authority of annexation and development applications

The municipality receiving and processing an application for annexation and zoning has the sole discretion as to whether or not to approve the application.

9.3 Amendment of IGA

Either party may request to have agreement amended.

10.0 Collaborative planning efforts

In order to achieve both the goals and purposes of this agreement as well as the region's broader planning goals, the municipalities agree to participate in cooperative and regional planning efforts with other agencies in the region.

10.1 Further planning efforts in the Overlay Area and SH 402 Corridor

Within the Overlay Area, the municipalities agree to cooperate with each other on any planning efforts, including but not limited to, future land use plan amendments, zoning code amendments specific to the Overlay Area, transportation planning, and design guidelines.

The municipalities agree to cooperate with each other in planning efforts in the State Highway 402 Corridor.

10.2 Infrastructure

The municipalities agree to cooperate with each other and all other infrastructure providers in the planning of infrastructure in the Overlay Area with the goal of avoiding unnecessary duplication and providing services to current and future residents and businesses with the greatest level of efficiency, service efficacy, and cost savings possible.

10.3 Preserve development opportunities

The municipalities agree to cooperate in the consideration of ways to preserve development opportunities in the Overlay Area in accordance with Comprehensive Plans. These options may include but are not limited to purchase of development rights or transfer of development rights programs

11.0 Implementation of Agreement

11.1 Amendment of codes and plans

Each municipality shall initiate amendments to their respective plans, policies, procedures, and codes necessary to implement the terms and provisions of this agreement within(certain date).

11.2 Inform and train employees

The parties will notify newly elected officials, new managers, and key staff of the existence of this intergovernmental agreement and conduct any necessary training to ensure the agreement is implemented

12.0 Termination

13.0 General Provisions (Notice, Additional Documents or Actions, Severability, Waiver of Breach, No Third Party Beneficiaries)

14.0 Maps and Exhibits

Overlap Area map

Johnstown Land Use Plan (showing growth management area)

Loveland Land Use Plan (showing growth management area)

Area to be removed from Loveland's growth management area

LOVELAND AND JOHNSTOWN INTERGOVERNMENTAL AGREEMENT

City Council Study Session

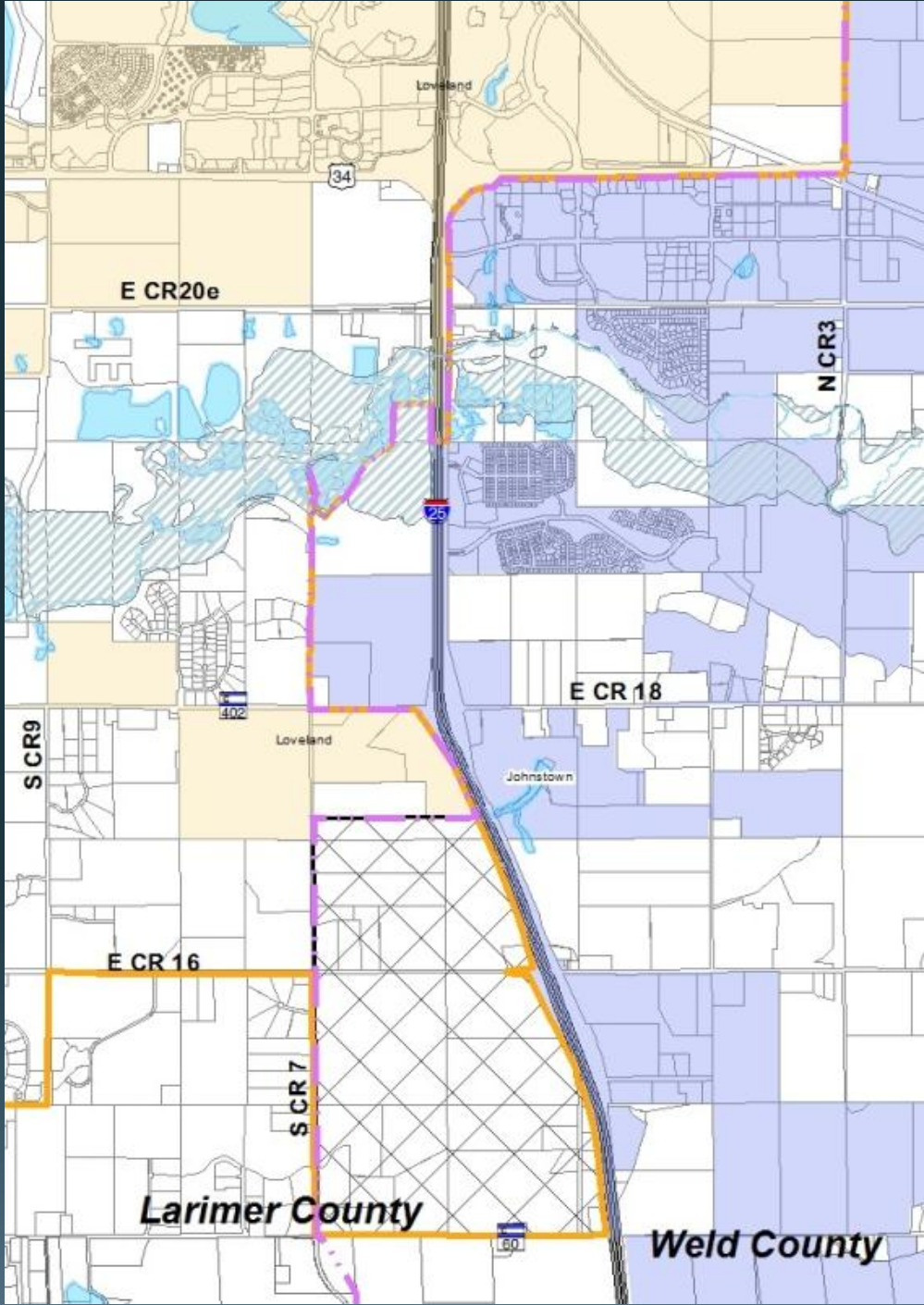
April 2, 2013

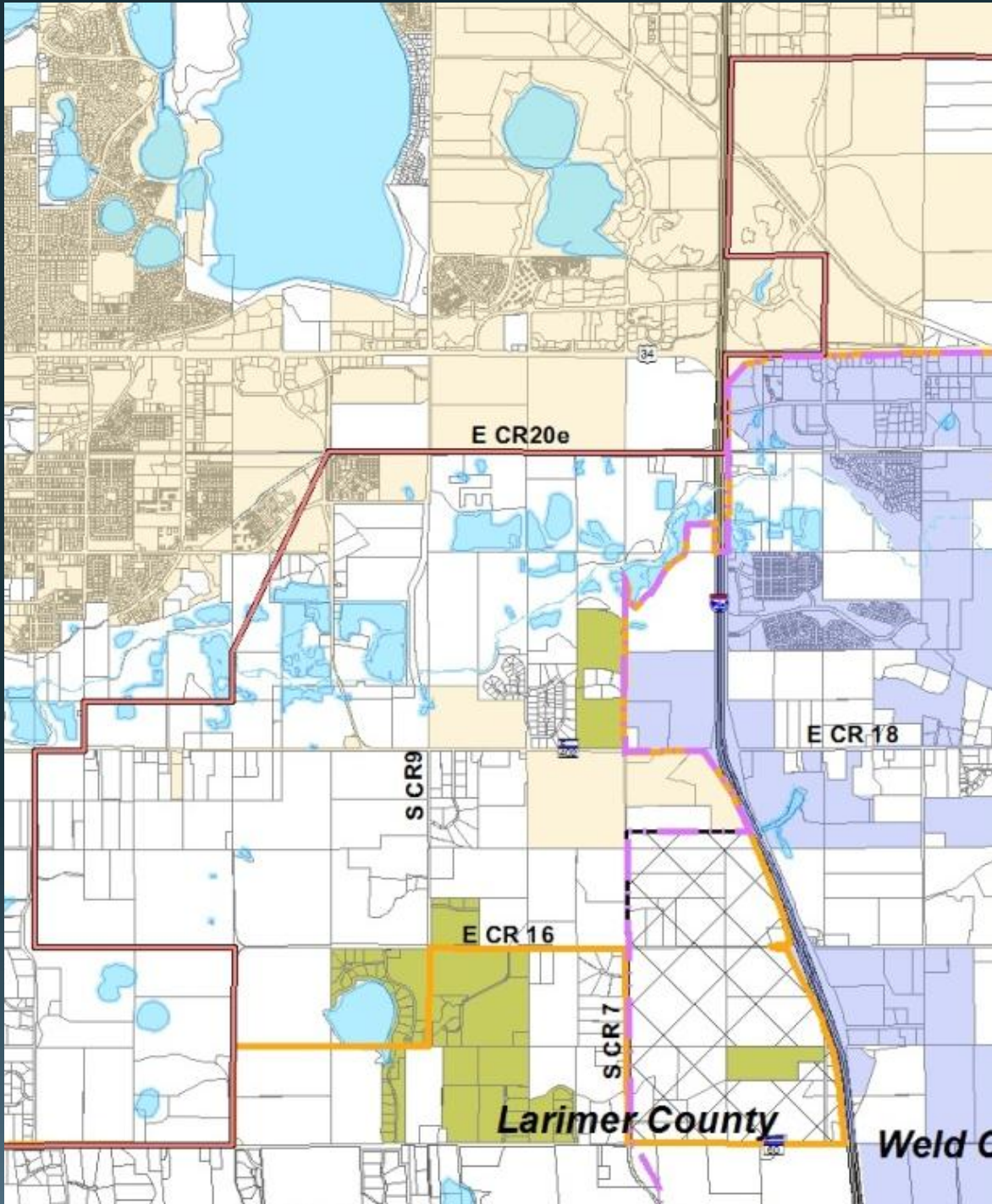
Agenda

- Background and Purpose
- Larger Planning Effort
- Cooperation in the IGA
- Next Steps
- Questions and Comments

Background and Purpose

- Loveland and Johnstown
- Loveland and Larimer County



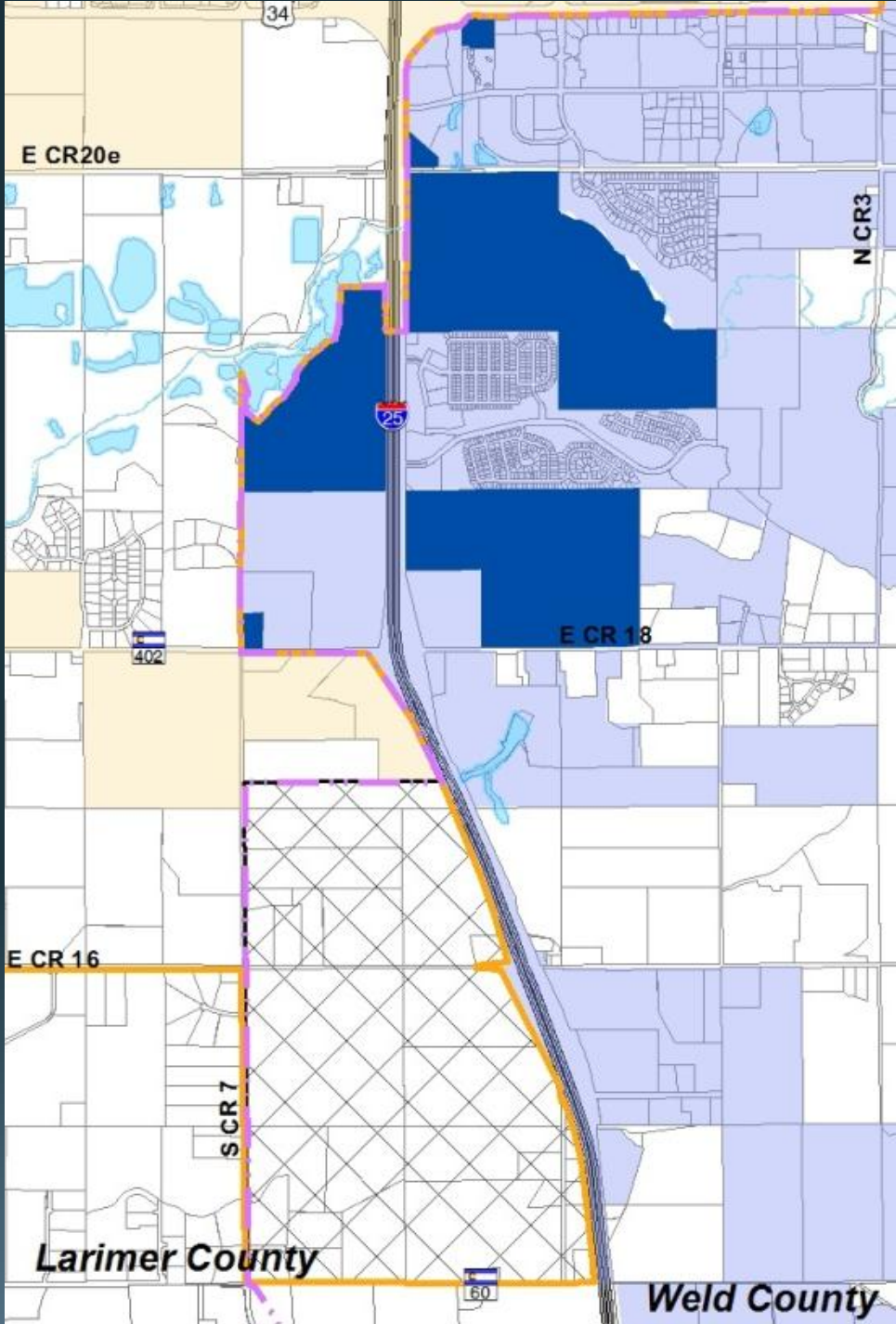


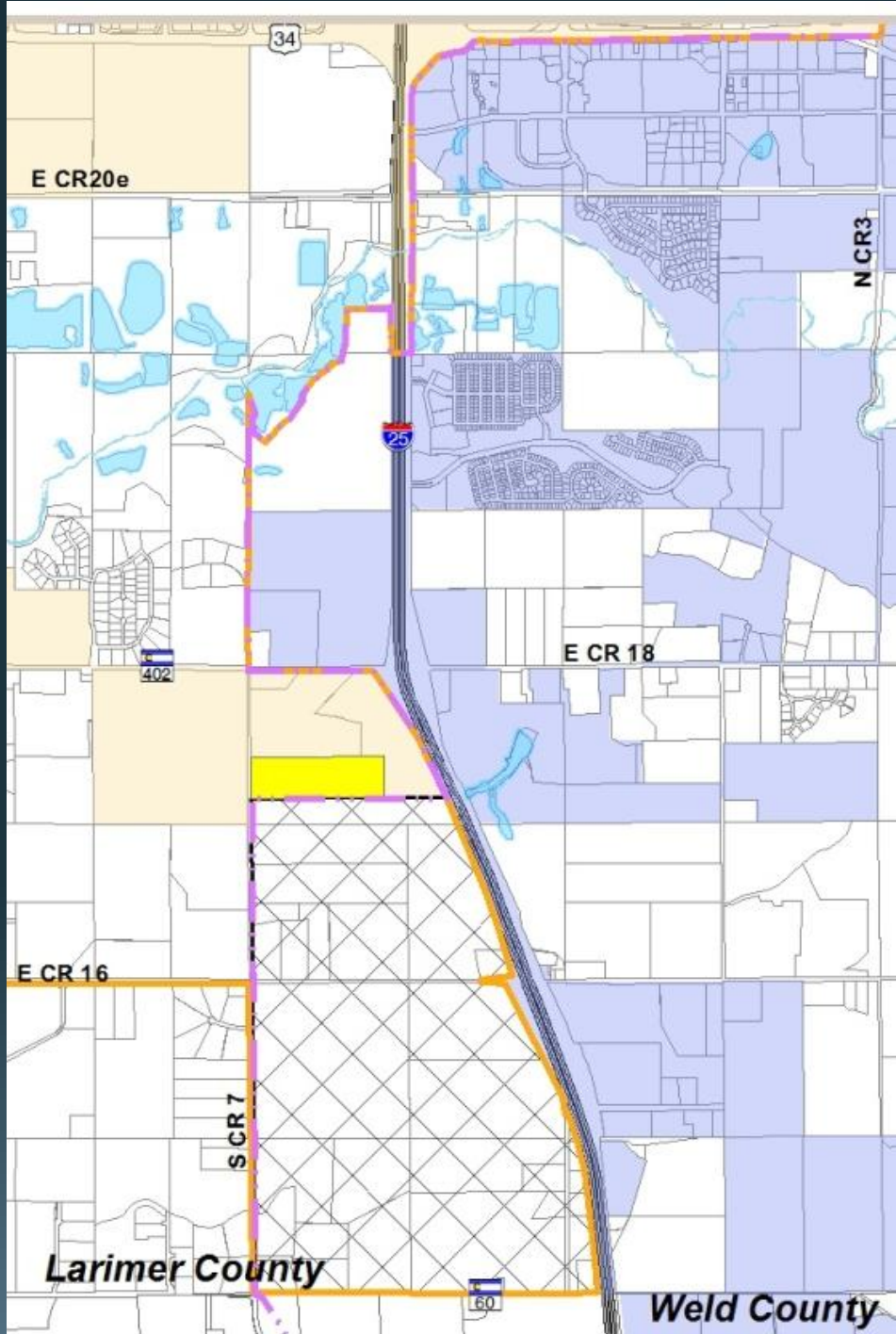
Larger Planning Effort

- Achieve Agreement with Larimer County
- State Highway 402 Corridor Plan

Cooperation in the IGA

- Process for processing annexations
- Agreement to collaborate in future planning efforts
- Municipalities retain all land use rights





Collaborative Process

- Planning Staff
- City and Town Managers
- Agreement at staff level
- Similar process in Johnstown

Next Steps

- Drafting of Agreement into formal legal language
- Open House for property owners in the Overlap Area
- Planning Commission May 13th
- City Council June 4th

Questions, Comments, Direction...

**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: 10
MEETING DATE: 4/2/2013
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Information related to an administrative fee for cases where there was a failure to provide proof of insurance (NPOI) that is later dismissed.

RECOMMENDED CITY COUNCIL ACTION:

This is an Information only item.

OPTIONS:

1. Accept the report.
 2. Give direction to staff for further action.
-

DESCRIPTION:

Following Citizen Comment at the Council meeting February 5, 2013, Council requested a review of the fee for failure to provide proof of insurance or No Proof of Insurance (NPOI). This item describes the fee imposed on motorists cited with NPOI, and provides background on the development of the fee and a comparison of processes used by other Colorado Municipalities.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

This item is informational only. In 2012, this fee generated \$3,245.

SUMMARY:

Motorists are required by law to provide police officers with proof of insurance when requested. Many times an officer will stop a motorist regarding another violation and ask for proof of insurance in accordance with routine traffic violation procedure. The officer may give the motorist a warning on the initial violation, but issue citation for failure to provide proof of insurance, if it is not provided.

Per state law, if the person can later provide the proof of insurance, the court must dismiss the charges. Due to the amount of staff time involved in processing these tickets, and as part of the Sustainability Strategy to increase General Fund Revenue in balance with reduced expenditures, a new fee was created to recover a portion of the administrative costs.

The Council approved the Sustainability Strategy in July of 2011 and the implementation of the Strategy by adopting the 2012 budget and accompanying fee resolution. A key piece of the strategy was to have a balance of expense decreases and increased revenue. To increase revenue fees for services were increased in most departments and new fees added for services that was not recovering any of their cost.

Within the Municipal Court specifically the court cost upon plea was increased to match the court cost if found guilty at a bench trial, the deferred sentence court administration fee was increased, the fee for performing weddings was increased, and the new NPOI fee implemented.

A staff memo is attached to show the history behind the development of the fee and statistics regarding these types of cases.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Staff memo

**CITY OF LOVELAND****BUDGET DIVISION**

Civic Center • 500 East Third • Loveland, Colorado 80537
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TO: City Council
THROUGH: Bill Cahill, City Manager
FROM: John Hartman, Budget Officer
DATE: March 12, 2013
RE: Staff Memo - Administrative Fee for Failure to Produce Proof of Insurance (NPOI)

Issue Definition

There are three sections in Loveland's traffic code related to the failure to have a vehicle insured, driving a vehicle without insurance, and failing to provide proof of insurance upon request or No Proof of Insurance (NPOI). All three carry the same penalties and all three are to be dismissed if the defendant shows proof of valid insurance coverage for the time of the traffic stop/investigation. For simplicity all will be referred to as NPOI.

The most commonly charged of the three sections is the failure to provide proof of valid insurance to the requesting officer at the time of the stop/investigation.

Many times, when an officer contacts a vehicle for a traffic violation such as a stop sign violation, failure to signal, unsafe lane change, speeding, etc. and the driver is unable to provide proof of valid insurance, the officer will write the driver the NPOI charge but not write the underlying charge the defendant was contacted for, giving them a warning instead.

Development of the Administrative Fee

In developing the Sustainability Strategy during the 2012 budget development process, one of the key points was to provide a balance of revenue increases and spending reductions. Part of the revenue increase strategy was to find areas within the organization where fees could be charged to recover the cost of providing service to a greater degree than had been done in the past. An employee committee was formed to look at all revenue opportunities and develop a recommendation. One recommendation was to either charge fees (if none existed) or increase fees to cover the administrative or other operating costs for providing services to the public.

The principal behind the fee is to recover costs from those driving the costs, rather than the taxpayers as a whole. IN this case, those failing to carry and produce proof of insurance would pay the cost of their actions, rather than shift the cost of their behavior to taxpayers.

The Council approved the Sustainability Strategy in July of 2011 and the implementation of the Strategy by adopting the 2012 budget and accompanying fee resolution. A key piece of the strategy was to have a balance of expense decreases and increased revenue. To increase revenue fees for services were increased in most departments and new fees added for services that was not recovering any of their cost. Some of the items included in this were changes in pricing and the addition or rental rates for the community rooms, implementing a new fee charging admission to art exhibits at the Museum, the increase of certain fees and development of new fees to recover planning costs associated with development approvals; and adding a new sales tax license renewal fee.

Within the Municipal Court specifically the court cost upon plea was increased to match the court cost if found guilty at a bench trial, the deferred sentence court administration fee was increased, the fee for performing weddings was increased, and the new NPOI fee implemented.

Why Charge a Fee for NPOI

When the defendant comes to court and produces proof of valid insurance, the charge

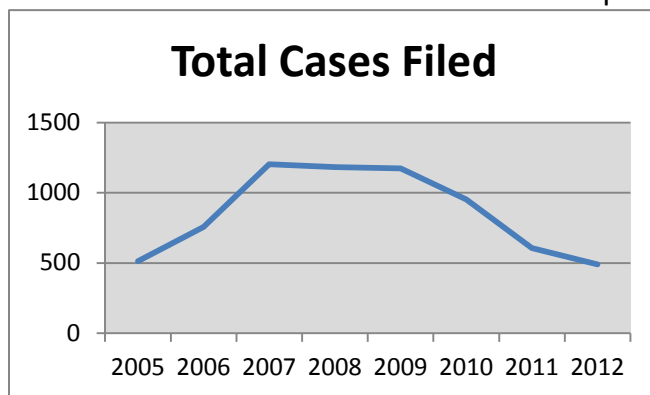


Figure 1

and sign the motion to dismiss. The court staff sometimes does the follow-up on the validity of the insurance if the City Attorney is not available.

is dismissed. This practice results in the officer spending time and resources to write the ticket, the Police Department Records Section to enter and process the ticket, the Municipal Court staff to process the ticket at the Court, the City Attorney's office to review the case and confirm the validity of the insurance proof provided, and the Judge to review

In 2006 and 2007 there was a very high growth rate in the number of NPOI cases (see Figure 1 above and Figure 3 below). In 2008 and 2009 the case growth flattened at near the peak levels. There was a drop in 2010 and ultimately in 2011. In mid-2011 when the decision making on the 2012 budget was being developed it appeared that the drop in

2010 was an anomaly and that case loads would resume at the peak levels or higher in the future. During this time period the percentage of cases dismissed continued to increase (see Figure 2).

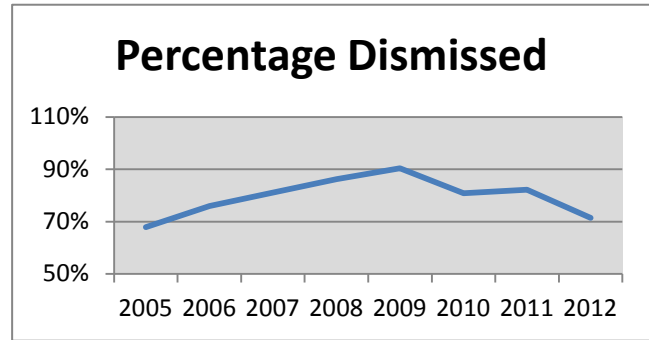


Figure 2

NPOI Case Information

Year	Total Cases Filed	Cases Dismissed	Percentage Dismissed	Percentage Change Total Cases - Compared to Previous Year
2005	513	348	68%	
2006	757	575	76%	48%
2007	1204	977	81%	59%
2008	1183	1020	86%	-2%
2009	1174	1061	90%	-1%
2010	952	770	81%	-19%
2011	607	499	82%	-36%
2012	491	351	71%	-19%

Figure 3

Without the fee, if there is no other charge on the ticket, there is nothing to offset the costs involved in processing a case where the defendant failed to obey the first tenet in the law, i.e. providing proof to the officer.

NPOI cases were taking a significant portion of the Court's time. For 2007-2010, on average 9.9% of all cases filed were NPIO cases.

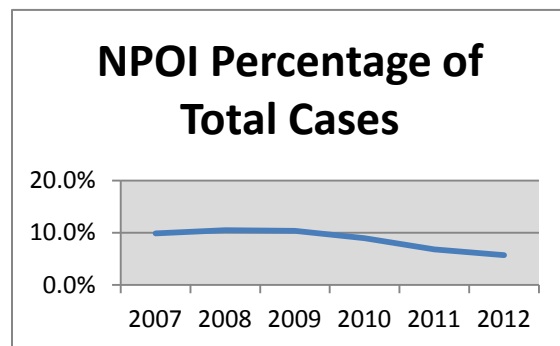


Figure 4

NPIO Cases as a Percentage of Total cases

Year	Total cases filed	NPIO cases filed	NPIO Percentage of Total Cases
2007	12,249	1206	9.8%
2008	11,267	1183	10.5%
2009	11,305	1174	10.4%
2010	10,654	952	8.9%
2011	8,931	607	6.8%
2012	8,595	490	5.7%

Figure 5

Each case takes an average of five minutes to process by the court clerk staff. In addition there is time spent by the City Prosecutor to review the charge, and court time to hear and rule on the charge. Because of the significant amount of staff time spent in dispensing these cases, an administrative fee is the best choice to recover costs.

It is important to understand the criminal justice system concept of “Not Guilty” versus “Innocent”. A person is not guilty until proven guilty beyond a reasonable doubt. A person may have committed an offense such as failing to provide proof of valid insurance by not showing the officer the insurance card at the time of the stop. While the law states the criminal charge shall be dismissed upon showing proof of insurance, does not mean the person is “innocent”. It means the criminal charge is dismissed. Innocent would mean the person DID SHOW the officer the proof of insurance at the time of the stop and there was no basis for the charge at all. The fee resolution is designed to recover some of the costs incurred because of the defendant’s failure to comply with the law.

What do Other Cities Do

The use of an administrative fee for the dismissal of NPIO charges is not uncommon in Colorado. Staff requested responses from all cities in the State using the judge’s list serve and city clerk’s list serve. Several cities in Colorado charge an administrative fee for NPIO charge dismissals. From the responses received, the cities and the amount of the fee are in the chart below. Loveland is included for comparison purposes.

NPOI Dismissal Administrative Fees

City	Amount	
Arvada	\$ 30.00	
Aurora	\$ 30.00	
Boulder	\$ 10.00	* Note – The fee for the City of Longmont is not a fee approved by the City Council, but through an Administrative Order first issued by the Judge in 2005. Longmont has a slightly different system and they have a surcharge based on liability (not guilt) under which the Administrative Order can apply. The Boulder charge is based on the inherent power of the judge to impose costs since, (like Loveland), their code imposes court costs. Arvada and Aurora have specific Municipal Code language approved through an ordinance authorizing the administrative fees.
Brighton	\$ 30.00	
Columbine	\$ 25.00	
Craig	\$ 30.00	
Erie	\$ 50.00	
Lafayette	\$ 40.00	
Longmont*	\$ 20.00	
Littleton	\$ 15.00	
Loveland	\$ 15.00	
Hugo	\$ 30.00	
Westminster	\$ 20.00	

Figure 6

Currently the cities of Ft. Collins and Greeley do not have a fee. In the City of Windsor, the Municipal Court does not handle any of these cases; all NPOI tickets are written to County Court.

Developing the Revenue Estimate, implementation and Actual Results

By placing the amount of the fee near the bottom of the scale of what other cities charge at \$15 and using the average number of cases for 2007-2010 of 1,128 equates to a rounded amount of \$17,000. However, as shown in Figure 3, the case load continued to fall from the peak levels to those in 2005. The fee is only applied to cases where NPOI is the only charge. As a result in 2012 there were 491 cases filed, 351 of which were dismissed with no plea. 215 of 351 cases dismissed, NPOI was the only charge, resulting in actual revenue of \$3,245. Taking into account the more recent case load history the amount budgeted in the 2013 budget is \$3,000. Through the end of January \$600.00 has been collected from this fee. If the first month is any indication (and one month does not make a trend) it would appear the case loads may be trending back up.

The fee is not imposed if there are other charges on the ticket besides NPOI. For these cases with multiple charges the fine and regular court costs are charged to defendant. The fee is only imposed when NPOI is the only charge on the ticket.

**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: 11
MEETING DATE: 4/2/2013
TO: City Council
FROM: Brent Worthington, Finance
PRESENTER: Brent Worthington

TITLE:

February 2013 Financial Report

RECOMMENDED CITY COUNCIL ACTION:

This is an information only item. No action is required.

DESCRIPTION:

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending February 28, 2013.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures including detailed reports on tax revenue and health claims as of February 28, 2013. Citywide Revenue (excluding internal transfers) of \$33,638,421 is 94.2% of year to date (YTD) budget or \$2,057,800 under the budget. Sales Tax collections are 106.8% of the YTD budget or \$419,308 over budget. Building Material Use Tax is 147.6% of YTD budget, or \$80,457 over budget. Sales and Use Tax collections combined were 115.0% of YTD budget or \$378,770 over budget. When the combined sales and use tax for the current year are compared to 2012 for the same period last year, they are higher by 8.4% or \$563,708.

Citywide total expenditures of \$24,378,496 (excluding internal transfers) are 65.5% of the YTD budget or \$12,841,338 under the budget.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Snapshot report for February 2013

Presentation

SnapShot

Monthly Financial Report

February 2013

A Snapshot In Time

- ◇ Citywide Revenue, excluding transfers between funds, \$33.6 million (5.8% below budget projections)
- ◇ Sales & Use Tax Collection, \$7.3 million (8.8% above budget projections)
- ◇ Citywide Expenditures, excluding transfers between funds, \$24.4 million (34.5% below budget projections)
- ◇ Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$9.2 million
- ◇ General Fund Revenue, excluding transfers between funds, \$11.7 million (10.0% above budget projections)
- ◇ General Fund Expenditures, excluding transfers between funds, \$7.3 million, (13.9 % below budget projections)
- ◇ General Fund Revenues exceed Expenditures by \$2.4 million

Citywide
Revenues &
Expenditures 2-3

General Fund
Revenues &
Expenditures 4-5

Capital
Projects 5

Tax Totals &
Comparison 6-9

Sales Tax SIC
& Geo Codes 10-12

Health Care
Claims 13

Activity
Measures 14

The Sales Tax Basics

February 2013	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2013	\$ 6,195,340	\$ 300,270	\$ 168,890	\$ 6,664,500
Actual 2013	\$ 6,614,648	\$ 388,620	\$ 249,347	\$ 7,252,615
% of Budget	106.8%	129.4%	147.6%	108.8%
Actual 2012	\$ 6,123,719	\$ 415,378	\$ 149,811	\$ 6,688,908
Change from prior year	8.0%	-6.4%	66.4%	8.4%

Financial Sustainability

The City remains in a strong financial position because of a tradition of conservative fiscal management. To uphold this tradition, the City ensures that operations are paid for by current-year revenues, fund balances are positive and reserves are sufficient to overcome financial challenges, and debt is considered extraordinary and avoided in favor of a pay-as-we-go system. This sound fiscal policy allows the City to achieve Council goals and priorities and to meet challenges as they arise.

In 2011, the City embarked upon a community-wide financial sustainability effort to ensure that shortfalls projected in its General Fund 10-year financial plan were addressed using a balanced plan consisting of 81% expenditure cuts and 19% revenue increases. The Financial Sustainability Strategy, adopted by the City Council on June 7, 2011, includes ongoing processes designed to ensure that the City retains a healthy financial outlook.

Although sales and use tax revenue is greater in 2013 than in 2007 year-to-date, inflation adjustment of the revenue shows that collections in 2013 are still below 2007 collections when inflation is taken into account, emphasizing the importance of continuing the strategy implementation.

Citywide Revenues & Expenditures

P. 285

Combined Statement of Revenues and Expenditures February 2013					
REVENUE		Current Month	YTD Actual	YTD Revised Budget	% of Budget
General Governmental					
1	General Fund	\$ 5,285,526	\$ 11,745,809	\$ 10,680,754	110.0%
2	Special Revenue	528,324	1,175,003	1,751,199	67.1%
3	Other Entities	702,396	2,562,336	5,562,744	46.1%
4	Internal Service	1,347,334	2,722,494	2,760,930	98.6%
5	Subtotal General Govt Operations	\$ 7,863,580	\$ 18,205,642	\$ 20,755,627	87.7%
6	Capital Projects	705,891	1,588,749	1,046,346	151.8%
Enterprise Fund					
7	Water & Power	5,614,018	11,908,351	11,941,010	99.7%
8	Stormwater	380,779	737,264	722,647	102.0%
9	Golf	83,147	313,772	288,050	108.9%
10	Solid Waste	456,761	884,644	942,541	93.9%
11	Subtotal Enterprise	\$ 6,534,705	\$ 13,844,031	\$ 13,894,248	99.6%
12	Total Revenue	\$ 15,104,176	\$ 33,638,421	\$ 35,696,221	94.2%
	Prior Year External Revenue		30,235,203		
	Increase From Prior Year		11.3%		
13	Internal Transfers	2,024,094	2,130,693	3,356,730	63.5%
14	Grand Total Revenues	\$ 17,128,270	\$ 35,769,114	\$ 39,052,951	91.6%
EXPENDITURES					
General Governmental					
15	General Fund	\$ 4,156,774	\$ 7,281,452	\$ 8,251,871	88.2%
16	Special Revenue	606,312	1,005,450	1,442,492	69.7%
17	Other Entities	1,112,716	1,535,760	4,966,296	30.9%
18	Internal Services	1,395,030	2,047,734	3,212,062	63.8%
19	Subtotal General Gov't Operations	\$ 7,270,832	\$ 11,870,396	\$ 17,872,721	66.4%
20	Capital	1,967,550	2,769,918	8,251,296	33.6%
Enterprise Fund					
21	Water & Power	4,592,462	8,730,677	9,715,680	89.9%
22	Stormwater	181,823	274,098	301,975	90.8%
23	Golf	152,731	240,793	375,458	64.1%
24	Solid Waste	290,931	492,614	702,704	70.1%
25	Subtotal Enterprise	\$ 5,217,947	\$ 9,738,182	\$ 11,095,817	87.8%
26	Total Expenditures	\$ 14,456,329	\$ 24,378,496	\$ 37,219,834	65.5%
	Prior Year External Expenditures		22,436,721		
	Increase (-Decrease) From Prior Year		8.7%		
27	Internal Transfers	2,024,094	2,130,693	3,356,730	63.5%
28	Grand Total Expenditures	\$ 16,480,422	\$ 26,509,189	\$ 40,576,564	65.3%
** Based on seasonality of receipts and expenditures since 1995.					

Special Revenue Funds: Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures, Transit, Transportation.

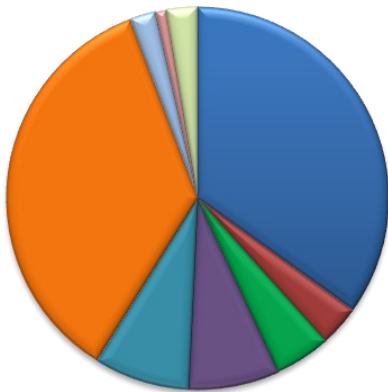
General Government Capital Projects Fund: Capital Expansion Fee Funds, Park Improvement, Conservation Trust, Open Space, Art In Public Places.

Other Entities Fund: Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority, Loveland Fire and Rescue Authority.

Internal Service Funds: Risk/Insurance, Fleet, Employee Benefits.

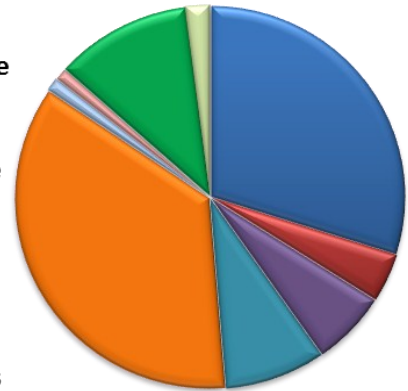
YTD Operating Revenues of \$33.6 Million

- General Fund
- Special Revenue
- Capital Projects
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Solid Waste



YTD Operating Expenditures of \$24.3 Million

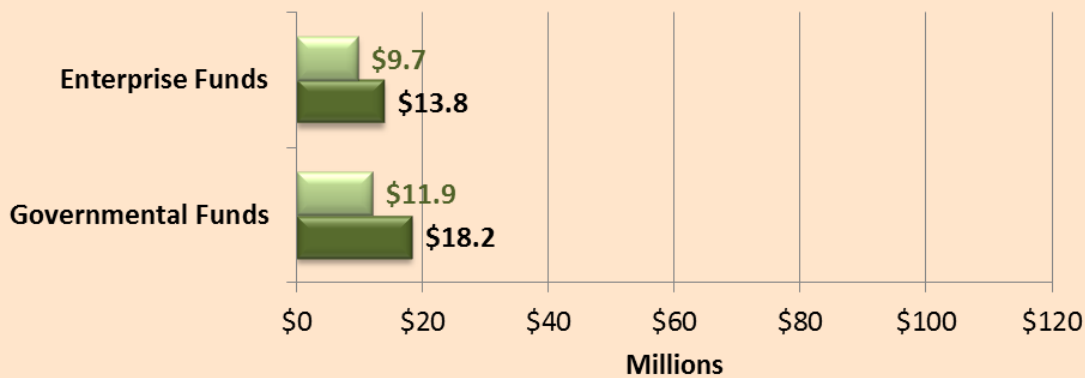
- General Fund
- Special Revenue
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Capital Projects
- Solid Waste



By Comparison, Excluding Transfers

Expenditure Actual

Revenue Actual

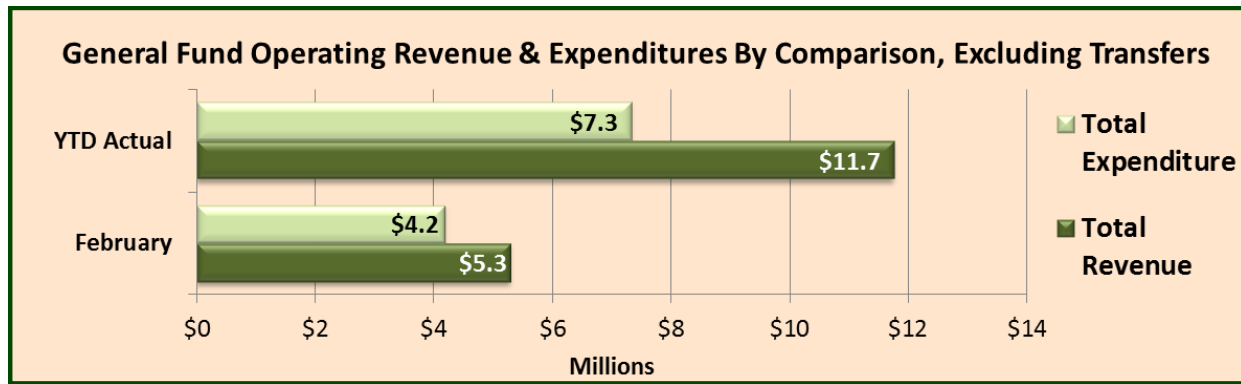


- ◆ General Fund Revenue, excluding transfers between funds, \$11.7 million (10.0% above budget projections)
* 14.3% above 2012 YTD
- ◆ General Fund Expenditures, excluding transfers between funds, \$7.3 million (11.8% below budget projections)
* 2.7% below 2012 YTD
- ◆ Water & Power Revenue, excluding transfers between funds, \$11.9 million (0.3% below budget projections)
* 3.2% above 2012 YTD
- ◆ Water & Power Expenditures, excluding transfers between funds, \$8.7 million (10.1% below budget projections)
* 12.2% above 2012 YTD
- ◆ Other Entities Fund Revenue, excluding transfers between funds, \$2.6 million (53.9% below budget projections)
* 108.5% above 2012 YTD
- ◆ Other Entities Expenditures, excluding transfers between funds, \$1.5 million (69.1% below budget projections)
* 5.8% above 2012 YTD

General Fund Revenues & Expenditures

P. 287

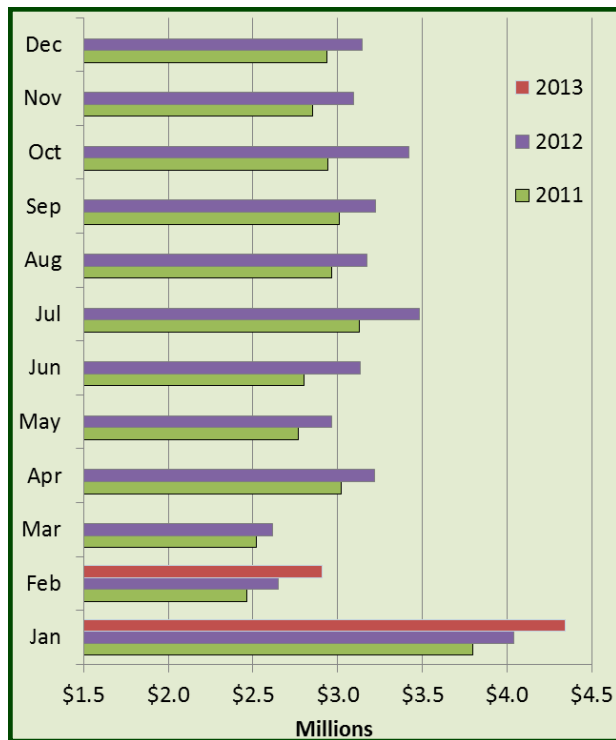
General Fund Revenue & Expenditures February 2013					
REVENUES		February 2013	YTD Actual	YTD Revised Budget	% of Budget
1	Taxes				
2	Property tax	\$ 288,585	\$ 286,846	\$ 103,060	278.3%
3	Sales tax	2,619,453	6,614,648	6,195,340	106.8%
4	Building use tax	67,440	249,347	168,890	147.6%
5	Auto use tax	219,886	388,621	300,270	129.4%
6	Other taxes	325,528	635,076	294,200	215.9%
7	Intergovernmental	713	5,252	56,020	9.4%
8	License & permits				
9	Building permits	78,115	247,010	220,430	112.1%
10	Other permits	(2,360)	53,473	40,390	132.4%
11	Charges for services	1,090,650	2,079,588	1,914,816	108.6%
12	Fines & forfeitures	71,976	130,535	178,330	73.2%
13	Interest income	43,619	60,956	56,680	107.5%
14	Miscellaneous	481,919	994,456	1,152,328	86.3%
15	Subtotal	\$ 5,285,526	\$ 11,745,809	\$ 10,680,754	110.0%
16	Interfund transfers	6,570	63,140	63,140	100.0%
17	Total Revenue	\$ 5,292,096	\$ 11,808,949	\$ 10,743,894	109.9%
EXPENDITURES					
Operating Expenditures					
18	Legislative	\$ 8,431	\$ 18,144	\$ 25,138	72.2%
19	Executive & Legal	173,493	252,471	314,100	80.4%
20	Economic Development	73,836	261,890	140,394	186.5%
21	Cultural Services	128,296	207,106	280,857	73.7%
22	Development Services	204,541	297,892	410,726	72.5%
23	Finance	313,945	465,421	586,282	79.4%
24	Fire & Rescue	-	4,975	-	
25	Human Resources	76,543	119,914	141,470	84.8%
26	Information Technology	293,813	438,467	829,252	52.9%
27	Library	273,099	374,742	417,369	89.8%
28	Parks & Recreation	563,230	873,092	1,231,232	70.9%
29	Police	1,398,639	2,191,109	2,324,468	94.3%
30	Public Works	427,039	622,568	723,804	86.0%
31	Non-Departmental	247,862	1,189,775	1,075,260	110.7%
32	Subtotal Operating	\$ 4,182,766	\$ 7,317,566	\$ 8,500,351	86.1%
33	Internal Transfers	2,015,007	2,059,516	2,790,090	73.8%
34	Total Expenditures	\$ 6,197,773	\$ 9,377,081	\$ 11,290,441	83.1%



Capital Projects \$500,000+

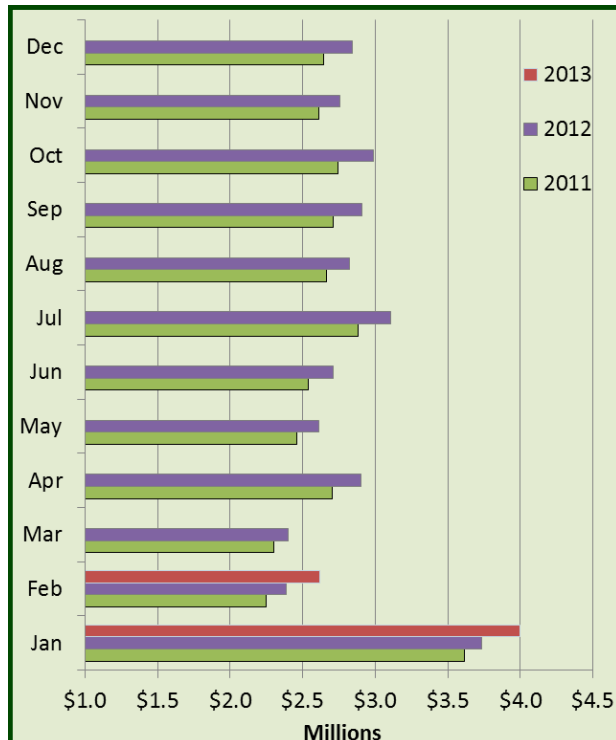
Project Title	2013 Budget	2013 Expenditures	Remaining 2012 Budget	% of 2013 Budget (Exp/Bud)
Water Capital				
Floc/Sed #1 and #2 Retrofit	\$ 600,000	\$ -	\$ 600,000	0.00%
Filter Plant No. 1 (Demolition & equip to 38 MGD)	598,400	-	598,400	0.00%
Filter Plant No. 1 Pipe Gallery Improvements	908,240	496,360	411,880	54.65%
W 1st St (Tyler to Lily)	725,910	-	725,910	0.00%
Lagoon 8 (ready for Deskins retrofit)	1,050,000	10,595	1,039,405	1.01%
Raw Water Capital				
Windy Gap Farming Project	618,000	-	\$ 618,000	0.00%
Purchase of Colorado-Big Thompson Project (CBT)	500,000	-	\$ 500,000	0.00%
Wastewater Utility Capital				
Digester Mixing System	1,200,000	-	\$ 1,200,000	0.00%
Digester Building Code Compliance	900,000	-	\$ 900,000	0.00%
Power Capital				
Airport Sub North to Crossroads and South to Kendall Pkwy	683,260	-	\$ 683,260	0.00%
Callisto (vault 2716) East along 5th, North on Boyd Lake to Railroad Xing	570,000	-	\$ 570,000	0.00%
SW219 on old railroad North on VanBuren, East on 22nd to SW126	670,250	-	\$ 670,250	0.00%
Crossroads Substation - purchase new transformer	600,000	-	\$ 600,000	0.00%
Crossroads Substation - new switgear & transformer install	512,900	-	\$ 512,900	0.00%
Stormwater Capital				
29th and Monrie Outfall (Dry Creek)	1,000,000	-	1,000,000	0.00%
Streets Transportation Program				
2013 Street Rehabilitation	4,194,250	13,284	4,180,966	0.32%
All Other				
Facilities Maintenance Capital Projects	500,000	119,594	380,406	23.92%
Open Lands Acquisition	2,520,800	49,902	2,470,898	1.98%
Fire Station 2 Relocation	3,534,480	8,220	3,526,260	0.23%
Service Center Phase III	5,617,540	163,526	5,454,014	2.91%
Vehicle Wash	\$ 600,000	\$ -	\$ 600,000	0.00%

Sales & Use Tax



	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 3,799,760	\$ 4,039,679	\$ 4,345,836	\$ 4,136,490	5.1%
Feb	2,465,447	2,649,229	\$ 2,906,779	\$ 2,528,010	15.0%
Mar	2,517,162	2,618,052		\$ 3,028,120	
Apr	3,022,770	3,215,437		\$ 3,286,040	
May	2,769,526	2,966,032		\$ 2,991,970	
Jun	2,800,184	3,136,014		\$ 3,127,370	
Jul	3,129,254	3,480,123		\$ 3,495,310	
Aug	2,961,686	3,171,055		\$ 3,154,400	
Sep	3,008,637	3,225,155		\$ 3,211,640	
Oct	2,944,433	3,421,098		\$ 3,327,150	
Nov	2,853,360	3,092,095		\$ 3,091,770	
Dec	2,933,671	3,142,793		\$ 3,141,380	
	\$35,205,889	\$38,156,762	\$7,252,615	\$38,519,650	8.8%
YTD	\$ 6,265,207	\$ 6,688,908	\$7,252,615	\$ 6,664,500	8.8%

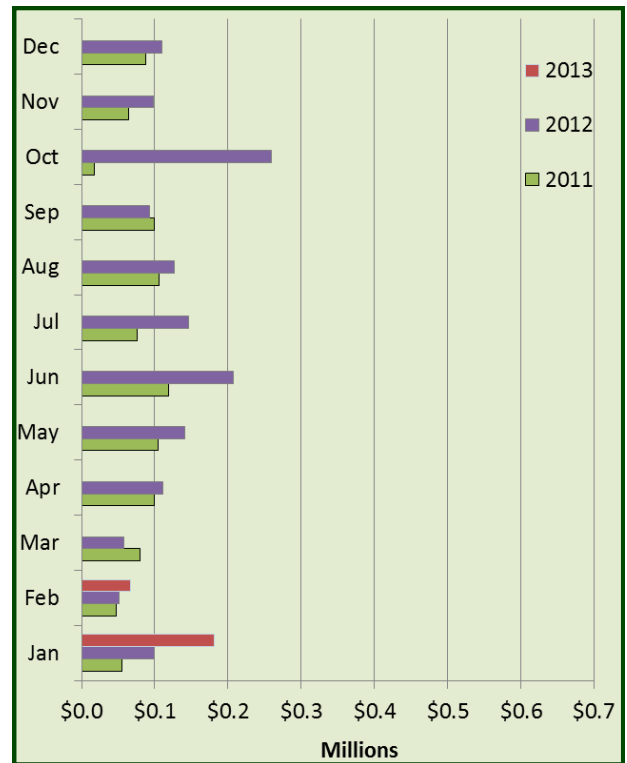
Retail Sales Tax



	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 3,613,881	\$ 3,733,310	3,995,194	\$ 3,909,960	2.2%
Feb	2,249,749	2,390,409	2,619,453	2,285,380	14.6%
Mar	2,299,237	2,403,380		2,715,660	
Apr	2,702,024	2,905,558		3,008,620	
May	2,462,213	2,614,500		2,710,640	
Jun	2,536,541	2,711,906		2,878,350	
Jul	2,882,075	3,105,564		3,210,310	
Aug	2,667,674	2,823,319		2,866,890	
Sep	2,710,738	2,909,008		2,909,990	
Oct	2,746,866	2,991,033		3,035,070	
Nov	2,610,980	2,757,932		2,824,870	
Dec	2,647,162	2,841,959		2,863,910	
	\$32,129,139	\$34,187,877	\$6,614,648	\$35,219,650	6.8%
YTD	\$ 5,863,630	\$ 6,123,719	\$6,614,648	\$ 6,195,340	6.8%

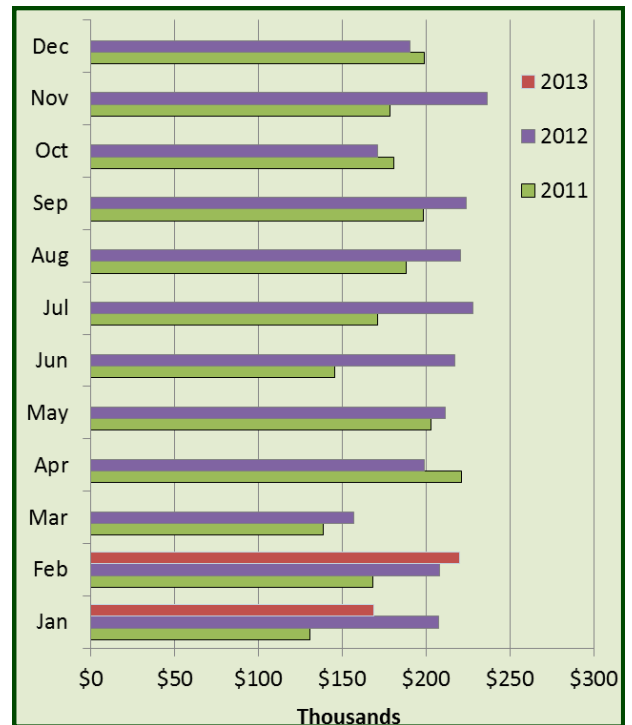
Building Materials Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 55,542	\$ 99,108	\$181,907	\$ 85,270	113.3%
Feb	47,621	50,703	67,440	83,620	-19.3%
Mar	79,590	57,845		164,570	
Apr	99,569	111,197		110,120	
May	104,373	140,470		104,700	
Jun	118,318	207,024		100,770	
Jul	76,488	146,570		108,080	
Aug	105,871	127,261		104,580	
Sep	99,544	92,415		117,480	
Oct	17,021	259,279		96,490	
Nov	64,211	97,778		100,250	
Dec	88,033	110,414		124,070	
	\$956,181	\$1,500,063	\$249,347	\$1,300,000	47.6%
YTD	\$103,163	\$ 149,811	\$249,347	\$ 168,890	47.6%



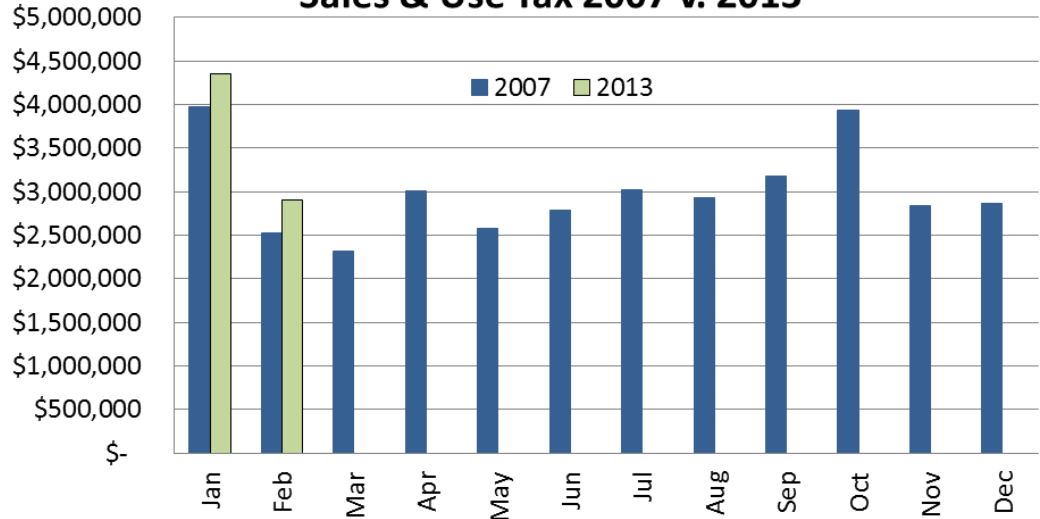
Motor Vehicle Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 130,337	\$ 207,261	\$168,734	\$ 141,260	19.4%
Feb	168,077	208,117	219,886	159,010	38.3%
Mar	138,335	156,828		147,890	
Apr	221,177	198,682		167,300	
May	202,940	211,062		176,630	
Jun	145,325	217,084		148,250	
Jul	170,691	227,989		176,920	
Aug	188,141	220,475		182,930	
Sep	198,355	223,732		184,170	
Oct	180,546	170,786		195,590	
Nov	178,169	236,385		166,650	
Dec	198,476	190,420		153,400	
	\$2,120,569	\$2,468,822	\$388,620	\$2,000,000	29.4%
YTD	\$ 298,414	\$ 415,378	\$388,620	\$ 300,270	29.4%



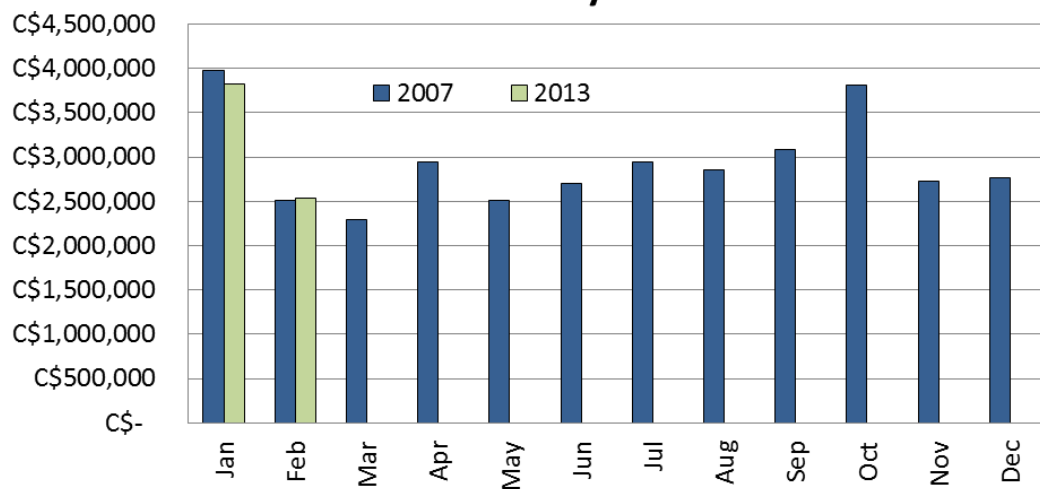
	2007	2013
Jan	\$ 3,972,513	\$ 4,345,836
Feb	2,520,486	2,906,780
Mar	2,319,579	
Apr	3,003,780	
May	2,581,830	
Jun	2,781,786	
Jul	3,022,815	
Aug	2,931,667	
Sep	3,176,883	
Oct	3,936,330	
Nov	2,835,420	
Dec	2,869,916	
	\$35,953,006	\$ 7,252,615

Sales & Use Tax 2007 v. 2013

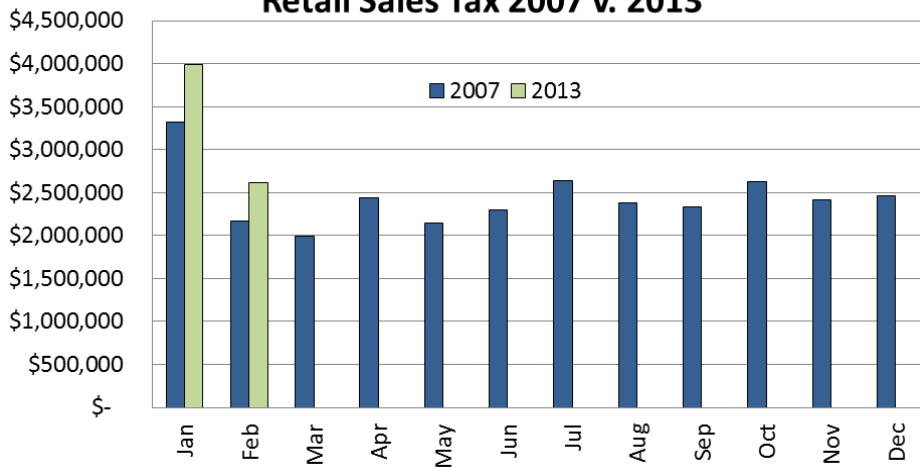


	2007	2013
Jan	\$ 3,972,513	\$ 3,819,987
Feb	2,507,072	2,534,302
Mar	2,286,415	
Apr	2,941,724	
May	2,513,134	
Jun	2,702,532	
Jul	2,937,441	
Aug	2,854,102	
Sep	3,084,330	
Oct	3,813,494	
Nov	2,730,719	
Dec	2,765,797	
	\$ 3,972,513	\$ 6,354,289

Sales & Use Tax 2007 v. 2013 in Constant January 2007 Dollars

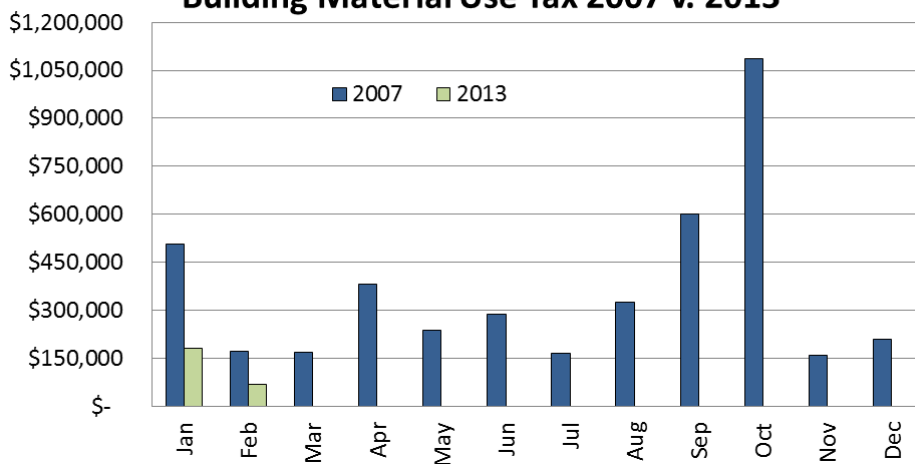


Retail Sales Tax 2007 v. 2013



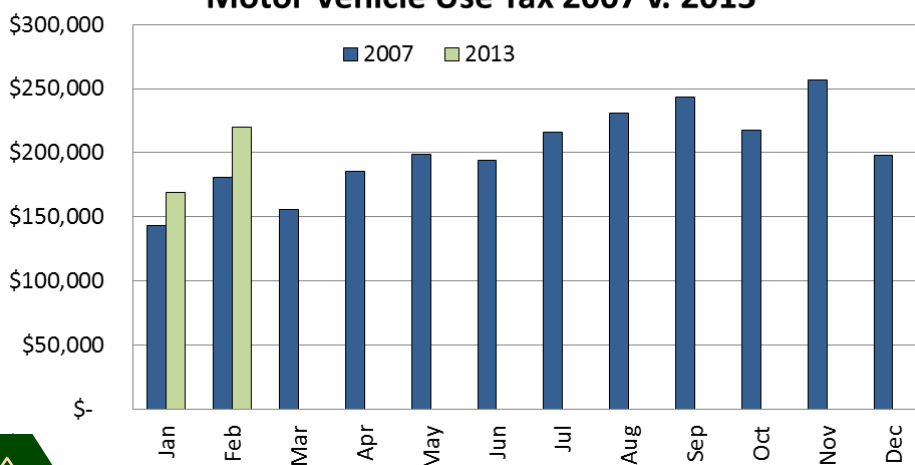
	2007	2013
Jan	\$ 3,324,067	\$ 3,995,194
Feb	2,167,873	2,619,453
Mar	1,994,635	
Apr	2,437,958	
May	2,146,685	
Jun	2,300,533	
Jul	2,640,223	
Aug	2,376,534	
Sep	2,332,844	
Oct	2,632,667	
Nov	2,419,051	
Dec	2,464,559	
	\$29,237,629	\$ 6,614,648

Building Material Use Tax 2007 v. 2013



	2007	2013
Jan	\$ 505,441	\$ 181,907
Feb	171,835	67,440
Mar	169,579	
Apr	380,285	
May	236,140	
Jun	287,300	
Jul	166,446	
Aug	324,125	
Sep	600,704	
Oct	1,086,325	
Nov	159,382	
Dec	207,723	
	\$ 4,295,285	\$ 249,347

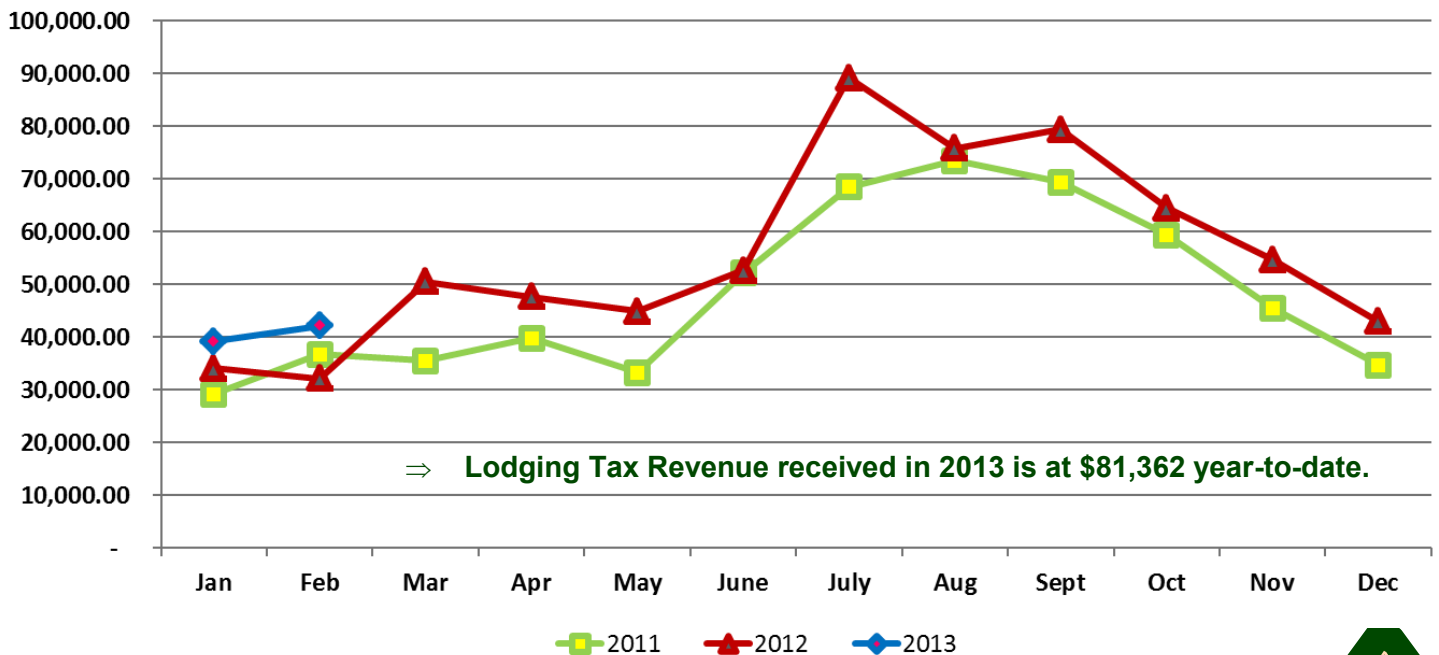
Motor Vehicle Use Tax 2007 v. 2013



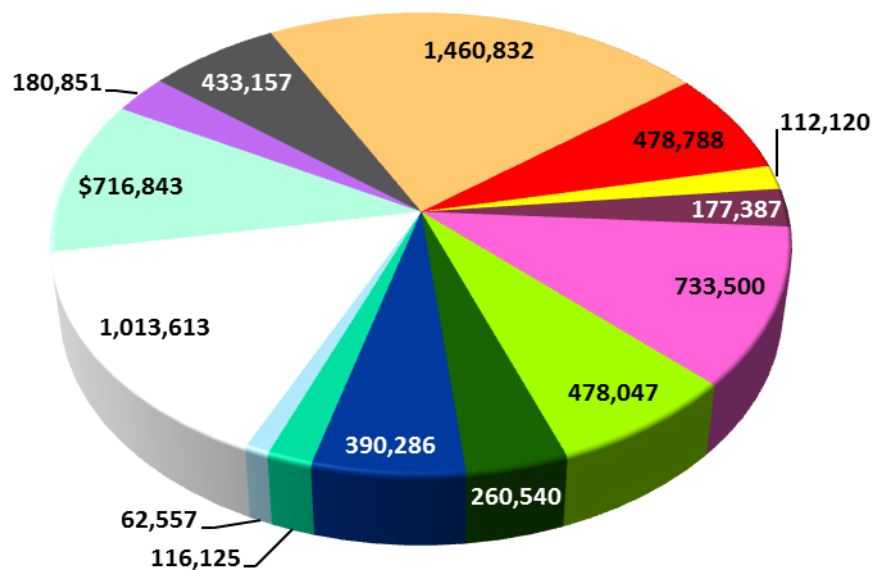
	2007	2013
Jan	\$ 143,005	\$ 168,734
Feb	180,778	219,886
Mar	155,365	
Apr	185,537	
May	199,005	
Jun	193,953	
Jul	216,146	
Aug	231,008	
Sep	243,336	
Oct	217,338	
Nov	256,987	
Dec	197,634	
	\$ 2,420,092	\$ 388,621

Description	YTD 2013	YTD 2012	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	\$ 1,522,559	\$ 1,432,977	\$ 89,582	6.3%	23.0%	23.0%
Grocery Stores & Specialty Foods	779,681	696,892	82,790	11.9%	11.8%	34.8%
Restaurants & Bars	745,623	666,522	79,101	11.9%	11.3%	46.1%
Clothing & Clothing Accessories Stores	500,323	452,944	47,379	10.5%	7.6%	53.6%
Sporting Goods, Hobby, Book & Music Stores	442,069	343,160	98,909	28.8%	6.7%	60.3%
Motor Vehicle Dealers, Auto Parts & Leasing	390,885	336,649	54,237	16.1%	5.9%	66.2%
Utilities	375,223	380,045	(4,822)	-1.3%	5.7%	71.9%
Building Material & Lawn & Garden Supplies	271,249	302,891	(31,642)	-10.4%	4.1%	76.0%
Broadcasting & Telecommunications	228,946	227,038	1,908	0.8%	3.5%	79.5%
Used Merchandise Stores	216,723	207,016	9,707	4.7%	3.3%	82.7%
Beer, Wine & Liquor Stores	153,207	134,775	18,432	13.7%	2.3%	85.1%
Consumer Goods & Commercial Equipment Rental	131,843	100,524	31,319	31.2%	2.0%	87.1%
Electronic Shopping & Mail-Order Houses	121,664	111,923	9,741	8.7%	1.8%	88.9%
Health & Personal Care Stores	120,927	108,643	12,284	11.3%	1.8%	90.7%
Hotels, Motels & Other Accommodations	109,348	98,245	11,103	11.3%	1.7%	92.4%
Electronics & Appliance Stores	86,972	128,797	(41,824)	-32.5%	1.3%	93.7%
Furniture & Home Furnishing Stores	83,111	82,771	340	0.4%	1.3%	94.9%
Office Supplies, Stationery & Gift Stores	49,547	65,446	(15,899)	-24.3%	0.7%	95.7%
Gasoline Stations with Convenience Stores	41,190	36,748	4,442	12.1%	0.6%	96.3%
All Other Categories	243,556	209,714	33,842	16.1%	3.7%	100.0%
Total	\$ 6,614,648	\$ 6,123,718	\$ 490,930	8.0%	100.0%	

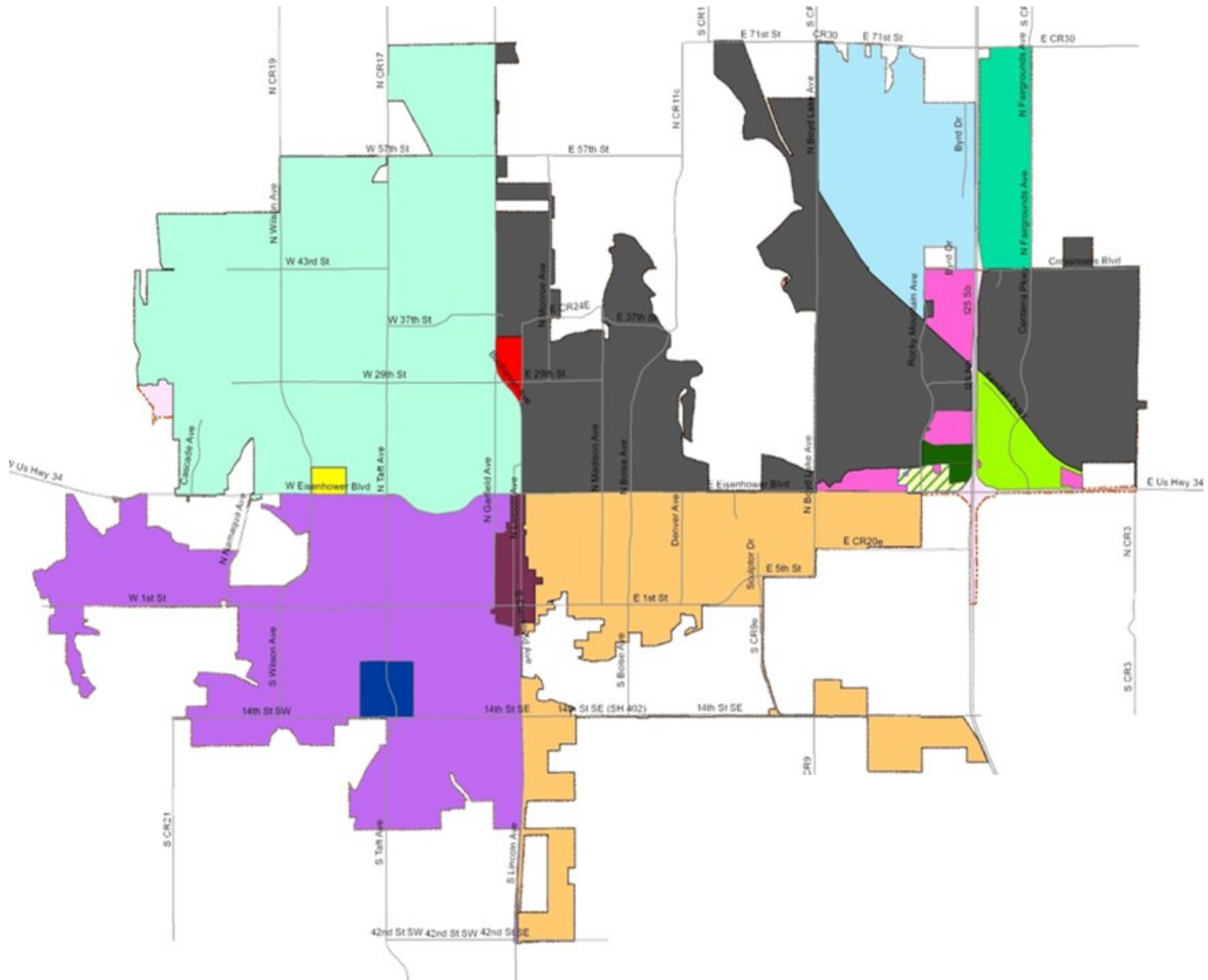
Lodging Tax



Geographical Area	YTD 2013	YTD 2012	Change
North West Loveland	\$716,843	\$659,953	8.6%
South West Loveland	180,851	160,398	12.8%
North East Loveland	433,157	389,780	11.1%
South East Loveland	1,460,832	1,425,578	2.5%
Orchards Shopping Center	478,788	416,705	14.9%
Columbine Shopping Center	112,120	105,317	6.5%
Downtown	177,387	166,143	6.8%
Centerra	733,500	614,816	19.3%
Promenade Shops	478,047	483,242	-1.1%
Outlet Mall	260,540	245,796	6.0%
Thompson Valley Shopping Center	390,286	352,400	10.8%
The Ranch	116,125	106,614	8.9%
Airport	62,557	51,162	22.3%
All Other Areas	1,013,613	945,814	7.2%
Total	<u>\$6,614,648</u>	<u>\$6,123,718</u>	<u>8.0%</u>



Map →



For a larger view of this map, please visit:

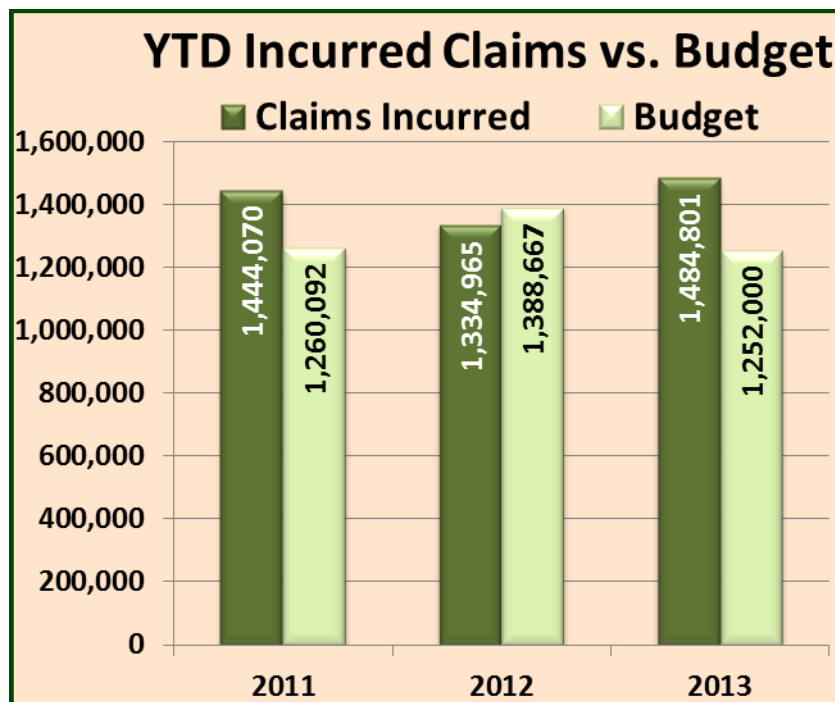
- ⇒ www.cityofloveland.org
- ⇒ Departments
- ⇒ Finance
- ⇒ Administration
- ⇒ Financial Reports
- ⇒ View Monthly Financial Reports
- ⇒ “Click here” below monthly SnapShot links

click + magnifier to zoom

Claims Incurred					\$ Over / (Under) Budget	% Over / (Under) Budget
		OAP	HRA	Total	Budget	
2013	February	440,020	132,883	572,903	626,000	(53,097) -8.5%
	YTD	1,154,238	330,563	1,484,801	1,252,000	232,801 18.6%
2012	February	565,475	73,440	638,915	694,333	(55,418) -8.0%
	YTD	1,174,168	160,797	1,334,965	1,388,667	(53,702) -3.9%
Change	February	(125,455)	59,443	(66,012)		
	% February	-22.2%	80.9%	-10.3%		
	YTD	(19,930)	169,766	149,836		
	% YTD	-1.7%	105.6%	11.2%		

⇒ OAP—Open Access Plan

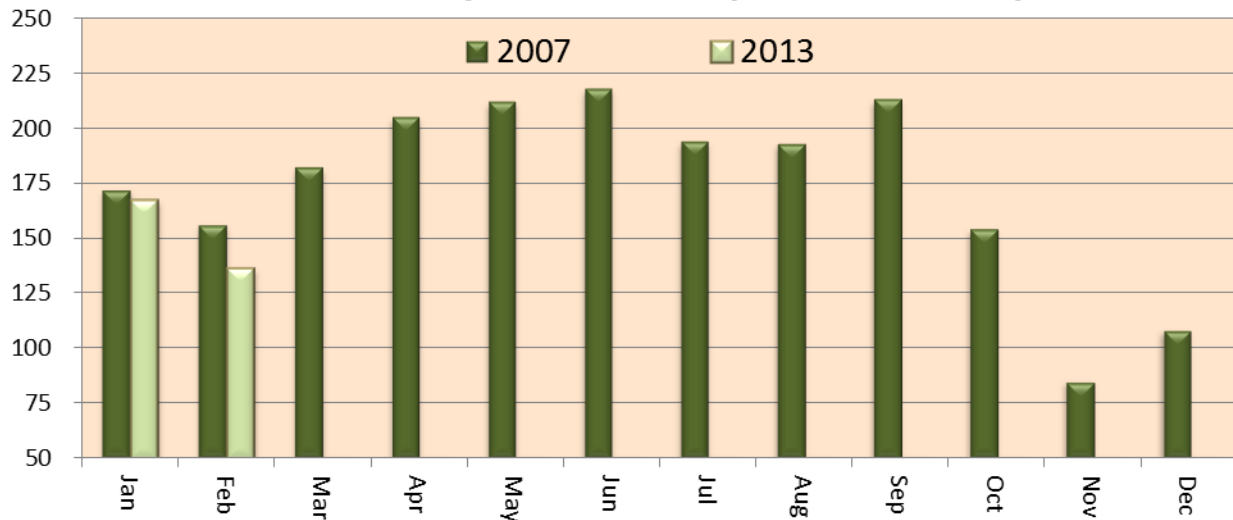
⇒ HRA—Health Reimbursement Arrangement



Comparison of YTD Claims Over \$25k				
February	2010	2011	2012	2013
# of claims	9	10	9	9
YTD Cost of high claims	\$1,256,387	\$564,144	\$464,433	\$388,708

⇒ 2013 # of StopLoss claims: 0
(claims over \$150k paid by StopLoss Carrier)

Building Permit Comparison History



Measures	Feb. 2011	Feb. 2012	Feb. 2013	2011 YTD	2012 YTD	2013 YTD
# of Building Permits	103	144	136	225	297	303
Building Permit Valuations	\$4,757,763	\$6,917,873	\$ 4,878,294	\$ 9,336,421	\$14,552,687	\$ 16,422,311
# of Certified Occupancies	13	12	22	36	28	38
Net # of Sales Tax Licenses	25	(64)	(168)	(20)	(136)	(332)
New Residential Electric Meter Sets	22	18	23	96	23	35
# of Utility Bills Sent	35,417	35,940	36,423	70,855	71,921	72,836
Rounds of Golf	1,971	-	2,478	3,058	1,749	3,989
Average Health Claim Costs/Emp.	\$ 1,086.25	\$ 1,006.17	\$ 884.11	\$ 2,304.45	\$ 2,111.01	\$ 2,308.95
KWH Demand (kH)	103,908	92,026	92,875	202,939	189,138	191,287
KWH Purchased (kwh)	55,608,189	58,349,082	55,611,773	117,042,248	119,608,743	118,175,477
Gallons of Water Sold	132,656,766	135,650,952	90,907	281,938,451	283,441,370	286,396,329
# of Workers' Comp Claims	5	10	13	18	21	18
\$ of Workers' Comp Claims Paid	\$ 4,841.00	26,018.82	\$ 13,722.50	\$ 5,615.00	\$ 113,966.82	\$ 49,012.95
# of Open Claims Current Year	5	8	6	15	11	11
# of Total Open Claims	8	17	18	26	30	30
\$ of Total Open Claims	\$ 88,511	\$ 234,533	\$ 158,167	\$ 206,961	\$ 402,865	\$ 359,544
\$ of Lodging Tax Collected	\$ 36,756.31	\$ 32,118.23	\$ 42,180.71	\$ 65,913.68	\$ 66,244.65	\$ 81,362.12

For more information regarding this report contact:

Brent Worthington, Finance Director

970.962.2300 or

brent.worthington@cityofloveland.org

**Financial Sustainability
Strategies Can Be
Found At:**

CityofLoveland.org

- ⇒ **Departments**
- ⇒ **Finance**
- ⇒ **Administration**
- ⇒ **Financial Reports**
- ⇒ **Financial
Sustainability
Strategies**

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





Snapshot

February 2013

Brent Worthington
Finance Director

Presented
April 2, 2013

February 2013 Snapshot

- Citywide Revenue
 - \$33.6 million, excluding transfers
 - 5.8% below budget projections

- Citywide Expenditures
 - \$24.4 million, excluding transfers
 - 34.5% below budget projections

- Citywide revenues exceed expenditures by \$9.2 million.

February 2013 Snapshot

- General Fund Revenue: \$11.7 million YTD
 - 10.0% above YTD Budget
 - 13.6% above same period last year
- Sales and Use Tax Revenue: \$7.2 million
 - 8.8% above budget projections
 - 8.4% above same period as last year
- Sales Tax only: \$6.6 million YTD
 - 6.8% above budget projections
 - 8.0% above same period last year

February 2013 Snapshot

Sales & Use Tax 2007 v. 2013



February 2013 Snapshot

Sales & Use Tax 2007 v. 2013 in Constant January 2007 Dollars



February 2013 Snapshot

- General Fund Expenditures
 - \$7.3 million YTD, excluding transfers
 - 13.9% below budget projections

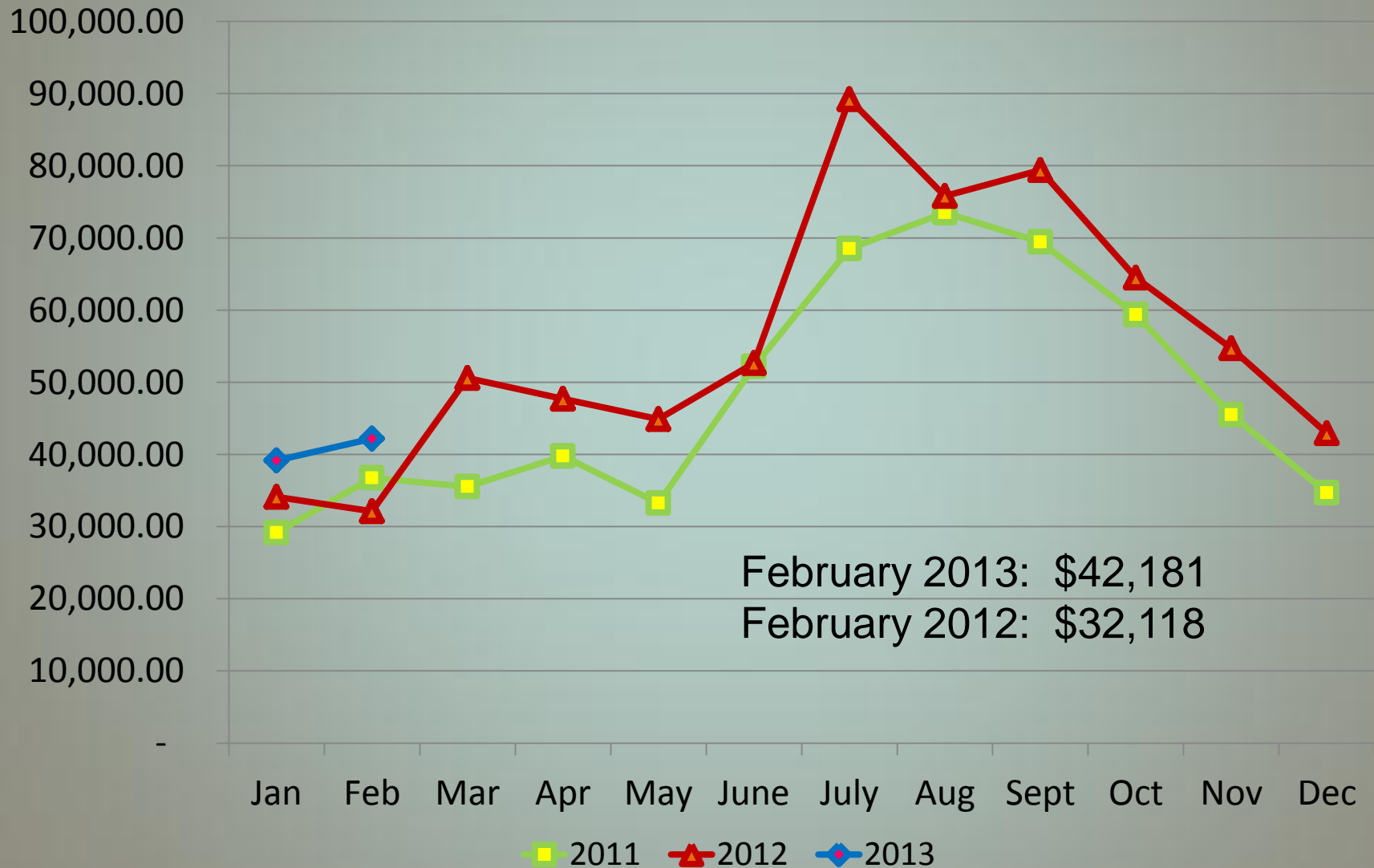
- General Fund Revenues Exceed Expenditures by \$2.4 million

- Health Claims
 - February Claims \$572,903
 - 8.5% below February budget projections
 - 2013 YTD increased from \$1.3 mil to \$1.5 mil from same time as last year (11.2%)

February 2013 Snapshot

- Other highlights
 - Lodging tax YTD is \$81,362 (22.8% higher than 2012 YTD).

Lodging Tax Comparison





February 2013 Snapshot

Questions?

Brent Worthington
Finance Director

Presented
April 2, 2013



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: 12
MEETING DATE: 4/2/2013
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE:

Investment Report for February 2013

RECOMMENDED CITY COUNCIL ACTION:

This is an information only item. No Council action is required.

DESCRIPTION: The budget estimate for investment earnings for 2013 is \$2,760,560. Through February, the amount posted to the investment account is \$363,425 including realized gains. Actual year-to-date earnings are lower than the budget projection by \$77,620. Based on the monthly statement, the estimated annualized 1.01% yield on the securities held by US Bank was down from last month and under the annual target rate of 1.20% for 2013. Reinvestment rates have been near record low levels, much lower than the budget projection.

SUMMARY: At the end of February, the City's portfolio had an estimated market value of \$214.5 million, about \$700,000 more than a month ago. Of this amount, US Bank held (including accrued interest) \$186.4 million in trust accounts; other funds are held in local government investment pools, in operating accounts at Wells Fargo Bank, and a few miscellaneous accounts. Interest rates trended significantly lower in 2012 and despite an upward move in December and January; they are projected to remain low for years. Investments are in US Treasury Notes, high-rated US Agency Bonds, high-rated corporate bonds, money market accounts, and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each percent of earnings on the portfolio equates to about \$2.1 million annually.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Investment Focus February 2013



Investment Focus

Monthly Investment Report

February 2013

What's in here?

Focal Points	1
Gain / Loss	
Rate Trends	2
Cash Statement	3
Portfolio size	4
Investment types	
Transactions /	5
Maturity	
Future Scan	6

Focal Points

- * **2013 targets for the City's portfolio:** 1) the interest rate target is **1.2%**; 2) the earnings goal = **\$2,760,420**.
- * **City investments are in high quality, low risk securities, in compliance with state law and the adopted investment policy.**
- * **Revenue posted to accounts = \$363,425 – 17.6% under target. So far this year, there are \$50,650 in realized gains.**
- * **Each 1% of the total portfolio amounts to about \$2.1 million.**
- * **The month end market value shows the unrealized loss was lower, estimated to be **\$428,023** at the end of February.**

Easy-Money Era a long Game for the Fed

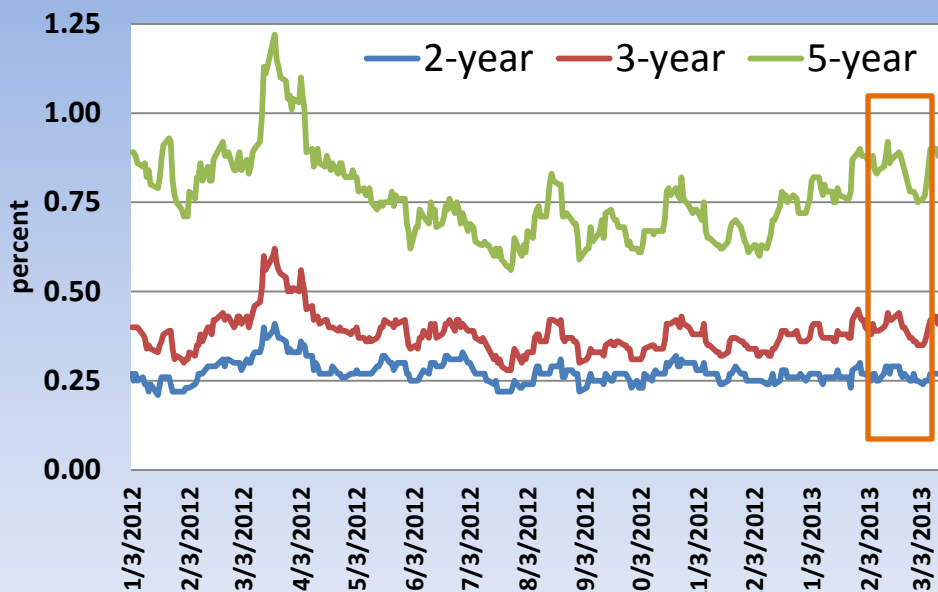
"The Outlook: Economists surveyed by **The Wall Street Journal** expect more than another year of bond buying, more than two more years of rock-bottom interest rates, and a Fed portfolio of securities that will remain bloated more than a decade after the financial crisis started."

(Source: John Hilsenrath, in **The Wall Street Journal** March 18, 2013.)

Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 9,457,614	\$9,457,614	--
Investment Pools	18,576,830	18,576,830	--
Money Markets	<u>27,718,863</u>	<u>27,718,863</u>	--
Subtotal	\$ 55,753,307	\$ 55,753,307	--
Notes and Bonds	<u>159,152,122</u>	<u>158,724,099</u>	\$ (428,023)
Total Portfolio	\$ 214,905,429	\$ 214,477,406	\$ (428,023)
Data Sources	(Morgan Stanley)	(US Bank)	

Due to rounding, column and row totals may not add exactly.

Treasury rate trends / Fed activity to continue



Interest rates on US treasuries finished the month of February down when compared to the end of January.

The 2-year treasury fell two basis points in January. The 3-year was 6 points lower. The 5-year finished 11 basis points lower.

The rate shifts increased the value of securities in the portfolio. Rates on purchases moved lower.

“Investors, lenders and many other market participants obsess about the end of easy money and the broad implications it carries. . .

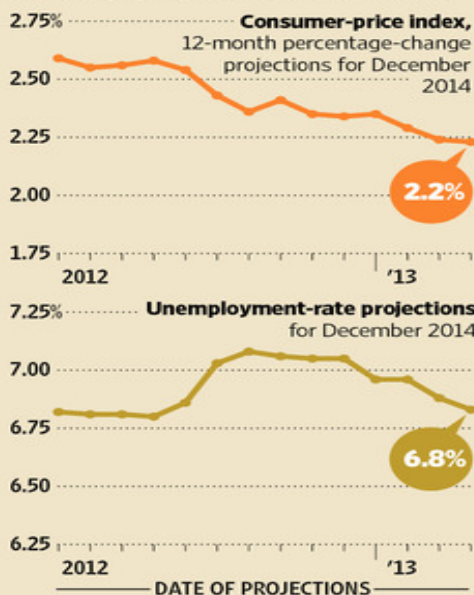
In the run up to the Fed’s policy meeting Tuesday and Wednesday, Fed Chairman Bernanke and other top officials have sought to signal that the unwinding isn’t likely until the recovery is much further advanced.”

(Source: John Hilsenrath, in *The Wall Street Journal* March 18, 2013.)

Slow Going

The outlook for U.S. unemployment is improving modestly and inflation expectations are receding...

Economists’ changing predictions for what CPI and unemployment will be in December 2014



...and economists expect a slow unwind of Fed easy-money policies.

Average predictions for Fed milestones

NOV. 2013

Fed begins slowing bond purchases

MAY 2014

Fed completes bond purchases

JUNE 2015

Jobless rate reaches 6.5%

DEC. 2019

Fed balance sheet returns to normal size

Source: WSJ.com economist survey
The Wall Street Journal

Cash Position Summary

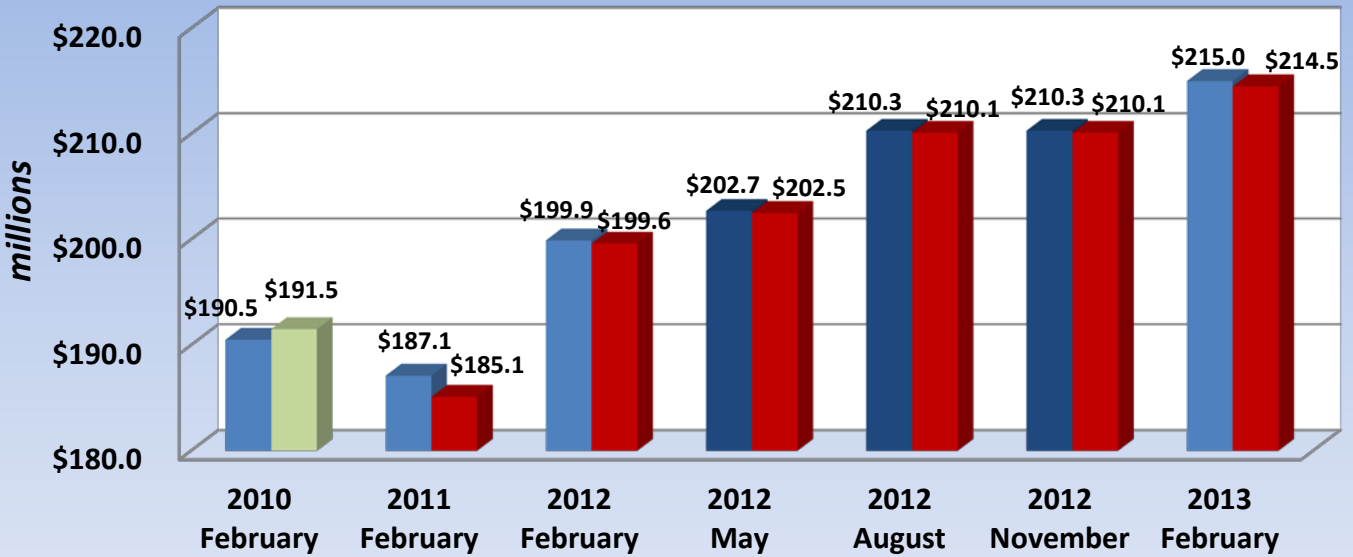
Cash & Reserves (unaudited)

		2013 Beginning	YTD Activity	Month End Total
Restricted Reserves		Due to rounding, column and row totals may not add exactly.		
1	Capital Expansion Fees	\$ 35,226,830	\$ 2,594,334	\$ 37,821,164
2	Water System Impact Fees	8,945,821	(266,214)	8,679,608
3	Raw Water Revenue – Windy Gap	20,893,582	168,352	21,061,935
4	Wastewater System Imp. Fees	5,131,782	204,167	5,335,949
5	Storm Drain System Imp. Fees	1,469,674	25,135	1,494,808
6	Power Plant Investment Fees	8,238,404	382,149	8,620,553
7	Cemetery Perpetual Care	2,629,094	21,927	2,651,021
8	Other Restricted	30,489,353	917,424	31,406,777
9	Total Restricted	\$ 113,024,541	\$ 4,047,275	\$ 117,071,815
Committed/ Assigned				
10	General Fund	\$ 11,224,908	\$ 430	\$ 11,225,338
11	Enterprise Funds	5,001,595	(222,458)	4,779,137
12	Internal Service Funds	19,553,388	551,512	20,104,900
13	Total Reserves	\$ 35,779,891	\$ 329,483	\$ 36,109,374
14	Total Restricted and Reserved	\$ 148,804,432	\$ 4,376,758	\$ 153,181,190
Unassigned Balance				
15	General Fund	\$ 23,686,427	\$ 259,597	\$ 23,946,014
16	Airport	1,384,130	(8,798)	1,375,332
17	Internal Service – Vehicle Maint	245,629	(37,648)	207,981
18	Enterprise Funds	37,113,573	(1,019,229)	36,094,344
19	Total Unrestricted	\$ 62,429,760	\$ (806,079)	\$ 61,623,680
20	TOTAL CASH	\$ 211,234,191	\$ 3,570,679	\$ 214,804,870

Monthly Investment Report

Portfolio Size / Types of Investments

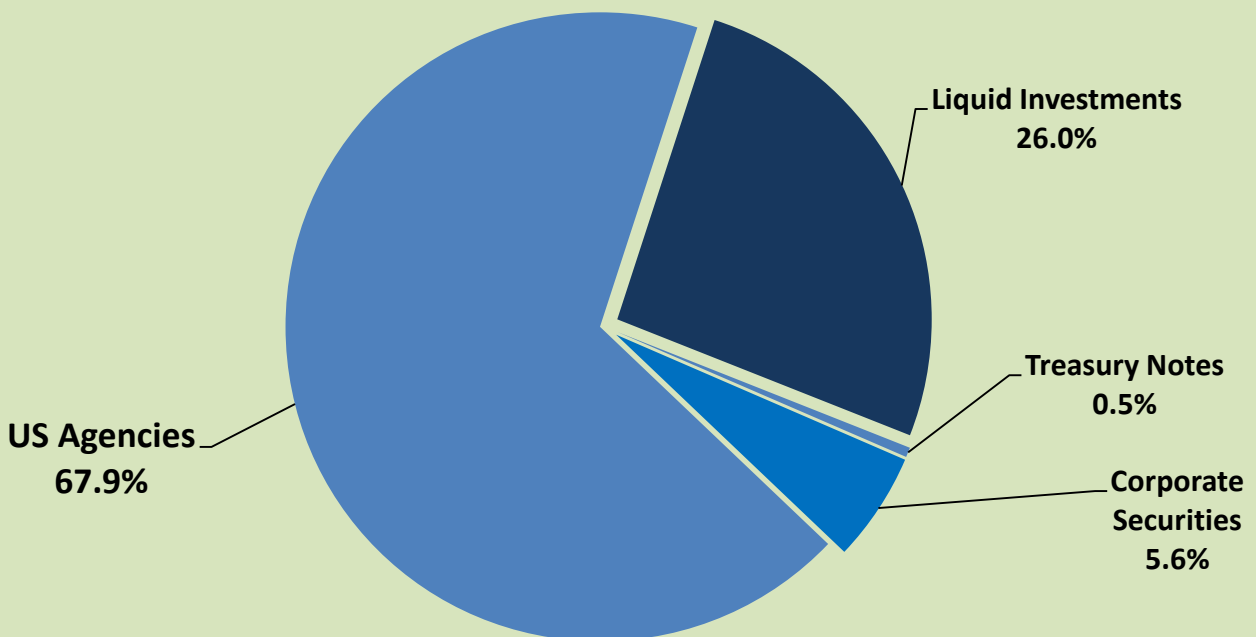
Portfolio Size since February 2010



Blue bars show Purchase value; red and green bars show Market value (red = loss and green = gain).

Portfolio by Type of Investment

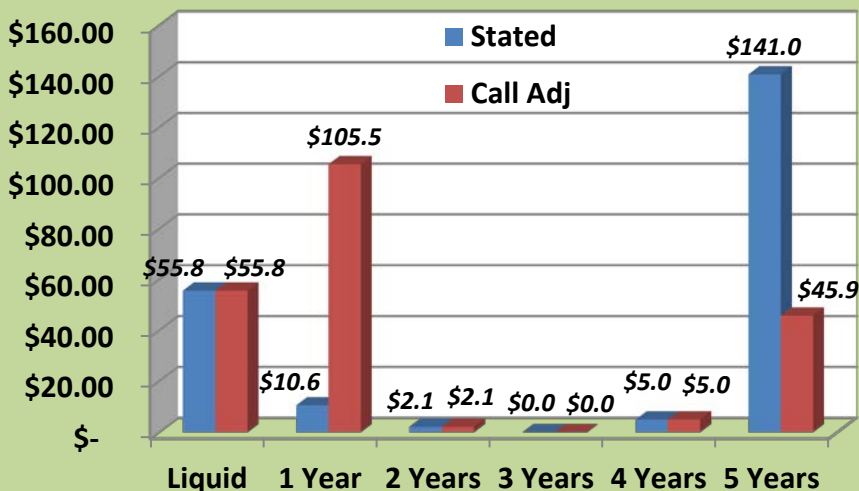
February 2013 – Market Value of \$214.5 million



Transactions / Portfolio by Maturity

	Maturity Date	Face Value	Purchase \$	Stated Rate
<u>Purchases</u>				
US Treasury Note	10/31/2017	\$ 1,000,000	\$ 994,359.18	0.750%
Fed National Mortgage Assn.	01/30/2018	<u>5,000,000</u>	<u>4,996,250.00</u>	1.050%
		\$ 6,000,000	\$ 5,990,609.18	
<u>Matured</u>				
JPMorgan Chase Medium Term	02/26/2013	\$ 2,010,000	\$ 2,000,000.00	1.105%
<u>Called</u>				
			<u>Call Value \$</u>	
Fed National Mortgage Assn.	02/08/2017	\$ 5,000,000	\$ 5,000,000.00	1.000%
<u>Sales</u>				
			<u>Gain \$</u>	
Federal Farm Credit Bank	05/30/2017	\$ 5,000,000	\$ 8,900.00	1.150%
Federal Home Loan Bank	06/30/2017	10,000,000	23,000.00	1.190%
Fed Home Loan Mort. Corp	07/19/2017	5,000,000	11,250.00	1.125%
Fed National Mortgage Assn.	09/27/2017	<u>5,000,000</u>	<u>7,500.00</u>	1.070%
		\$ 25,000,000	\$ 50,650.00	

Portfolio by Estimated Maturity Term
(in millions - Total = \$214.5 at the end of February 2013)



The target rate for 2013 is 1.2%. Rates are now up slightly ahead of near record lows. For February, the portfolio proceeds were below the earnings target level for 2013.

To support earnings or to reposition the portfolio, bonds may be sold. So far this year, gains of \$50,650 have been realized through sales.

The blue bars show the stated term. Red bars show the calls. Many of the five year bonds will be called early.



Future Scan: Markets watching and waiting on FED

- ❖ The **Federal Open Market Committee** (“FOMC” or “Fed” or “Committee”) will meet on March 19-20 and if significant action is taken, it will be reported at the April 2nd Council meeting. Some of the financial analysts speculation about the meeting is provided below:
 - “Talk about inflation increased on Friday [March 15] after the February consumer price index data came in higher than expected. The overall figure was up 0.7% in February, the highest since June 2009. The main figure was led by a surge in gasoline prices, up 9.1%. The core number, which strips out the volatile food and energy component, rose 0.2%. Even with the jump in February data, so far the data over the past 12 months increased 2%, which is within the Federal Reserve’s inflation target.”
 - “The main planned news event for next week is the Fed’s March Federal Open Market Committee meeting, set for Wednesday. This meeting will feature a press conference from Chairman Ben Bernanke and market participants will look for more forward guidance on Fed policy, particularly after stronger-than-expected housing and jobs data.”
 - “They should give more direction on the economy and QE3 and whether that will end sooner rather than later, and whether they are going to support the recovery in another way,” said Robin Bhar, metals analyst with Societe Generale.” (Source: *Forbes* online, Kitco News, March 15, 2013.)
- ❖ **Morgan Stanley Smith Barney (“MS”): The Sequester Arrives**
 - “Possessing eerie similarities to the much ballyhooed ramp-up, but uneventful arrival of “Y2K,” the federal sequester went into effect last week. But unlike the dot-com era scare, the impact of sequestration, if not subsequently altered, will affect a broad array of services and industries, as well as states and municipalities over the coming months.”
 - “With regard to interest rate risk, our expectation for only a mild rise in interest rates during 2013 gives investors time to reevaluate longer-duration bonds.”
 - “Conversely, investors who have predominantly short-duration exposure (inside of two years), may wish to consider taking gains and reinvesting into five-year maturities that may experience calendar roll in the coming years.” (Source: *Municipal Bond Monthly*, John M. Dillon and Matthew Gastall, March 7, 2013.)
- ❖ The January 2013 Colorado Employment Situation was released on March 18, 2013. Using non-seasonally adjusted employment data, **Colorado’s unemployment rate** for January was estimated to be 7.6% compared to the national unemployment rate of 8.6%. Larimer County was at 6.1%. Boulder County stayed at 5.5% and Weld County was 8.3%. Data for cities were nearly the same as a month ago. Loveland’s unemployment rate is estimated to be 7.0%, higher than December; and down from 7.9% one year ago. Fort Collins was 5.9%, Boulder 4.9%, and Greeley 8.3%.
- ❖ **Recession Outlook:** “Despite my rejection . . . that a recession began in mid-2012, I do think the US economy remains vulnerable. The greatest . . . threat is the ongoing impact of the expired 2% FICA tax holiday, disappointing Personal Income and the real impact of sequestration, which has scarcely begun. [R]isks are reemerging in eurozone recessions and the political stalemate in Italy may be copycatted elsewhere in the eurozone periphery.. the US economy is not out of the woods.” (Source: *Advisor Perspectives*, Doug Short, March 15, 2013.)

For more information regarding this report, please contact:

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Updated Colorado Labor Data

- ☐ Loveland's workforce **contracted** in **January**, down 631 jobs from December.
- ☐ Compared to one year ago in January, there are 987 **more** jobs.

Unemployment Rates

Data not adjusted for seasonality

