AGENDA

LOVELAND CITY COUNCIL MEETING
LOVELAND URBAN RENEWAL AUTHORITY
TUESDAY, FEBRUARY 4, 2014
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, age, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act. For more information, please contact the City's ADA Coordinator at bettie.greenberg@cityofloveland.org or 970-962-3319.

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENTATION:
Miss Loveland Valentine 2014 - Nicole Wilson

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. Members of the public 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 comments to no more than three minutes.

CONSENT AGENDA

1. **CITY CLERK** **(presenter: Terry Andrews)**
APPROVAL OF JANUARY 7, 2014 CITY COUNCIL MINUTES
A Motion to Approve the City Council Meeting Minutes for the January 2, 2014 Regular Meeting.
This is an administrative action to approve the City Council Meeting Minutes from the January 7, 2014 regular meeting.

2. **CITY MANAGER** **(presenter: Bill Cahill)**
BOARDS & COMMISSIONS APPOINTMENTS

1. A Motion to Reappoint Bradley Pierson to the Citizens' Finance Advisory Commission for a Term Effective until December 31, 2016.
2. A Motion to Appoint David Hallett and Ryan Lundquist to the Citizens' Finance Advisory Commission, Each for a Term Effective until December 31, 2016.
3. A Motion to appoint Elton Bingham as a City Commission Member on the Fire and Rescue Advisory Commission for a Term Effective until June 30, 2016.
4. A Motion to Reappoint Rick Brent to the Open Lands Advisory Commission for a Term Effective until December 31, 2017.
5. A Motion to Appoint Jim Roode to the Open Lands Advisory Commission for a Term Effective until December 31, 2017.
6. A Motion to Reappoint Roger Clark and Charlie Jackson to the Visual Arts Commission, Each for a Term Effective until December 31, 2016.
7. A Motion to Appoint Abbie Powers and Sara Turner as Alternate Members on the Visual Arts Commission, Each for a Term Effective until December 31, 2014.
8. A Motion to Appoint Jill Angelovic as an Alternate Member on the Affordable Housing Commission for a Term Effective until June 30, 2014.

These are administrative actions recommending the appointments and reappointments of members to the Citizens' Finance Advisory Commission, the Fire and Rescue Advisory Commission, the Open Land Advisory Commission and the Visual Arts Commission.

3. PUBLIC WORKS (presenter: Keith Reester)

IGA WITH THE STATE OF COLORADO REGARDING FLOOD REPAIR OF FEDERAL AID SYSTEM ROADWAYS

A Motion to Adopt Resolution #R-8-2014 Approving a Master Intergovernmental Agreement Between the City of Loveland, Colorado and the State of Colorado, Acting By and Through the Colorado Department of Transportation, for Repair of Federal Aid System Roadways Located within the City of Loveland that were Damaged by the September 2013 Flood.

This is an administrative action. The resolution approves an Intergovernmental Agreement (IGA) between the City of Loveland and the Colorado Department of Transportation (CDOT). This agreement is necessary to facilitate the distribution of Federal Highway Administration (FHWA) funds appropriated for the repair of Federal Aid System (FAS) Roadways damaged by the September 2013 Flood. The positive impact of this action is that it will facilitate the distribution of Federal Emergency Funds to cover a large portion (80 to 87.5%) of the costs for repair of our flood-damaged roadway infrastructure. On the negative side, the City will be responsible for the remaining 12.5 to 20% repair costs (dependent on the federal classification of the repair), which was unforeseen at the time of 2013 budgeting.

4. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)

MICHAELS DEVELOPMENT COMPANY EXCLUSIVE RIGHT TO NEGOTIATE

A Motion to Authorize the City Manager to Sign an Exclusive Right to Negotiate With the Michaels Development Company, in the Form Attached to this Cover Sheet, Pertaining to the 3rd Street Redevelopment Project.

This is an administrative action. The motion authorizes the City Manager to sign an exclusive right to negotiate with the Michaels Development Company (MDC) on the 3rd Street Redevelopment Project. The exclusive right would allow six months to define a scope of work for the project and define the financials. The City and MDC may extend the period to negotiate a development agreement if preliminary work is successfully completed. The motion authorizes negotiations only.

5. DEVELOPMENT SERVICES (presenter: Karl Barton)

PUBLIC HEARING

AMENDING SECTION 4.7 FUTURE LAND USE PLAN MAP TO MODIFY THE GROWTH MANAGEMENT AREA

A Motion to Adopt Resolution #R-9-2014 Approving Amendment of the City of Loveland 2005 Comprehensive Plan, 2011 Implementation Plan by the Amendment of Section 4.7 Future Land Use Plan Map to Modify the City of Loveland Growth Management Area.

This is legislative action. The resolution amends the City of Loveland Future Land Use Plan by changing the boundaries of Loveland's Growth Management Area, removing certain properties located on the west and east sides of I-25, north of SH 402 and primarily south of the Big Thompson River. This is the final step in reaching the agreement with Johnstown that will allow Loveland to work with Larimer County to get the Loveland GMA Overlay Zoning District expanded.

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

PUBLIC COMMENT *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*

PROCEDURAL INFORMATION

Anyone in the audience will be given time to speak to any item on the Regular Agenda before the Council acts upon it. The Mayor will call for public comment following the staff report. 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

6. CITY CLERK (presenter: Terry Andrews)

APPROVAL OF JANUARY 14, 2014 STUDY SESSION MINUTES

A Motion to Approve the City Council Study Session Meeting Minutes for the January 14, 2014 Study Session.

This is an administrative action to approve the City Council Study Session Minutes from the January 14, 2014 Study Session. Councilors Clark and Trenary were absent.

7. PUBLIC WORKS (presenter: Ken Cooper)

PUBLIC HEARING

SUPPLEMENTAL APPROPRIATION FOR THE SERVICE CENTER EXPANSION PROJECT

A Motion to Approve and Order Published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Service Center Expansion Project.

This is an administrative action. The ordinance on first reading appropriates funds for construction contingency on the Service Center Expansion project in the amount of $636,150. The ordinance appropriates undesignated fund balance reducing the flexibility to fund other projects. The fund balance is the result of actual revenues being higher

than projected in the 2013 Budget and from projected 2014 revenue that was not appropriated in the 2014 Budget.

8. CITY ATTORNEY (presenter: John Duval)

6TH AMENDMENT TO THE CENTERRA MFA & IGA AND DISBURSEMENT OF FUNDS FROM THE CENTERRA METROPOLITAN DISTRICT #1

1. A Motion to Adopt Resolution #R-10-2014 of the Loveland City Council Approving the Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement.

These two resolutions are both administrative actions. The first resolution approves a Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement to designate the proposed "Parcel 505 Parking Improvements" in the Centerra development as "Local Improvements" under the Centerra MFA and to also permit Centerra Metro District No. 1 ("District") to reimburse the City for its previous construction of the "Boyd Lake Waterline" on the basis that the Fifth Amendment to the MFA recently designated Boyd Lake Avenue as a "Regional Improvement" under the MFA.

2. A Motion to Adopt Resolution #R-11-2014 of the Loveland City Council Consenting to the Disbursement of Funds from the Centerra Metropolitan District No. 1 2008 Regional Improvements Subaccount.

The second resolution authorizes the District to use the approximately $840,000 of funds remaining in the "2008 Regional Improvements Subaccount" to be used for the construction of a wastewater lift station to serve Parcel 505 and other adjacent properties. The Sixth Amendment does not change in any way the current or future amount of revenues collected and disbursed under the Centerra MFA. It only expands the type of public improvements for which these revenues can be spent. The same is true with respect to the Council consenting to the requested disbursement from the 2008 Regional Improvements Subaccount.

ADJOURN AS CITY COUNCIL AND CONVENE AS THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)

9. CITY ATTORNEY

LURA 6TH AMENDMENT TO THE CENTERRA MFA & IGA

A Motion to Adopt Resolution #R-12-2014 of the Loveland Urban Renewal Authority Approving the Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement.

This is an administrative action. The Resolution approves a Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement to designate the proposed "Parcel 505 Parking Improvements" in the Centerra development as "Local Improvements" under the Centerra MFA and to also permit Centerra Metro District No. 1 ("District") to reimburse the City for its previous construction of the "Boyd Lake Waterline" on the basis that the Fifth Amendment to the MFA recently designated Boyd Lake Avenue as a "Regional Improvement" under the MFA. The Sixth Amendment does not change in any way the current or future amount of revenues collected and disbursed under the Centerra MFA. It only expands the type of public improvements for which these revenues can be spent.

ADJOURN AS THE LOVELAND URBAN RENEWAL AUTHORITY (LURA) AND RECONVENE AS CITY COUNCIL

10. FINANCE (presenter: John Hartman)

ABOLISHING THE REQUEST FOR DISMISSAL OF NPOI FEE AND AMENDING THE 2014 SCHEDULE OF FEES

A Motion to Approve Resolution #R-13-2014 Abolishing the "Request For Dismissal Of No Proof Of Insurance Fee" and Amending the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the City of Loveland, Other than Services Provided by the Water and Power Department and the Stormwater Enterprise, and Superseding all Prior Resolutions Establishing Such Rates, Charges, and Fees.

This is an administrative action. The Resolution amends the Schedule of Rates, Charges and Fees for Services provided by the City of Loveland by eliminating the "Request for dismissal of no proof of insurance fee". The fee generated revenue within the General Fund to fund the provision of City services. The 2013 actual collections from this fee totaled $2,835. The 2014 Budget projected revenue from this fee of $3,000 will not be realized if the Resolution is adopted.

BUSINESS FROM CITY 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.*

CITY MANAGER REPORT

CITY ATTORNEY REPORT

ADJOURN

MINUTES
LOVELAND CITY COUNCIL MEETING
TUESDAY, JANUARY 7, 2014
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

6:30 P.M. REGULAR MEETING - City Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL
Roll was called and the following responded: Mayor Gutierrez, Mayor Pro Tem Clark, Councilors Shaffer, Fogle, Farley, Krenning, Trenary, Taylor and McKean.

PROCLAMATION DECLARING THE WEEK OF JANUARY 5TH THROUGH JANUARY 11, 2014 AS "NAMAQUA CHAPTER NSDAR CENTURY OF SERVICE WEEK" Councilor Shaffer read the Proclamation and it was received by Kate Klusman and Barbara Wilkinson.

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 Krenning wished to removed Items 2.5-2.8 and Item 8 from the Consent Agenda to the Regular Agenda. Councilor Shaffer moved to approve the Consent Agenda with the exception of Item 2.5-2.8 and Item 8. Councilor Clark seconded the motion which carried with all councilors present voting in favor thereof.

1. CITY CLERK (presenter: Terry Andrews)
APPROVAL OF MINUTES
1. A Motion to Approve the City Council Meeting Minutes for the December 3, 2013 City Council Regular Meeting was approved.
This is an administrative action to approve the City Council Meeting Minutes for the December 3, 2013 City Council Regular Meeting.

2. A Motion to Approve the City Council Meeting Minutes for the December 17, 2013 City Council Regular Meeting was approved.

This is an administrative action to approve the City Council Meeting Minutes for the December 17, 2013 City Council Regular Meeting.

2. CITY MANAGER (presenter: Bill Cahill)

BOARDS & COMMISSIONS APPOINTMENTS

1. A Motion to Appoint Hope Chrisman to the Golf Advisory Board for a partial term effective until December 31, 2014 was approved.

2. A Motion to Appoint Joe Lopo and Jim Whitenight to the Golf Advisory Board, each for a full term effective until December 31, 2016 was approved.

3. A Motion to Reappoint Jerry Weitzel to the Golf Advisory Board for a full term effective until December 31, 2016 was approved.

4. A Motion to Appoint Charles Dyer as an Alternate member of the Golf Advisory Board for a term effective until December 31, 2014 was approved.

5. This motion was removed from the Consent Agenda and placed on the Regular Agenda.

6. This motion was removed from the Consent Agenda and placed on the Regular Agenda.

7. This motion was removed from the Consent Agenda and placed on the Regular Agenda.

8. This motion was removed from the Consent Agenda and placed on the Regular Agenda.

These are administrative actions recommending the appointments and reappointments of members to the Golf Advisory Board and Planning Commission.

3. CITY CLERK (presenter: Terry Andrews)

2014 LOCATION POSTINGS FOR CITY OF LOVELAND MEETINGS

A Motion Approving Resolution #R-1-2014, Establishing the Location for the Posting of the City of Loveland Notices for 2014 was approved.

This is an administrative action. Approval of the resolution will designate the bulletin board immediately adjacent to the Loveland City Council Chambers located at 500 East 3rd Street, City of Loveland, Colorado, as the location for the posting for all of the City of Loveland's written notices for 2014. This resolution also designates the City's Fire Administration Building as an Emergency Posting location if the primary designated location becomes inaccessible or is no longer in existence, due to natural disaster or other similar cause.

4. PUBLIC WORKS (presenter: Keith Reester)

CONTRACT PURCHASE FROM ELLIOT EQUIPMENT FOR SIX NEWWAY AUTO SIDE-LOADING REFUSE PACKER BODIES

A Motion to Award a Contract to Elliott Equipment, LLC in the Amount of $726,329.00 for the Acquisition of Six Automated Side Loader Packer Bodies for Purchase and Delivery in 2014 and to Authorize the City Manager to Execute the Contract on Behalf of the City was approved.

This is an administrative action to approve the purchase with Elliot Equipment, for $726,329.00 for six (6) NewWay, automated side-loading refuse packer bodies. This award was made after a competitive RFP for automated side-loading solid waste packer bodies to fit on six (6) 2014 Autocar ACX 64, class 8 chassis, equipped with Parker RunWise hydraulic hybrid propulsion system. The purchase of the six (6) chassis was approved by Council on 10/22/2013. Budget dollars are available in three Solid Waste

capital equipment accounts.

5. WATER & POWER (presenter: Bob Miller)
IGA WITH PLATTE RIVER POWER AUTHORITY FOR SCADA SERVICES
A Motion to Adopt Resolution #R-2-2014 Approving an Intergovernmental Agreement between the City of Loveland, Colorado and Platte River Power Authority for SCADA Services was approved.
This is an administrative action. The proposed Intergovernmental Agreement (IGA) with Platte River Power Authority (PRPA) provides Supervisory Control and Data Acquisition (SCADA) services. SCADA support and operation is required as part of the electric distribution system. If Loveland does not pay PRPA for SCADA services we will be required to provide those services in-house which may necessitate requesting additional staff resources. The funds to be committed are $147,122 and will be billed monthly at the rate of $12,260.17. The funds have been appropriated and are available in the 2014 Water and Power Budget.

6. FIRE & RESCUE (presenter: Randy Mirowski)
SUPPLEMENTAL APPROPRIATION FOR THE FIRE STATION NO. 2 CONSTRUCTION PROJECT
A public hearing was held and a motion to Approve and Order Published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Re-appropriation of Unexpended 2013 Funds for the Fire Station 2 Construction Project and the Appropriation of Additional Funds Needed to Complete the Project was approved.
This is an administrative action. The ordinance reappropriates the remaining balance of the 2013 appropriation for the project and adds funding for addition of the fourth bay to the project. Most of the additional funding for the project is from reserves, which reduces the flexibility to fund other projects.

7. CITY MANAGER (presenter: Rod Wensing)
CITY OF LOVELAND 2014 LEGISLATIVE POLICY AGENDA
A Motion to Adopt the 2014 City Council Legislative Policy was approved.
This is an administrative action. The Council Legislative Review Committee and City staff is recommending approval of the attached 2014 Loveland City Council Legislative Policy Agenda.

8. PUBLIC WORKS (presenter: Jason Licon)
SUPPLEMENTAL APPROPRIATION AIRPORT INTERNSHIP
This item was removed from the Consent Agenda and placed on the Regular Agenda.

9. FINANCE (presenter: Brent Worthington)
NOVEMBER 2013 FINANCIAL REPORT
This is an information only item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending November 30, 2013.

10. CITY MANAGER (presenter: Alan Krcmarik)
INVESTMENT REPORT FOR NOVEMBER 2013
This is an information only item. The budget estimate for investment earnings for 2013 is $2,760,420. Through November, the net amount posted to the investment accounts is

$1,226,835, including realized gains. Actual year-to-date earnings are much lower than the budget projection. Earlier this year, several very high interest rate corporate bonds matured, so current and future yields have been and will be lower. For the end of November the estimated annualized yield on market value for securities held by US Bank was 1.08%, down from 1.09% at the end of October. The yield is below the annual target rate of 1.20% for 2013. Reinvestment rates have risen recently after being at near record low levels. Current reinvestment rates are now higher than the budget projection target.

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.*

Shaffer: Attended the North I-25 Elected Meeting; Announced the next North I-25 Elected Meeting scheduled for Saturday, February 1, 2014.

Farley: Encouraged all to read an article from Cultural Traveler regarding World Class Art & Culture in Loveland, Colorado.

Gutierrez: Announced Director of the Platte River Power Authority (PRPA), Jackie Sargent had presented the adopted Strategic Plan of the PRPA, which is available on the PRPA website; Ms. Sargent announced the PRPA Wind Farm located in Wyoming sold at the end of 2013. The sale of which would have been made more difficult after the first of the year due to new legislation.

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 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

2. CITY MANAGER (presenter: Bill Cahill)

Items 2.5 – 2.8 are administrative actions recommending the appointments and reappointments of members to the Planning Commission.

Council discussed the process of making appointments, interviewing, and rules in compliance with the City Council Handbook. Discussion ensued. Bob Massaro addressed Council. **Councilor Clark moved to Appoint Michelle Forrest to the**

Planning Commission for a full term effective until December 31, 2016 and Jeremy Jersvig to a partial term effective until December 31, 2014. Councilor Fogle seconded. Discussion ensued. Councilor McKean called the question. Mayor Gutierrez seconded the motion to end the debate. The motion carried with seven councilors voting in favor and Councilors Shaffer and Trenary voting against. The original motion was considered and failed with four councilors voting in favor and Councilors Shaffer, Trenary, Farley, Taylor and Gutierrez voting against.

5. Councilor Shaffer moved to Appoint Michelle Forrest to the Planning Commission for a partial term effective until December 31, 2014. Councilor Trenary seconded the motion which carried with all councilors present voting in favor thereof.

6. Councilor Shaffer moved to Appoint Bob Massaro to the Planning Commission for a full term effective until December 31, 2016. Councilor Farley seconded the motion which failed with four councilors voting in favor and Councilors McKean, Fogle, Clark, Taylor and Krenning voting against.

7. Councilor Shaffer moved to Reappoint Rich Middleton and Mike Ray to the Planning Commission for a full term effective until December 31, 2016. Councilor Farley seconded the motion which carried with all councilors voting in favor thereof.

8. Councilor Shaffer moved to Appoint Jeremy Jersvig as an Alternate to the Planning Commission for a term effective until December 31, 2014.

8. PUBLIC WORKS (presenter: Jason Licon)

SUPPLEMENTAL APPROPRIATION AIRPORT INTERNSHIP

Airport Director, Jason Licon presented this item to Council. Public Works Director**,** Keith Reester also spoke concerning this item. This is an administrative action. The State has provided funding for an additional internship at the Airport with a fifty percent matching requirement. The airport's approved 2014 Budget includes provisions for a single intern. The additional internship will require matching funds totaling $16,640. The match is from unassigned fund balance within the Airport Fund reducing flexibility to fund other projects. However, new funds are received for half the cost of the internship. Discussion ensued. **Councilor Shaffer moved to approve and order published on first reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 Fort Collins/Loveland Municipal Airport Budget for State Grant Funding of an Internship. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**

11. CITY CLERK (presenter: Terry Andrews)

APPROVAL OF MINUTES

This is an administrative action to approve the Study Session Meeting Minutes for the December 10, 2013 Study Session. Councilor Fogle was absent. **Councilor Shaffer moved to approve the City Council Study Session Meeting Minutes for the December 10, 2013 Study Session. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof. Councilor Fogle abstained.**

12. HUMAN RESOURCES (presenter: Julia Holland)

MUNICIPAL JUDGE COMPENSATION

This is an administrative action regarding compensation of the Municipal Judge. At the direction of City Council, the 2014 annual base salary for the Municipal Judge shall receive a two percent (2.0%) merit increase beginning on the initial pay period in 2014.

Councilor Shaffer moved to approve Resolution #R-3-2014 of the Loveland City Council Regarding the Compensation of the Municipal Judge. Councilor McKean seconded the motion which carried with eight councilors voting in favor and Councilor Krenning voting against.

13. ECONOMIC DEVELOPMENT (presenter: Betsey Hale)
SUPPLEMENTAL APPROPRIATION FOR SPONSORSHIP OF TWO EVENTS
Economic Development Director, Betsey Hale introduced this item to Council. This is an administrative action. The ordinance appropriates funds for the City to sponsor two events using reserves from the Lodging Tax Fund in the amount of $50,000. The ordinance is funded with unassigned fund balance reducing the flexibility to fund other projects. The fund balance in Lodging Tax Reserves is $718,000. Tom Dwyer and Cindy Mackin were present. Discussion ensued. **Mayor Gutierrez opened the public hearing at 8:29 p.m. and hearing no public comment, closed the public hearing at 8:30 p.m. Councilor Shaffer moved to approve and Order Published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Sponsorship of Two Community Events, the Snow Sculpture Contest and Oktoberfest. Councilor Farley seconded the motion which carried with eight councilors voting in favor and Councilor Fogle voting against.**

14. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)
INTERGOVERNMENTAL AGREEMENT- LARIMER COUNTY BUILDING LOCATION
Economic Development Manager, Mike Scholl introduced this item to Council. This is an administrative action. The resolution would authorize the City Manager to sign an Intergovernmental Agreement with Larimer County for the purpose of working cooperatively to locate a newly constructed 45,000 square foot County Building in Downtown Loveland. The City desires to work with the County to facilitate the development of an area between Lincoln and Cleveland, south of the Rialto (Back Stage Alley). While there is negligible impact from the IGA itself, the negotiations that occur as a result of the IGA may result in a development proposal with some cost to the City. Any development proposal would require further consideration and formal approval by City Council. **Councilor Shaffer moved to adopt Resolution #R-4-2014 Approving an Intergovernmental Agreement regarding the Location of the Larimer County Office Building in Downtown Loveland. Councilor McKean seconded the motion which carried with all councilors voting in favor thereof.**

15. PARKS & RECREATION (presenter: Gary Havener)
INTERGOVERNMENTAL AGREEMENT - PUBLIC PARK IMPROVEMENTS
Parks and Recreation Director, Gary Havener introduced this item to Council. This is an administrative action. The proposed Intergovernmental Agreement is a collaborative effort to fund and provide a public park area within the Lakes at Centerra Development to be located on two adjacent sites. One will be next to The Lakes at Centerra Clubhouse and Environmental Center with the second next to a future R2J School District school site. The Lakes Metro District and the School District will upfront the costs to construct these park sites with reimbursement coming from the City's collection of Park CEFs from residential units constructed in the Lakes at Centerra Development in a total amount not to exceed $1 million. No supplemental funding is required to fund the City's obligation under the Intergovernmental Agreement, as it will be funded up to $1 million from the future collection of Park CEFs from residential development within the Lakes at Centerra Development. City attorney, John Duval indicated there were some minor corrections made to Exhibit A with one major exception: page 2 of the attachment

line 35 "…shall complete the construction of the School District Improvements on or before July 1, 2016." instead of December 1, 2015. **Councilor Shaffer moved to adopt Resolution #R-5-2014 to Approve an Intergovernmental Agreement between The Lakes at Centerra Metropolitan District No. 1, the Thompson R2J School District and the City of Loveland Concerning Public Park Improvements, with the amendments to the attachment identified by City Attorney John Duval. Councilor McKean seconded the motion which carried with all councilors present voting in favor thereof.**

ADJOURNMENT

Having no further business to come before Council, the January 7, 2014 Regular Meeting was adjourned at 9:33 p.m.

Respectfully Submitted,

_____ _____

Jeannie Weaver, Deputy City Clerk Cecil A. Gutierrez, Mayor

CITY OF LOVELAND
CITY MANAGER'S OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: **2**
MEETING DATE: 2/4/2014
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill, City Manager

TITLE:
Appointments to Boards and Commissions

RECOMMENDED CITY COUNCIL ACTION:
1. A motion to reappoint Bradley Pierson to the Citizens' Finance Advisory Commission for a term effective until December 31, 2016.
2. A motion to appoint David Hallett and Ryan Lundquist to the Citizens' Finance Advisory Commission, each for a term effective until December 31, 2016.
3. A motion to appoint Elton Bingham as a City Commission Member on the Fire and Rescue Advisory Commission for a term effective until June 30, 2016.
4. A motion to reappoint Rick Brent to the Open Lands Advisory Commission for a term effective until December 31, 2017.
5. A motion to appoint Jim Roode to the Open Lands Advisory Commission for a term effective until December 31, 2017.
6. A motion to reappoint Roger Clark and Charlie Jackson to the Visual Arts Commission, each for a term effective until December 31, 2016.
7. A motion to appoint Abbie Powers and Sara Turner as alternate members on the Visual Arts Commission, each for a term effective until December 31, 2014.
8. A motion to appoint Jill Angelovic as an alternate member on the Affordable Housing Commission for a term effective until June 30, 2014.

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

SUMMARY:
These are administrative actions recommending the appointments and reappointments of members to the Citizens' Finance Advisory Commission, the Fire and Rescue Advisory Commission, the Open Land Advisory Commission, the Visual Arts Commission and the Affordable Housing Commission.

BUDGET IMPACT:
☐ Positive
☐ Negative

☒ Neutral or negligible

BACKGROUND:

Term vacancies and two 2013 resignations (Richard Ball and Jodi Radke) created five vacancies on the **Citizens' Finance Advisory Commission** (CFAC). Three applications were received and interviews conducted. Bradley Pierson is recommended for reappointment to CFAC for a term effective until December 31, 2016. David Hallett and Ryan Lundquist are recommended for appointment to CFAC, each for a term effective until December 31, 2016. Recruiting continues for the two, partial-term vacancies.

City Commission Member vacancies on the **Fire and Rescue Advisory Commission** have existed since the Summer of 2013. Recently, two applicants were interviewed for these memberships. Elton Bingham is recommended for appointment as a City Commission Member on the Fire and Rescue Advisory Commission, for a term effective until June 30, 2016. The other applicant interviewed, Bob Gesumaria, has withdrawn his application.

The **Open Lands Advisory Commission** (OLAC) had two term vacancies during the Fall recruiting cycle. Four applications were received and interviews were held. The committee recommends the reappointment of Rick Brent and the appointment of Jim Roode to OLAC, each for a term effective until December 31, 2017.

During the Fall recruiting cycle, five applications were received for one term vacancy on the **Visual Arts Commission** (VAC). Interviews were held. The committee recommends the reappointment of Roger Clark to VAC for a term effective until December 31, 2016. On August 16, 2013, City Council unanimously approved Charlie Jackson's appointment to VAC for a partial term effective until December 31, 2013. The *Handbook for Boards and Commissions* states:

> "Any person who has served less than 50% of a full term will be eligible for consecutive reappointment for a full term, pursuant to the following process:
> 1. 90 days prior to the partial term expiration, a letter will be sent by the City Manager's Office to the member advising the member that he or she must notify the City Manager's Office in writing within 15 days of the date of the letter if the member desires to be reappointed to the board or commission. If the member provides such notification and if the member remains otherwise eligible to serve on the board or commission, the member shall be recommended to the City Council for reappointment without the need for solicitation of applicants and interviews."

Mr. Jackson was notified of this eligibility and he provided notification of his desire to be reappointed to the Visual Arts Commission. Charlie Jackson is recommended for reappointment to the Visual Arts Commission for a term effective until December 31, 2016. Abbie Powers and Sara Turner are each recommended for appointment as Alternate members on the Visual Arts Commission for a term effective until December 31, 2014.

Due to a clerical error, the Affordable Housing Commission was included in the "Current Openings" web page after all vacancies had been filled. Two applications were received and

interviews were conducted. The interview committee recommends the appointment of Jill Angelovic as an Alternate member on the commission for a term effective until June 30, 2014.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

None

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: **3**
MEETING DATE: 2/4/2014
TO: City Council
FROM: Keith Reester, Public Works Director
PRESENTER: Keith Reester, Public Works Director

TITLE:
A Resolution Approving a Master Intergovernmental Agreement Between the City of Loveland, Colorado and the State of Colorado, Acting By and Through the Colorado Department of Transportation, for Repair of Federal Aid System Roadways Located within the City of Loveland that were Damaged by the September 2013 Flood

RECOMMENDED CITY COUNCIL ACTION:
Adopt the resolution.

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

SUMMARY:
This is an administrative action. The resolution approves an Intergovernmental Agreement (IGA) between the City of Loveland and the Colorado Department of Transportation (CDOT). This agreement is necessary to facilitate the distribution of Federal Highway Administration (FHWA) funds appropriated for the repair of Federal Aid System (FAS) Roadways damaged by the September 2013 Flood.

BUDGET IMPACT:
☒ Positive
☐ Negative
☒ Neutral or negligible

The positive impact of this action is that it will facilitate the distribution of Federal Emergency Funds to cover a large portion (80 to 87.5%) of the costs for repair of our flood-damaged roadway infrastructure. On the negative side, the City will be responsible for the remaining 12.5

to 20% repair costs (dependent on the federal classification of the repair), which was unforeseen at the time of 2013 budgeting.

BACKGROUND:

CDOT, on behalf of the FHWA, is providing funding for repairs within the road rights-of-way for damage incurred to FAS roads during the September 2013 Flood. In the City of Loveland, FAS roads are generally characterized by higher traffic volumes, and fall into our Collector and Arterial roadway classifications. Dependent on the federal classification of the necessary repair, the reimbursement will vary from 80 to 87.5% of the construction costs. It is anticipated that the bulk of the repair projects will fall into the 87.5% reimbursement category. As noted above, the City is responsible for the remaining 12.5 to 20% of the costs.

The IGA contains blanks where actual dollar amounts will be included at a later date. The purpose of this effort is to establish an agreement where the City can cooperate with CDOT on the finalization of repair costs and receive timely disbursement of applicable reimbursements.

The roadways anticipated to be included in this IGA are: Namaqua Avenue, Railroad Avenue, Taft Avenue, 1st Street, and Sculptor Drive.

For many of the locations, the work has already been completed and the City is being reimbursed for actual costs. For the remaining locations, including Railroad Avenue, the costs are an estimate and the actual reimbursement will be adjusted upon the completion of the work. It is important to note that, for Railroad Avenue, which was the most heavily damaged roadway, FHWA will be including additional funds for "Betterment" purposes. These funds will be used to improve the reconstructed roadway to a level that reduces the likelihood of substantial damage, should a future event of similar proportions occur.

A supplement for the City portion of the repair funding will be presented in the near future as more detailed information becomes available.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. IGA

RESOLUTION #R-8-2014

A RESOLUTION APPROVING A MASTER INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, FOR REPAIR OF FEDERAL AID SYSTEM ROADWAYS LOCATED WITHIN THE CITY OF LOVELAND THAT WERE DAMAGED BY THE SEPTEMBER 2013 FLOOD

WHEREAS, the City of Loveland has already repaired or will soon repair Federal Aid System roads located within the City of Loveland that were damaged by the September 2013 Flood (the "Project"); and

WHEREAS, the Federal Highway Administration ("FHWA") is providing funding for said repairs to be administered and made available through the State of Colorado, acting by and through the Colorado Department of Transportation ("CDOT"); and

WHEREAS, while the exact cost of the Project and amount of federal funds available to the City are unknown at this time, the City and CDOT anticipate that FHWA reimbursement to the City will be between 80% to 87.5% of the cost of each roadway repair included within the Project; 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 Master Intergovernmental Agreement with City of Loveland, Colorado," attached hereto as Exhibit A and incorporated herein by reference ("Intergovernmental Agreement"), is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City. The authority granted to the City Manager in this Section 2 shall include, without limitation, the authority to establish the amount of the City's financial contribution under the Intergovernmental Agreement so long as said amount has been appropriated by City Council and is available in the Public Works Department budget.

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 4th day of February, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Shawn L. Oltorf
Assistant City Attorney

(FMLAWRK-TSKORDR-FLOOD REPAIR)
REGION 4/(rp)

Routing # 14 HA4 64567
ID 331001026

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

TABLE OF CONTENTS

1. PARTIES

THIS MASTER INTERGOVERNMENTAL AGREEMENT ("**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**"). Except as provided in **§8.F**, 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

The President of the United States declared certain Colorado couties as disaster areas and available for federal assistance and engaging the federal assistance program and procedures (dated September 12, 2013), and as was amended by the Federal Emergency Management Administration on September 14, 15, and 24,2013 and October 1 and 15, 2013 and as may be amended in the future (collectively, the "**Presidential Declaration**"). Also, pursuant to the Emergency Relief Program for Federal-Aid Highways under 23 CFR 668.20, 23 CFR 668.205 (a) and Title 23, United States Code, Sections 120 and 125, or FEMA emergency procedures under 44 CFR 9,10,13,14 and 206, as amended, and the Stafford Act, as amended, and Moving Ahead for Progress in the 21st Century Act (MAP 21), as amended, (collectively, the "**Federal Provisions**"), federal funds have been allocated for transportation projects requested by the State and the Local Agency.

ii. State Authority

The Colorado Governor declared distaster emergency due to flooding in certain Colorado counties pursuant to Executive Order D 2013-026 (dated September 13, 2013), and as amended by Executive Orders D 2013-027 (dated September 19, 2013), D 2013-028 (dated September 26, 2013), and C 2013-030 (dated October 8, 2013), and as may be amended in the future (collectively, the "**Governor's Order**"). Also, 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 further 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 and/or other funds to the Local Agency pursuant to the Presidential Declaration and Governor's Order in accordance with the procedures in this Agreement.

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, which are authorized and encumbered through Task Orders and specified on each Task Order Budget.

C. Budget

"Budget" means the aggregate budgets specified in Task Order Budgets for the Work described in the associated Task Order Scopes.

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. DBE

"DBE" means Disadvantaged Business Enterprise.

F. DBE Program

"DBE Program" means CDOT's DBE program, which has been developed in accordance with 49 CFR Part 26 and approved by the appropriate federal government operating agency.

G. Evaluation

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

H. Exhibits and Other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Master Agreement Scope of Work), **Exhibit B** (List of Authorized Local Agency Signatories), **Exhibit C** (Form of Funding Provisions), **Exhibit D** (Form of Task Order), **Exhibit E** (Form of Local Agency Contract Administration 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), **Exhibit K** (Supplemental Federal Provisions), **Exhibit L** (Form of Detailed Damage Inspection Report – Form FHWA 1547), **Exhibit M** (Form of Option Letter), **Exhibit N** (Assurance of Non-Discrimination by Local Agency), **Exhibit O** (Form of Local Agency Offer), and **Exhibit P** (Form of Local Agency Offer Amendment).

I. Federal Funds

"Federal Funds" means the funds provided by the FHWA to the State to fund performance of the Work by the Local Agency pursuant to any Task Order under this Agreement.

J. FHWA

"FHWA" means the Federal Highway Administration.

K. 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.

L. Local Agency Offer

"Local Agency Offer" means any Local Agency offer executed by the Local Agency in the form substantially in conformance with **Exhibit O**, which shall each include a Task Order Scope, a completed Task Order Budget, a completed Local Agency Contract Administration Checklist substantially in the form of **Exhibit E**, a completed Damage Inspection Report substantially in the form of **Exhibit L**, contact information for the Local Agency for the specified Task Order

(including name, title, address, email address and phone number) and any other relevant information.

M. Local Agency Offer Amendment

"Local Agency Offer Amendment" means any Local Agency offer amendment to an exisiting Task Order, which is executed by the Local Agency in the form substantially in conformance with **Exhibit P** and shall each include all relevant information.

N. Local Funds

"Local Funds" means the funds provided by the Local Agency to fund performance of the Work as required by the FHWA to match the Federal Funds pursuant to any Task Order under this Agreement.

O. Option Letter

"Option Letter" means any option letter executed by CDOT in the form substantially in conformance with **Exhibit M** in compliance with the terms of this Agreement.

P. Oversight

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

Q. Participating Funds

"Participating Funds" means the aggregate of Federal Funds plus Local Funds plus State Funds (if required by the FHWA).

R. Payable Participating Percentage

"Payable Participating Percentage" means the aggregate percentage of Participating Costs for Federal Funds and State Funds (as identified in a Task Order Budget)**.**

S. Party or Parties

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

T. Review

"Review" means examining Local Agency's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and in the Task Orders.

U. Services

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

V. State Funds

"State Funds" means the funds provided by the State to fund performance of the Work, which may be required by the FHWA to match the Federal Funds pursuant to any Task Order under this Agreement or may be a voluntary contribution by the State.

W. Task Order

"Task Order" means any task order executed by CDOT in the form substantially in conformance with **Exhibit D** in compliance with **§7**, which shall each include either (i) a completed Local Agency Offer with all required attachments or, (ii) for existing Task Orders, a Local Agency Offer Amendment with all required attachments.

X. Task Order Budget

"Task Order Budget" means the budget attached to an approved Task Order which details the budget for the Work to be performed by the Local Agency under the specified Task Order, which shall be substantially in the form of **Exhibit C**. Each Task Order Scope must be within the scope of work in **Exhibit A**.

Y. Task Order Scope

"Task Order Scope" means the scope of work attached to an approved Task Order which details the Work to be performed by the Local Agency under the specified Task Order. Each Task Order Scope must be within the scope of work in **Exhibit A**.

Z. Work

"Work" means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Agreement, in the individual Task Orders, including the performance of the Services and delivery of the Goods.

AA. 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

A. Initial Term/Work Commencement

The Parties' respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after five (5) years of state controllers signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

B. State's Option to Extend

At its sole discretion, the State, upon written notice to Local Agency by Option Letter, may unilaterally require continued performance of this Agreement for up to one additional year at the same rates and terms specified in the Agreement. The State shall exercise the option by written notice to the Local Agency within 30 days prior to the end of the current Agreement term. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the Agreement. The total duration of this Agreement, including the exercise of any options, shall not exceed six (6) years.

6. SCOPE OF WORK

A. Completion

The Local Agency shall complete the Work and other obligations as described herein in **Exhibit A** and any authorized Task Orders**.** Except as provided in **§8.F**, 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 Agreement 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 Center for Procurement and Contracting Services.

(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** for the authorized Task Order. 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 FHWA 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)(b)(2) also apply to any advertising and awards made by the State.

(4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.

(a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.F.R. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

(b) An alternative to the preceeding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.

(c) If the State provides 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 for the authorized Task Order.

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.

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. TASK ORDERS

A. Task Orders - General

The Work under this Agreement shall consist of "As Needed" design/construction services at various flood-damaged locations throughout the City of Loveland**.** This Agreement will enable Task Orders to be written for specific locations/projects as designated under Form FHWA 1547. Neither CDOT nor the Local Agency has any obligation under the Agreement until and unless a Task Order is issued pursuant to this Agreement. The CDOT Project Manager for a specific location/project will coordinate with the appropriate Local Agency contact person to initiate a Task Order. The Local Agency shall be responsible to perform the Work authorized under the Task Order, as well as comply with all applicable terms and conditions of this Agreement.

The Local Agency shall perform the Work in accordance with directives and authorizations by the State's representative and pursuant to the terms and conditions of this Agreement and the authorized Task Order. Any Task Order issued pursuant to this Agreement shall incorporate the terms of this Agreement by reference and shall also contain the items listed in the Task Order definition in **§4.W.**

B. Task Order Procedures

a) The Local Agency will notify CDOT of work needed under this Agreement.
b) The Local Agency will coordinate with the CDOT Project Manager to gather the information necessary for the items listed in the Local Agency Offer definition in **§4.L**.
c) When all items have been gathered, Local Agency shall submit a Local Agency Offer to CDOT for Work. Local Agency's Offer shall be signed by a representative of the Local Agency listed on **Exhibit B,** who is authorized to contractually bind the Local Agency. The Local Agency Offer shall constitute a firm offer to provide the Work and Local Funds, if specified, on the basis set forth in the Local Agency Offer. The Local Agency Offer shall reference this Agreement between the Parties.
d) The State's issuance of a Task Order based on a Local Agency Offer shall constitute an acceptance of the Local Agency Offer and no further signature shall be required on the part of Local Agency. Task Orders shall not be effective or enforceable until they are approved and signed by the Colorado State Controller or its designee. Except as provided in **§8.F**, the State shall not be liable to pay or reimburse Local Agency for any performance hereunder or under a Task Order including, but not limited to, costs or expenses incurred, prior to execution of a Task Order for the specified Work. Upon execution of the Task Order, the Local Agency shall successfully complete the Work within the price identified in the Task Order.

e) Except as provided in **§8.F**, the Local Agency shall begin performance of the Work if, and only to the extent that, the State specifically authorizes the Work by executing a Task Order, and the State's representative(s) issues and the Local Agency receives a written communication by e-mail, from the CDOT Project Manager for a specific location/project setting forth the Work to be performed under the Task Order and giving authorization to begin performance of the Task Order.

f) Each Task Order shall specify a performance period for the Work authorized; however, all Work authorized on the Task Order must be completed within the performance period of the Task Order. All Task Orders must be completed by the end of the Agreement term specified in **§5.A**, including any extensions**.**

Changes to an executed Task Order require Local Agency to submit a Local Agency Offer Amendment to CDOT for changes to such Task Order. Local Agency's Offer Amendment shall be signed by a representative of the Local Agency listed on **Exhibit B,** who is authorized to contractually bind the Local Agency. The Local Agency Offer Amendment shall constitute a firm offer to provide the Work and Local Funds, if specified, on the basis set forth in the Local Agency Offer Amendment. The Local Agency Offer Amendment shall reference the Task Order to be modified and this Agreement between the Parties. The State's issuance of a Task Order based on a Local Agency Offer Amendment shall constitute an acceptance of the Local Agency Offer Amendment and no further signature shall be required on the part of Local Agency. Amendments to Task Orders shall not be effective or enforceable until they are approved and signed by the Colorado State Controller or its designee. The Local Agency shall be allowed to modify performance under a Task Order if, and only to the extent that, the State specifically authorizes the modification by executing a Task Order, and the State's representative(s) issues and the Local Agency receives a written communication by e-mail, from the CDOT Project Manager for a specific location/project setting forth the changes to the Task Order and giving authorization to modify performance of the Task Order.

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 cumulative "not to exceed" amount for all Agreement Funds in all Task Orders issued under this Agreement shall be **$1,046,800.00.** The Local Agency shall accept no Task Orders which result in a cumulative Agreement Funds value that exceeds the "not to exceed" value. The maximum amount payable under each Task Order will be set forth in a completed Task Order Budget**,** as determined by the State from available funds. CDOT's financial obligation to the Local Agency are limited to the unpaid encumbered balance of Agreement Funds in approved Task Orders. Local Agency agrees to provide any additional funds required for successful completion of the Work.

i. Increase Not to Exceed Amount

At its sole discretion, the State, upon written notice to the Local Agency by Option Letter, may unilaterally increase/decrease the not to exceed amount payable under this Agreement specified in **§8.A**. The State shall exercise the option by providing a fully executed Option Letter to the Local Agency. Delivery/performance of the Goods/Services shall continue at the same rates and under the same terms as established in this Agreement and specified through Task Orders.

ii. Phased Performance

The State may require the Local Agency to begin performance on each phase of Work as outlined in a Task Order Budget and at the same terms and same conditions stated in the Agreement. If the State exercises this option, it will provide written notice to the Local Agency prior to authorizing such phase of Work by unilaterally executing a revised Task Order. If exercised, the provisions of the revised Task Order shall become part of and be incorporated into this original Agreement and the applicable original Task Order. Except as provided in

§8.F, Local Agency shall not commence Work on any phase until it receives a notice to proceed from the State; such notice to proceed shall not be issued without a fully executed Task Order for such phase.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Agreement or in any Task Order shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. 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 Agreement shall be made only from available funds encumbered for this Agreement through Task Orders and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may terminate this Agreement 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 Agreement or other contracts, grants 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

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

D. Local Funds

The Local Agency shall provide Local Funds as specified in Task Order Budget(s). The Local Agency shall have raised the full amount of Local Funds prior to the effective date of the authorized Task Order 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 Local 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 Funds" in an authorized Task Order Budget 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 the Task Order Budget. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimubursement hereunder, and the Local Agency shall comply with all such principles. The costs will be estimated and preapproval for federal funding will be recorded on Form FHWA 1547 (**Exhibit L**). To accept subsequent revisions to this form, the Parties will need to comply with **§7.B.g** to amend the associated Task Order. The CDOT Project Manager, in cooperation with the Local Agency, will complete and submit the form to FHWA. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work for a Task Order after review and approval thereof, subject to the provisions of this Agreement and the Task Order. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the effective date of the Task Order 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).

F. Retroactive Payments

The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Agreement Funds involve federal funding and (2) federal laws, rules and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement, its Exhibits and the applicable Task Order. Local Agency shall initiate any payment request by submitting invoices to the State in the form and manner set forth herein and approved by the State. As authorized by the FHWA, Agreement Funds may include costs or expenses incurred or performance by the Agreement Funds prior to the Effective Date.

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 Task Order Budget(s). If funding is not available or is withdrawn, or if the Local Agency terminates this Agreement or any Task Order 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 State shall submit a report to the Local Agency 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

A. Agreement 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:

i. 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 and specified in Task Order(s).

ii. 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 or any Task Order within 15 days of receiving such request.

iii. 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.

B. Local Agency Offer/Local Agency Offer Amendment Representation and Warranty
By submission of the Local Agency Offer and/or Local Agency Offer Amendment ,the Local Agency represents and warrants that it possesses the legal authority to make the Local Agency Offer and/or Local Agency Offer Amendment 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 signatory to execute the Local Agency Offer and/or Local Agency Offer Amendment 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 the Local Agency Offer and/or Local Agency Offer Amendment within 15 days of receiving such request. The Parties agree that the State will rely upon this representation and warranty when entering into the associated Task Order.

15. INSURANCE

The Local Agency shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: The Local Agency's Contractors, Consultants and subcontractors shall obtain and maintain insurance as specified in this section at all times during their employment on any Task Orders. 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, Consultants and Subcontractors

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 Contractor's, subcontractor's, 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.

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, subconsultants 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, subconsultants 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 shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. All Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the Local Agency 5 business days prior to work commencing by the Contractor, subcontractors, or Consultants. 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 certificate 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 provision of this **§15**.

16. DEFAULT-BREACH

A. Defined

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

B. Notice and Cure Period

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

17. REMEDIES

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

A. Termination for Cause and/or Breach

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

The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts 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 subcontracts. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

ii. Payments

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

iii. Damages and Witholding

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

B. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

If this Agreement is terminated by the State pursuant to this **§17(B)**, the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket

expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

C. Remedies Not Involving Termination

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

i. Suspend Performance

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

ii. Withold Payment

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

iii. Deny Payment

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

iv. Removal

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

v. Intellectual Property

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

18. NOTICES and REPRESENTATIVES

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

A. State:

Kenneth Pavlick, Sr. Designer
Incident Command Center, Local Agency Coordinator
CDOT IRF ICC
2695 Rocky Mountain Avenue, Suite 300
Loveland, Colorado 80538
(303) 807-8093
pavlickk@pbworld.com

B. Local Agency:

Jeff Bailey
Senior Civil Engineer
City of Loveland
410 E. 5th Street
Loveland, Colorado 80537
(970) 962-2558
Michelle.aschenbrenner@cityofloveland.org

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

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

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

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

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

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and

prohibit the Local Agency from bidding on future agreements. The Local Agency may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

22. FEDERAL REQUIREMENTS

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

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist for each Task Order 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 DOT-approved DBE program to the State for review and enter into a Memorandum of Understanding with the State regarding DBE responsibilities prior to the execution of this Agreement.

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:

- **i.** **Exhibit K** (Supplemental Federal Provisions),
- **ii.** **Exhibit I** (Federal-Aid Contract Provisions) and **Exhibit J** (Federal Requirements),
- **iii.** Colorado Special Provisions,
- **iv.** The provisions of the main body of this Agreement,
- **v.** **Exhibit A** (Master Agreement Scope of Work),
- **vi.** Authorized Task Orders,
- **vii.** Authorized Local Agency Offers and Local Agency Offer Amendments,
- **viii.** Task Order Scope(s),
- **ix.** Task Order Budget(s),
- **x.** Completed Damage Inspection Report(s) substantially in the form of **Exhibit L** for Task Order(s),
- **xi.** Completed Local Agency Contract Administration Checklist(s) substantially in the form of **Exhibit E** for Task Order(s), and
- **xii.** 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.

P. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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26. COLORADO SPECIAL PROVISIONS

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

1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5).

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

3. GOVERNMENTAL IMMUNITY.

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

4. INDEPENDENT CONTRACTOR.

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

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

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

7. BINDING ARBITRATION PROHIBITED.

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

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

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, the Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Local Agency is in violation of this provision, the State may exercise any

remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Local Agency's services and the Local Agency shall not employ any person having such known interests.

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

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

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

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

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

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

SPs Effective 1/1/09

27. SIGNATURE PAGE

Agreement Routing Number 141 HA4 64567

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

THE LOCAL AGENCY **City of Loveland, Colorado** By: William D. Cahill Title: City Manager _____ *Signature Date: _____	**STATE OF COLORADO** **John W. Hickenlooper, GOVERNOR** Colorado Department of Transportation Donald E. Hunt, Executive Director _____ By: Scott McDaniel, P.E., Acting Chief Engineer Date: _____

ALL AGREEMENTS REQUIRE APPROVAL 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. Except as provided in §8.F, the Local Agency is not authorized to begin performance until such time. Except as provided in §8.F, 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
Robert Jaros, CPA, MBA, JD

By:_____

Colorado Department of Transportation

Date:_____

28. EXHIBIT A – MASTER AGREEMENT SCOPE OF WORK

The Work to be performed under this Agreement shall be related to the flood damaged areas within the counties designated as eligible for federal disaster relief funding under the Presidential Declaration, as amended, and other locations as designated under the Colorado Governor's declaration, as amended (collectively, the "**Flood Damaged Areas**").

The Work shall be performed only on Flood-Damaged Areas. The Work shall consist of elements to return the Flood-Damaged Areas back to their condition before the flood as identified and pre-approved by the FHWA on Form FHWA 1547 for each authorized Task Order. The Work shall be specified in each Task Order and may include, but not be limited to:

- General Engineering Services
- Bridge and Structural Design
- Roadway Design
- Hydrology Activities
- Hydraulics Design
- Traffic Engineering
- Rockfall Assessment and Mitigation
- Environmental Services
- Construction Management

Any Work requested outside of the Flood Damaged Areas will not be eligible for federal or state reimbursement under this Agreement.

Any items that will improve a Flood-Damaged Area to a better condition than it was before the flood (each a "**Betterment**") may not be eligible for federal reimbursement. Prior to any expenditures related to a betterment, the FHWA must approve the Betterment and a Task Order must be approved by the State for such Work in accordance with **§7.B.e**.

Task Orders will be created for each Flood-Damaged Area. The Work for each Flood-Damaged Area will be identified and detailed in a specific Task Order Scope dedicated to the specific Flood Damaged Area.

29. EXHIBIT B – LIST OF AUTHORIZED LOCAL AGENCY SIGNATORIES

Dave Klockeman
City Engineer
(970) 962-2514
dave.klockeman@cityofloveland.org

The persons and/or positions identified on this **Exhibit B** cannot be further delegated.

30. EXHIBIT C – SAMPLE FUNDING PROVISIONS

A. Estimated Cost of Work

The estimated total cost the Work is as follows:

1.	**BUDGETED FUNDS**	
a.	Federal Funds	$0.00
	(__% of Participating Costs)	
b.	Local Funds	$0.00
	(__% of Participating Costs)	
c.	State Funds	$0.00
	(__% of Participating Costs)	
	TOTAL BUDGETED FUNDS	$0.00
2.	**ESTIMATED PAYMENT TO LOCAL AGENCY***	
a.	Federal Funds Budgeted (1a)	$0.00
b.	State Funds Budgeted (1c)	$0.00
	TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY*	$0.00

3. FOR CDOT ENCUMBRANCE PURPOSES

WBS Element	Phase	Function	Payable Participating Percentage	Budgeted Funds	Encumbered Funds**
_____.__.__	Design	3020		$0.00	$0.00
_____.__.__	ROW (Acq/Reloc)	3111/3114		($0.00)	($0.00)
_____.__.__	ROW Incidentals	3114		$0.00	$0.00
_____.__.__	Const	3301		$0.00	$0.00
_____.__.__	Miscellaneous	3404		$0.00	$0.00
_____.__.__	Utilties	3988		$0.00	$0.00
_____.__.__	Environmental	3403		$0.00	$0.00
_____.__.__					
			TOTAL ENCUMBERED FUNDS		$0.00

*The "Total Estimated Payment to Local Agency" amount assumes that that the entire budgeted amount in **Section 1** will be encumbered. Local Agency is not entitled to payment for any amounts that are not encumbered.

The Agreement Funds payable by the State to Local Agency pursuant to this Agreement is limited to the aggregate amount of encumbered funds identified in **Section 3 above multiplied by the Payable Participating Percentage for Federal Funds or State Funds identified in **Section 3**.

Single Audit Act

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 of 1984, as amended (PL 98-

502; PL 104-156) (collectively the "**Single Audit Act**"), purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) and OMB Circular A-133 Compliance Supplement, as amended. *See also*, 49 CFR 18.20 through 18.26. The Single Audit Act 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.

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31. EXHIBIT D – SAMPLE TASK ORDER

Date:	Task Order #	Master Agreement CMS # Project # ( )	Task Order CMS # PO

In accordance with **§7** of the Master Agreement ("**Master Agreement**")(routing number 14 HA4 00000) between the State of Colorado, Department of Transportation ("**State**" or "**CDOT"**), and the City of ("**Local Agency**")**,** beginning beginning agreement date and ending on ending agreement date, the provisions of the Master Agreement, and any amendments thereto affected by this task order ("**Task Order**") are modified as follows:

1) Task Order Description.
All terms not defined in this Task Order shall have the meaning given in the Master Agreement. The State accepts the Local Agency Offer dated _____attached hereto. Local Agency shall perform the Work authorized in this Task Orderat location in accordance with the Master Agreement and the attached Local Agency Offer.

2) PRICE/COST
Funding for each phase of Work (as identified on the attached Task Order Budget) shall be encumbered as each phase is authorized pursuant to a unilateral Task Order amendment by State authorized pursuant to **§8.A.ii** of the Master Agreement. The maximum amount payable by the State to Local Agency for performance of this Task Order is limited to the amount of Agreement Funds identified on the attached Local Agency Budget, as determined by the State from available funds. Local Agency agrees to provide any additional funds required for successful completion of the Work. Payments to the Local Agency are limited to the unpaid Agreement Funds balance set forth in the attached Local Agency Budget.

3) PERFORMANCE PERIOD
Local Agency shall complete its obligations under this Task Order on or before _____.

4) EFFECTIVE DATE
This Task Order shall not be effective or enforceable until it is approved and signed by the Colorado State Controller, or their designee, ("**Effective Date**").

5) APPROVALS

STATE OF COLORADO:
John W. Hickenlooper, Governor

By:_____
Timothy J. Harris, Chief Engineer
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 Task Order is not valid until signed and dated below by the State Controller, or delegate. Except as provided in §8.F of the Master Agreement, the Local Agency is not authorized to begin performance until such time. Except as provided in §8.F of the Master Agreement, if the Local Agency begins performing prior to the date below, the State of Colorado is not obligated to pay for such performance or for any goods and/or services provided.

State Controller
Robert Jaros, CPA, MBA, JD

By: _____

Date:_____

32. EXHIBIT E – SAMPLE LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code	Region

Project Location	Date

Project Description	

Local Agency	Local Agency Project Manager

CDOT Resident Engineer	CDOT Project Manager

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

The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.

Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

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

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463		
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		
5.3	Conduct Consultant Selection/Execute Consultant Agreement		
5.4	Conduct Design Scoping Review Meeting		
5.5	Conduct Public Involvement		
5.6	Conduct Field Inspection Review (FIR)		
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)		
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)		
5.9	Obtain Utility and Railroad Agreements		
5.10	Conduct Final Office Review (FOR)		
5.11	Justify Force Account Work by the Local Agency		
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items		
5.13	Document Design Exceptions - CDOT Form 464		
5.14	Prepare Plans, Specifications and Construction Cost Estimates		
5.15	Ensure Authorization of Funds for Construction		

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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)		
6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☐ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) _____ _____ CDOT Resident Engineer (Signature on File) Date		
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)		
6.4	Title VI Assurances		
	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)		
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks		
7.2	Advertise for Bids		
7.3	Distribute "Advertisement Set" of Plans and Specifications		
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement		
7.5	Open Bids		
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		
	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		
	Submit required documentation for CDOT award concurrence		
7.7	Concurrence from CDOT to Award		
7.8	Approve Rejection of Low Bidder		
7.9	Award Contract		
7.10	Provide "Award" and "Record" Sets of Plans and Specifications		
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor		
8.2	Project Safety		
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)		
	Pre-survey • Construction staking • Monumentation		
	Partnering (Optional)		
	Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual*)		
	Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual*)		
	HMA Pre-Paving (Agenda is in *CDOT Construction Manual*)		
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents		
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." _____ _____ Local Agency Professional Engineer or CDOT Resident Engineer Phone number		

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		
	Construction inspection and documentation		
8.6	Approve Shop Drawings		
8.7	Perform Traffic Control Inspections		
8.8	Perform Construction Surveying		
8.9	Monument Right-of-Way		
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. _____ _____ Local Agency Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings		
8.12	Prepare Local Agency Reimbursement Requests		
8.13	Prepare and Authorize Change Orders		
8.14	Approve All Change Orders		
8.15	Monitor Project Financial Status		
8.16	Prepare and Submit Monthly Progress Reports		
8.17	Resolve Contractor Claims and Disputes		
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. _____ _____ CDOT Resident Engineer Phone number		
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting		
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed		
9.3	Perform Project Acceptance Samples and Tests		
9.4	Perform Laboratory Verification Tests		
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices		
9.6	Approve Sources of Materials		
9.7	Independent Assurance Testing (IAT), Local Agency Procedures ☐ CDOT Procedures ☐ • Generate IAT schedule • Schedule and provide notification • Conduct IAT		
9.8	Approve mix designs • Concrete • Hot mix asphalt		
9.9	Check Final Materials Documentation		
9.10	Complete and Distribute Final Materials Documentation		

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

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

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

The Local Agency also agrees by signing this Agreement that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such sub-recipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

1. Program Objective and Assurance:

It is the objective of the State to create a level playing field upon which Disadvantaged Business Enterprises (DBEs) can compete fairly for DOT-assisted contracts. By entering into this Agreement, the Local Agency hereby agrees to the following:

> The Local Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of the DBE program or the requirements of 49 CFR part 26. The Local Agency shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Each contract the Local Agency signs with a subcontractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

> The contractor, sub recipient 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 recipient deems appropriate.

2. DBE Contract Goals:

Each scope of work prepared to procure consultant services or construction of the Work shall be evaluated by the CDOT Regional Civil Rights Office to determine a contract goal. The Local Agency shall be responsible for ensuring that the contract goal is incorporated into the procurement advertisement and accompanied by either:

a. For consultant services, CDOT’s then current process for evaluating the Consultant’s proposed DBE participation; or an alternative proposed by the local agency and approved by CDOT.

b. For construction, the CDOT DBE Standard Special Provision and all related forms.

The Local Agency shall submit the Statement of Interest (consultants) and/or DBE Forms (Construction) to the CDOT Civil Rights and Business Resource Center for review and concurrence prior to award.

3. Compliance:

With the assistance of the Local Agency, the CDOT Regional Civil Rights Office shall oversee the subcontractor’s performance toward the contract goal.

Revised 11/2013

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, 6and the goal for Disadvantaged Business Enterprise (DBE) participation for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

   The short-list is based on the following evaluation factors:

   a. Qualifications,

   b. Approach to the Work,

   c. Ability to furnish professional services.

   d. Anticipated design concepts, and

   e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

a. Abilities of their personnel,

b. Past performance,

c. Willingness to meet the time and budget requirement,

d. Location,

e. Current and projected work load,

f. Volume of previously awarded contracts, and

g. Involvement of minority consultants.

6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than $50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.

8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceeding eight (8) steps.

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT)

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

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 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. **Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

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.

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ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

37. EXHIBIT J – FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Subcontractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Subcontractor 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/Subcontractor shall comply with section 18.37 concerning any subcontracts; to expedite any CDOT approval, the Local Agency/Subcontractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Subcontractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 subcontract procedures, as applicable;

the Local Agency/Subcontractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by the Local Agencys and their subcontractors or the Local Agencys).

C. Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subcontracts 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 Agency when required by Federal agreement program legislation. This act requires that all laborers and mechanics employed by contractors or subcontractors 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 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 and subcontracts, 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 CFR 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 Local Agencycontractor 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. FHWA Emergency Relief Manual

The FHWA's "Emergency Relief Manual (Federal-Aid Highways)" from the Office of Infrastrucutre, Office of Program Administration, as amended.

S. 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.

T. 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 Local Agency, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Local Agency 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 Local Agency, 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 Local Agency 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 Local Agency for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the Local Agency of the Local Agency'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 Local Agency 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 Local Agency is in the exclusive possession of another who fails or refuses to furnish this information, the Local Agency 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 Local Agency'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 Local Agency under the Agreement until the Local Agency complies, and/or **b.** Cancellation, termination or suspension of the Agreement, in whole or in part.

U. Incorporation of Provisions §22

The Local Agency 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 Local Agency 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 Local Agency becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Local Agency may request the State to enter into such litigation to protect the interest of the State and in addition, the Local Agency may request the FHWA to enter into such litigation to protect the interests of the United States.

38. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

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. **"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.

   1.3. **"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.

   1.4. **"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

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

   - **1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
   - **1.5.2.** A foreign public entity;
   - **1.5.3.** A domestic or foreign non-profit organization;
   - **1.5.4.** A domestic or foreign for-profit organization; and
   - **1.5.5.** A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.

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

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

1.8. **"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."

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

1.10. **"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.

1.11. **"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.

1.12. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's System for Award Management (SAM) profile, if applicable.

1.13. **"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.

1.14. **"System for Award Management (SAM)"** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.sam.gov.

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

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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. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**

   3.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM 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 SAM 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 SAM 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 ToSAM. A Subrecipient shall register in SAM and report the following data elements in SAM ***for each*** Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

      7.1.1 Subrecipient DUNS Number;

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

7.1.3 Subrecipient Parent DUNS Number;

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

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in **SAM**.

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

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

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39. EXHIBIT L – SAMPLE DETAILED DAMAGE INSPECTION REPORT (FORM FHWA 1547)

U.S. Department of Transportation
Federal Highway Administration

DETAILED DAMAGE INSPECTION REPORT
(Title 23, Federal-aid Highways)

Report Number

Inspection Date

Location *(Name of Road and Milepost)*

Route **at Mile Post** **to**

FHWA Disaster Number

Federal-aid Route Number

Description of Damage
☐ Emergency Repair ☐ Permanent Repair ☐ Debris Removal
ONLY ONE ITEM MAY BE CHECKED

State CO County

Work Order Number

Cost Estimate

Description of Work to Date (Equipment, Labor, and Materials)	Unit	Unit Price	Quantity	Cost	
				Completed	Remaining
			Subtotal		
			PE/CE		
			Right-of-Way		
			Repair Total		

Method
☐ Local Forces ☐ State Forces ☐ Contract

Estimated Total

Environmental Assessment Recommendation
☐ Categorical Exclusion ☐ EA/EIS

Recommendation ☐ Eligible ☐ Ineligible	FHWA Engineer Print Name	FHWA Engineer Signature	Date
Concurrence ☐ Yes ☐ No	State Engineer Print Name	State Engineer Signature	Date
Concurrence ☐ Yes ☐ No	Local Agency Print Name	Local Agency Signature	Date

FHWA USE ONLY
FEMA Eligible
☐ Yes ☐ No

Form FHWA-1547

40. EXHIBIT M – FORM OF AN OPTION LETTER

OPTION LETTER

Date:	State Fiscal Year:	Option Letter #	Routing #

1) **OPTIONS:** Choose all applicable options listed in §1 and in §2 and delete the rest.
   - **a.** Option to renew only *(for an additional term)*
   - **b.** Change in the amount of the maximum not to exceed amount

2) Option to initiate next phase of a contract
   REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:
   - **a. For use with Option 1(a):** In accordance with Section 5.B of the Master Agreement routing number _____ between the State of Colorado, Department of Transportation**,** and Local Agency's Name, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at the same rates and same terms specified in the Master Agreement, as amended. Unless specified in this Option Letter, there shall be no change to the current agreement value as a result of this extension to the term.
   - **b. For use with Option 1(b):** In accordance with Section 8.A(i) of the Master Agreement routing number _____ between the State of Colorado, Department of Transportation**,** and Local Agency's Name, the State hereby exercises its option to increase/decrease the not to exceed amount payable in the Master Agreement, as amended, by $_____ for a new not to exceed value of $_____ as consideration for Services/Goods ordered under the Master Agreement, as amended. The first sentence of Section 8.A is hereby modified accordingly. The total agreement value including all previous amendments, option letters is $_____. Delivery/performance of the Work shall continue at the same rates and under the same terms as established in the Master Agreement, as amended.

3) **Effective Date**. The effective date of this Option Letter is upon approval of the State Controller or Date, whichever is later.

STATE OF COLORADO
John W. Hickenlooper GOVERNOR
Department of Transportation

_____
(For) Donald E. Hunt, Executive Director

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Except as provided in §8.F of the Master Agreement, Local Agency is not authorized to begin performance until such time. Except as provided in §8.F of the Master Agreement, if Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay Local Agency for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Department of Transportation

Date: _____

41. EXHIBIT N – ASSURANCE OF NON-DISCRIMINATION BY LOCAL AGENCY

The Local Agency HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the “Act”), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the “Regulations”) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent 'directives, no person in the United States shall, on the grounds of race color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Local Agency receives Federal financial assistance from the Department of Transportation, including the Federal Highway Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations, a copy of which is attached.

More specifically, and without limiting the above general assurance, the Local Agency hereby gives the following specific assurances with respect to its (Name of Appropriate Program):

1. That the Local Agency agrees that each "program" and each "facility as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.

2. That the Local Agency shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all (Name of Appropriate Program) and, in adapted form in all proposals for negotiated agreements:

The Local Agency, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

3. That the Local Agency shall insert the clauses of **Appendix A** of this assurance in every contract subject to the Act and the Regulations.

4. That the Local Agency shall insert the clauses of **Appendix B** of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereron, or interest therein.

5. That where the Local Agency receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where the Local Agency receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.

7. That the Local Agency shall include the appropriate clauses set forth in **Appendix C** of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Local Agency with other parties: (a) for the subsequent transfer of real property acquired or improved under (Name of Appropriate Program); and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under (Name of Appropriate Program).

8. That this assurance obligates the Local Agency for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Local Agency or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Local Agency retains ownership or possession of the property.

9. The Local Agency shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.

10. The Local Agency agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Local Agency under the (Name of Appropriate Program) and is binding on it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest and other participants in the (Name of Appropriate Program). The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Local Agency.

Dated_____
(Local Agency)

by_____
(Signature of Authorized Official)

APPENDIX A to Exhibit N

During the performance of this contract, the contractor, for itself, its assignees and successors in interest
(hereinafter referred to as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall 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 B of the Regulations.

(3) Solicitations for Subcontractors, Including Procurements 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 procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (Name of Local Agency) or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the (Name of Local Agency) or FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the (Name of Local Agency) shall impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

(a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
(b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract. or procurement as the (Name of Local Agency) or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a 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 (Name of Local Agency) to enter into such litigation to protect the interests of the

(Name of Local Agency), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B to Exhibit N

A. The following clauses shall he included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the
(Name of Local Agency) will accept title to the lands and maintain the project constructed thereon, in accordance
with FHWA, the Regulations for the Administration of (Name of Appropriate Program) and the policies and procedures prescribed by FHWA of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. .2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (Name of Local Agency) all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (Name of Local Agency) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which
Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the (Name of Local Agency), its successors and assigns. The (Name of Local Agency), in consideration or the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, he excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on over or under such lands hereby conveyed [and)* (2) that the (Name of Local Agency) shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of -the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may he amended and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.

APPENDIX C to Exhibit N

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the (Name of Local Agency) pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permitee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permitee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]

That in the event of breach of any of the above nondiscrimination covenants, (Name of Local Agency) shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deed.]

That in the event of breach of any of the above nondiscrimination covenants, (Name of Local Agency) shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (Name of Local Agency) and its assigns.

42. EXHIBIT O – FORM OF LOCAL AGENCY OFFER

Local Agency Offer
Project Number

In accordance with Section 7 of the Master Agreement, yr/region/CMS# ("**Master Agreement**") between the State of Colorado, Department of Transportation ("**CDOT**") and _____ ("**Local Agency**"), the authorized person signing below for Local Agency hereby submits this Local Agency Offer to CDOT for creation of a Task Order under the Master Agreement for the purpose of authorizing Local Agency for perform Work in the Flood Damaged Area identified below and receive reimbursement for such Work.

All terms not defined in this Local Agency Offer shall have the meanings given in the Master Agreement.

The Local Agency hereby approves the attached documents and incorporates them by reference for the creation of a Task Order for the Flood Damaged Area in project location(s) ("**Project Location**"):

- Task Order Scope
- Task Order Budget
- Local Agency Contract Administration Checklist
- Damage Inspection Report (Form FHWA 1547)

Completion of the Work under this Local Agency Offer is estimated to be # of weeks/months.

Pursuant to §4.L of the Master Agreement, the Local Agency contact information for the project specified in this Local Agency Offer is:

_____(name, title)
_____(address)
_____(email address)
_____(phone number)

Local Agency hereby requests the creation of a Task Order for the Project Location.

*** Person signing for the Local Agency hereby swears and affirms that he/she are authorized to act on the Local Agency's behalf (as indicated in Exhibit B of the Master Agreement) and acknowledge that the State is relying on his/her representation to that effect.**

_____
Signature of Authorized Person (Local Agency)

_____
Title

_____
Date

43. EXHIBIT P – LOCAL AGENCY OFFER AMENDMENT

Local Agency Offer Amendment
Project Number

In accordance with Section 7 of the Master Agreement yr/region/CMS# ("**Master Agreement**") between the State of Colorado, Department of Transportation ("**CDOT**") and _____ ("**Local Agency**"), the authorized person signing below for Local Agency hereby submits this Local Agency Offer Amendment to CDOT for modification of Task Order No. ____ ("**Original Task Order**") under the Master Agreement for the Flood Damaged Area in project location(s) ("**Project Location**").

All terms not defined in this Local Agency Offer Amendment shall have the meanings given in the Master Agreement and/or Original Task Order.

The Local Agency hereby requests that the Original Task Order, and all prior amendments thereto, if any, be modified as follows:

In connection with this Local Agency Offer Amendment, the Local Agency approves the attached documents and incorporates them by reference, if applicable:

- Task Order Scope
- Task Order Budget
- Local Agency Contract Administration Checklist
- Damage Inspection Report (Form FHWA 1547)

Local Agency hereby requests modification of the Original Task Order for the Project Location.

*** Person signing for the Local Agency hereby swears and affirms that he/she are authorized to act on the Local Agency's behalf (as indicated in Exhibit B of the Master Agreement) and acknowledge that the State is relying on his/her representation to that effect.**

_____
Signature of Authorized Person (Local Agency)

_____
Title

_____
Date

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: 2/4/2014
TO: City Council
FROM: Economic Development Department
PRESENTER: Mike Scholl, Economic Development Manager

TITLE:
A Motion to Authorize the City Manager to Sign an Exclusive Right to Negotiate With the Michaels Development Company, in the Form Attached to this Cover Sheet, Pertaining to the 3rd Street Redevelopment Project

RECOMMENDED CITY COUNCIL ACTION:
Adopt the motion.

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

SUMMARY:
This is an administrative action. The motion authorizes the City Manager to sign an exclusive right to negotiate with the Michaels Development Company (MDC) on the 3rd Street Redevelopment Project. The exclusive right would allow six months to define a scope of work for the project and define the financials. The City and MDC may extend the period to negotiate a development agreement if preliminary work is successfully completed.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible
The motion authorizes negotiations only.

BACKGROUND:
In October of 2013, the Michaels Development Company submitted an application to be the City's development partner on the 3rd Street Redevelopment Project. The concept for the

redevelopment was included in the City's Downtown Strategic Plan and the Downtown Vision book.

If the motion is approved, staff will commence negotiations with MDC to develop a scope of the project and financials. It is anticipated that this phase will take no more than six months. Should the negotiations yield positive results, MDC and the City may agree to extend the negotiation for an additional six months to complete a development agreement for consideration by Council.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Exclusive Right to Negotiate

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

February 4, 2014

Whitney Weller, Senior Vice President
Michaels Development Company
3 East Stow Road, Suite 100, P.O. Box 994
Marlton, NJ 08053

RE: Downtown Loveland/Exclusive Right to Negotiate

Dear Whitney,

I am pleased to inform you that after a thorough review of your response to our Request for Expressions of Interest to be the developer for the 3rd Street catalyst project, the City of Loveland would like to extend to Michaels Development Company a right of exclusive negotiation for up to 180 days subject to the terms and conditions on the following page. We look forward to negotiations and a successful development partnership.

Any development agreement negotiated by staff is subject to Council approval. If we reach an agreement, an item will be added to the Council agenda for consideration. We make no guarantees that Council will provide a favorable vote, only that it will be considered.

Thank you for your interest in investing in Downtown Loveland. Mike Scholl from the City's Economic Development Department will be the project manager for the City and will be contacting you to initiate negotiations. Again, we look forward to a successful catalyst project in Downtown.

Sincerely,

William D. Cahill, City Manager
City of Loveland

Terms of Agreement

Parties: Michaels Development Company (MDC) & the City of Loveland (City)

Terms: Both parties agree to engage in negotiations for the development of City owned property on 3rd Street between Lincoln and Cleveland Avenue. The project may include the proposed Larimer County office building on 2nd Street.

Scope of Work: At the conclusion of 180 days the parties wish to complete the following:

- Scope of work and preliminary design concept for the 3rd Street Catalyst project
- Financial analysis and cost estimate to include a sources and uses statement.
- Completion of a "term sheet" based on the information above that will serve as the basis for the Development and Disposition Agreement.

Project: The City anticipates that the project will be a market rate, mixed-use development. The project may include:

- 200,000 to 300,000 square feet of new development to include market rate residential, anchor retail and commercial office
- Multi-purpose parking structure that may incorporate Larimer County's proposed new facility
- Streetscape and infrastructure improvements

Right of Renewal: Subject to the completion of the deliverables and notice to the Loveland City Council not later than 180 days from approval, MDC and the City may extend the negotiation period for an additional 180 days for the purposes of negotiating a *Development and Disposition Agreement*.

No Contractual Obligation:

The agreement is non-binding and does not constitute a commitment to go forward with a project. Any agreement resulting from the negotiations will be subject to review and approval by the Loveland City Council.

In acknowledgment that the Michaels Development Company agrees to the terms set forth herein

Whitney Weller, Senior Vice President
Michaels Development Company

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: **5**
MEETING DATE: 2/4/2014
TO: City Council
FROM: Greg George, Department Services
PRESENTER: Karl Barton, Community & Strategic Planning

TITLE:
A Resolution Approving Amendment of the City of Loveland 2005 Comprehensive Plan, 2011 Implementation Plan by the Amendment of Section 4.7 Future Land Use Plan Map to Modify the City of Loveland Growth Management Area

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and approve the resolution.

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

SUMMARY:
This is a legislative action. The resolution amends the City of Loveland Future Land Use Plan by changing the boundaries of Loveland's Growth Management Area, removing certain properties located on the west and east sides of I-25, north of SH 402 and primarily south of the Big Thompson River. This is the final step in reaching the agreement with Johnstown that will allow Loveland to work with Larimer County to get the Loveland GMA Overlay Zoning District expanded.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
Loveland's Growth Management Area (GMA) represents land that it believes will develop some time in the future and to which Loveland is willing to extend urban level services to support that

development. Since its establishment, it has been modified from time to time in order to appropriately respond to changes in the land use and development conditions in the region.

This amendment modifies Loveland's GMA boundaries so as to remove some areas (due to access, contiguity and floodplain issues) that would probably not be annexed or cost effectively served by Loveland. These areas are located on the east and west sides of I-25, north of SH 402 and primarily south of the Big Thompson River.

This amendment is a companion to the previously approved IGA with Johnstown, designed along with an amendment of Johnstown's GMA, to eliminate areas where the two GMAs overlap, except where outlined in the IGA. Johnstown approved both the IGA and their GMA amendment on December 16, 2013.

With the approval of this amendment, the City will have achieved the agreement with Johnstown on respective GMA boundaries that is required to approach Larimer County in order to expand the Loveland GMA Overlay Zoning District to lands along the SH 402 corridor and I-25 frontage. Establishing the Overlay Zoning District is important in order for Loveland to have some control over future development along these important corridors.

The GMA amendment presented here, as well as the preceding IGA, are the results of significant cooperation and compromise between Loveland and Johnstown, undertaken with the shared goal of securing orderly development that is beneficial to both municipalities and property owners.

On July 8, 2013 the Planning Commission considered the GMA amendment and unanimously recommended it for approval.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution with Exhibit A
2. Staff Memorandum with Exhibits

RESOLUTION #R-9-2014

A RESOLUTION APPROVING AMENDMENT OF THE CITY OF LOVELAND 2005 COMPREHENSIVE PLAN, 2011 IMPLEMENTATION PLAN BY THE AMENDMENT OF SECTION 4.7 FUTURE LAND USE PLAN MAP TO MODIFY THE CITY OF LOVELAND GROWTH MANAGEMENT AREA

WHEREAS, the Loveland, Colorado 1994 Comprehensive Master Plan was recommended for City Council approval by resolution of the Loveland Planning Commission in October, 1994, and approved and adopted by resolution of the Loveland City Council in October, 1994; and

WHEREAS, the City of Loveland 1994 Comprehensive Master Plan was renamed the "2005 Comprehensive Plan" and was recommended for City Council approval by the Loveland Planning Commission in February, 2007 and amended, approved and adopted by Resolution #21-2007 of the Loveland City Council on March 6, 2007; and

WHEREAS, the City of Loveland "2005 Comprehensive Plan, 2011 Implementation Plan", resulting from a five (5) year process to update the 2005 Comprehensive Plan, was adopted by Resolution #92-2011 of the Loveland City Council on December 20, 2011 and constitutes the "City of Loveland Comprehensive Plan" pursuant to C.R.S. §31-23-206, as amended; and

WHEREAS, by unanimous vote after a duly noticed public hearing, the Loveland Planning Commission approved a motion recommending that City Council amend Section 4.7 – Future Land Use Plan Map of the City of Loveland Comprehensive Plan as necessary to reflect the adjusted boundaries proposed by the Intergovernmental Agreement with the Town of Johnstown and make additional "clean up" changes to the City's Growth Management Area ("GMA") boundaries set forth thereon; and

WHEREAS, a duly notice public hearing has been held on the proposed amendment of Section 4.7 – Future Land Use Plan Map of the City of Loveland Comprehensive Plan

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

Section 1. The City Council hereby makes the findings required by Section 6 of the Comprehensive Plan, which findings and the basis for the findings are set forth in the Planning Commission Staff Report dated July 8, 2013 and attached to the cover sheet for this Resolution, and are incorporated herein by this reference

Section 2. The boundaries of the GMA, as described in Section 4.3 of the Comprehensive Plan and depicted in Section 4.7 Future Land Use Plan Map are hereby amended

as shown on the revised Section 4.7 Future Land Use Plan Map attached hereto as **Exhibit A** and incorporated herein by reference.

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

ADOPTED this 4th day of February, 2014.

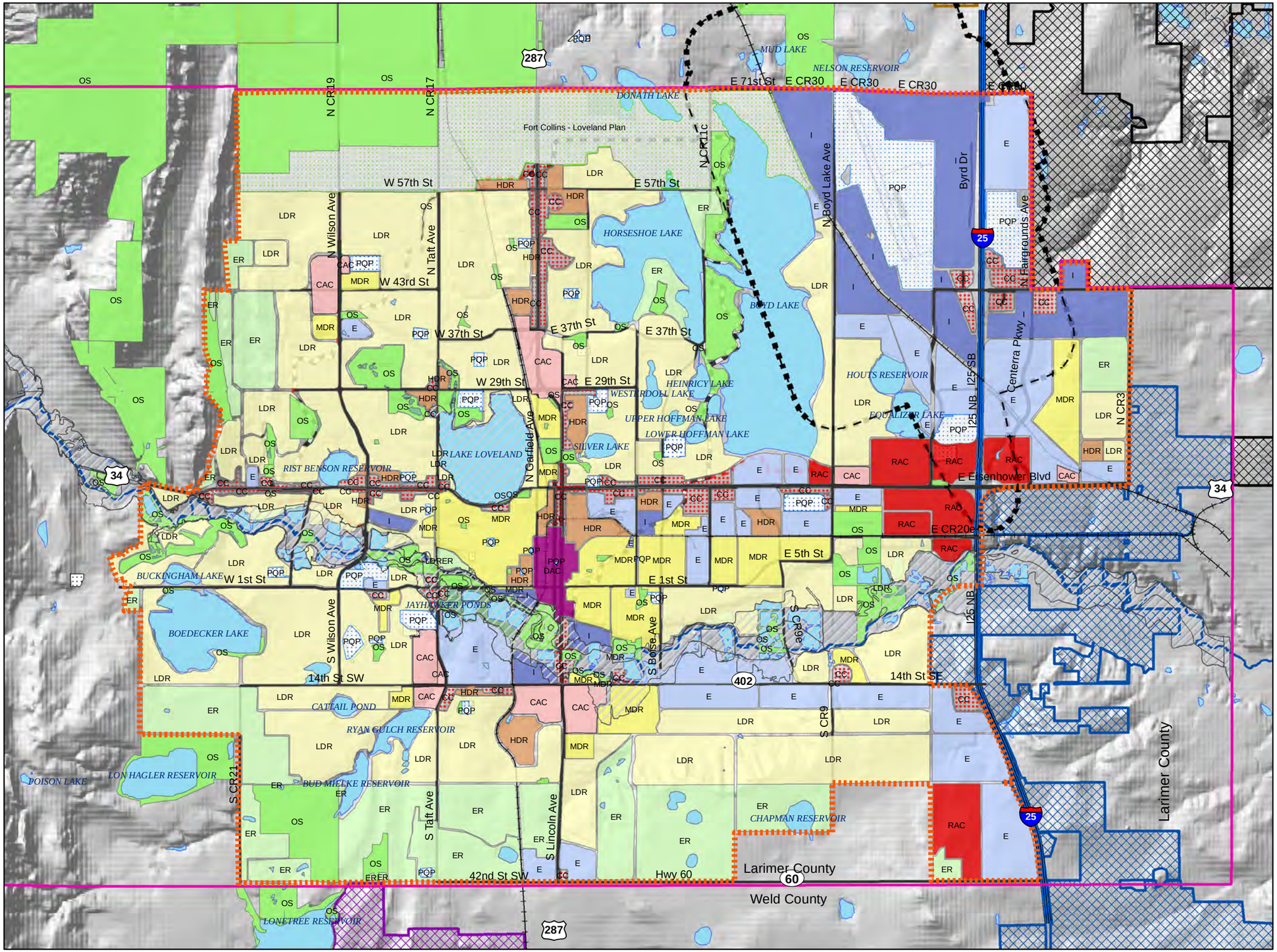
_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney



Land Use Categories

Residential Mixed-Use
- ER - Estate Residential
- LDR - Low Density Residential
- MDR - Medium Density Residential
- HDR - High Density Residential

Activity Center Mixed-Use
- RAC - Regional Activity Center
- DAC - Downtown Activity Center
- CAC - Community Activity Centers
- CC - Corridor Commercial
- E - Employment

Other Categories
- I - Industrial
- 100-Year Floodplain (FEMA)
- 100-Year Floodway (FEMA) (see note 3)
- Public Schools, Hospital, Public Facilities
- DR - Development Reserve
- Parks, Open Lands, Conservation Easements, Golf Courses and Cemeteries
- Fort Collins/Loveland Corridor Area
  Land Use generally north of 57th Street is guided by the document, "Plan for the Region Between Fort Collins and Loveland."

- Windsor City Limits
- Johnstown City Limits
- Berthoud City Limits
- Fort Collins City Limits
- Lakes and Ponds
- GMA - Growth Management Area
- CIA - Community Influence area
  For westerly boundary of the CIA - refer to the Planning Boundaries Map
- Major Streets
- Big Thompson River
- Fort Collins/Loveland Airport Influence Area (see note 2)

(1) This map is intended to serve as a guide for future land use patterns within Loveland's GMA and is advisory in nature. Land use patterns depicted on the map are generalized, recognizing that development proposals may contain a mixture of land uses and density levels which achieve the intent of the Comprehensive Master Plan. All development is subject to City standards for protection of evironmentally sensitive areas, and other performance guidelines.

(2) For details regarding appropriate land uses within the Airport Influence Area refer to section 4.6, "Airport and Surrounding Areas" of the Comprehensive Master Plan.

(3) The 100-year Floodway is displayed only within City Limits, awaiting further data.

City of Loveland

0 0.5 1 2 Miles

CITY OF LOVELAND FUTURE LAND USE PLAN

Exhibit A

City of Loveland

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: February 4, 2014

RE: Growth Management Area Boundary Amendment

I. EXHIBITS

A. Planning Commission staff report dated July 8, 2013 including
1. Current Future Land Use Map
2. Proposed Future Land Use Map

B. Planning Commission minutes dated July 8, 2013

C. Staff Power Point presentation

II. EXECUTIVE SUMMARY

This Growth Management Area (GMA) boundary amendment is the critical final step in reaching agreement with Johnstown in regards to our respective GMA boundaries. With agreement in place, we will be able to demonstrate to Larimer County that Loveland and Johnstown have resolved their GMA boundary dispute that has previously made the County reluctant to extend the Loveland GMA Overlay Zoning District into the southeast quadrant of our GMA. The Loveland Overlay Zoning District covers the other three quadrants of our GMA. With adoption of this resolution, we will now be able to approach the County and begin discussion on extending the Overlay Zoning District to appropriate properties in the SH 402 and I-25 corridors.

It is crucial to get the Overlay Zoning District in place, because without it our Intergovernmental Agreement (IGA) with Larimer County is not legally in effect and Loveland, therefore, has little to no control over development in these important gateways to the City. Without the IGA in effect, Larimer County would be able to approve re-zonings and more intensive development without having to give Loveland the chance to annex the property or require that the development conform to City standards. As the SH 402 and I-25 corridors are sure to see development in the future, not having the

IGA in place has the potential to have significant impacts on land available for Loveland's growth in the future.

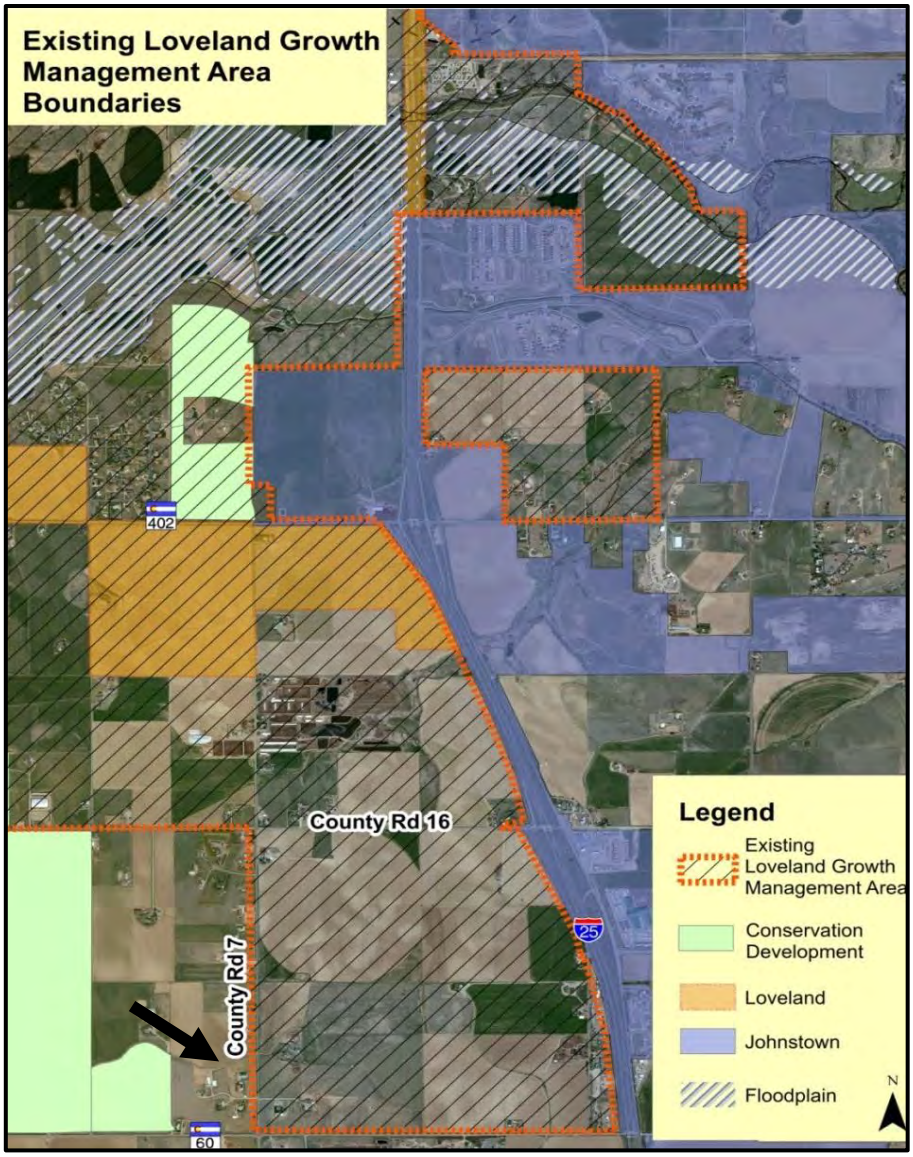
The previous step in achieving agreement with Johnstown was the Intergovernmental Agreement between the two communities that establishes a process of cooperation for processing annexation requests in an area where the GMAs of the two communities will continue to overlap. This agreement was approved by Loveland City Council on November 5th and by Johnstown Town Council on December 16th of 2013. As a companion to the IGA, Loveland and Johnstown agreed to amend their GMA boundaries to eliminate disputed areas. Johnstown approved their amendment on December 16, 2013

III. DESCRIPTION OF GMA BOUNDARY CHANGES

A. Existing Growth Management Area Boundaries

Map A shows Loveland's current GMA boundaries. Note that there is significant area surrounded by land already within the Town of Johnstown or that would be difficult to access from land within the City of Loveland or for Loveland to provide utilities.

Map A



B. Proposed Growth Management Area Boundaries

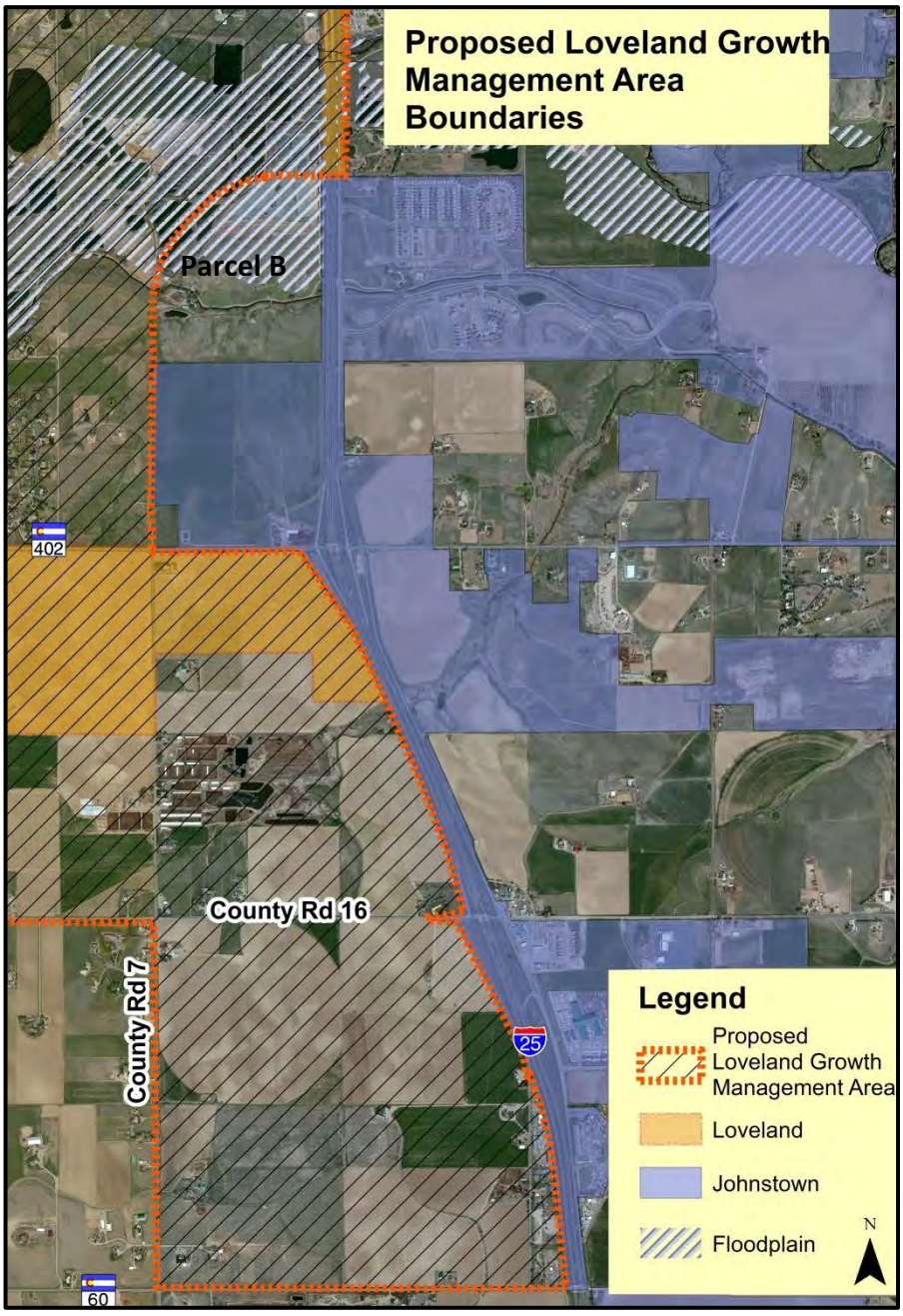
Map B on the next page shows the proposed GMA boundaries. The proposed boundary is designed to mirror the change that Johnstown made to their GMA boundaries on December 16, 2014.

The changes to Loveland's GMA boundaries shown on this map are slightly different than that approved by Planning Commission on July 8, 2013. However, the difference is a minor reduction in the amount of land being removed from Loveland's GMA on the parcel north of the Johnston property (**Parcel B**)

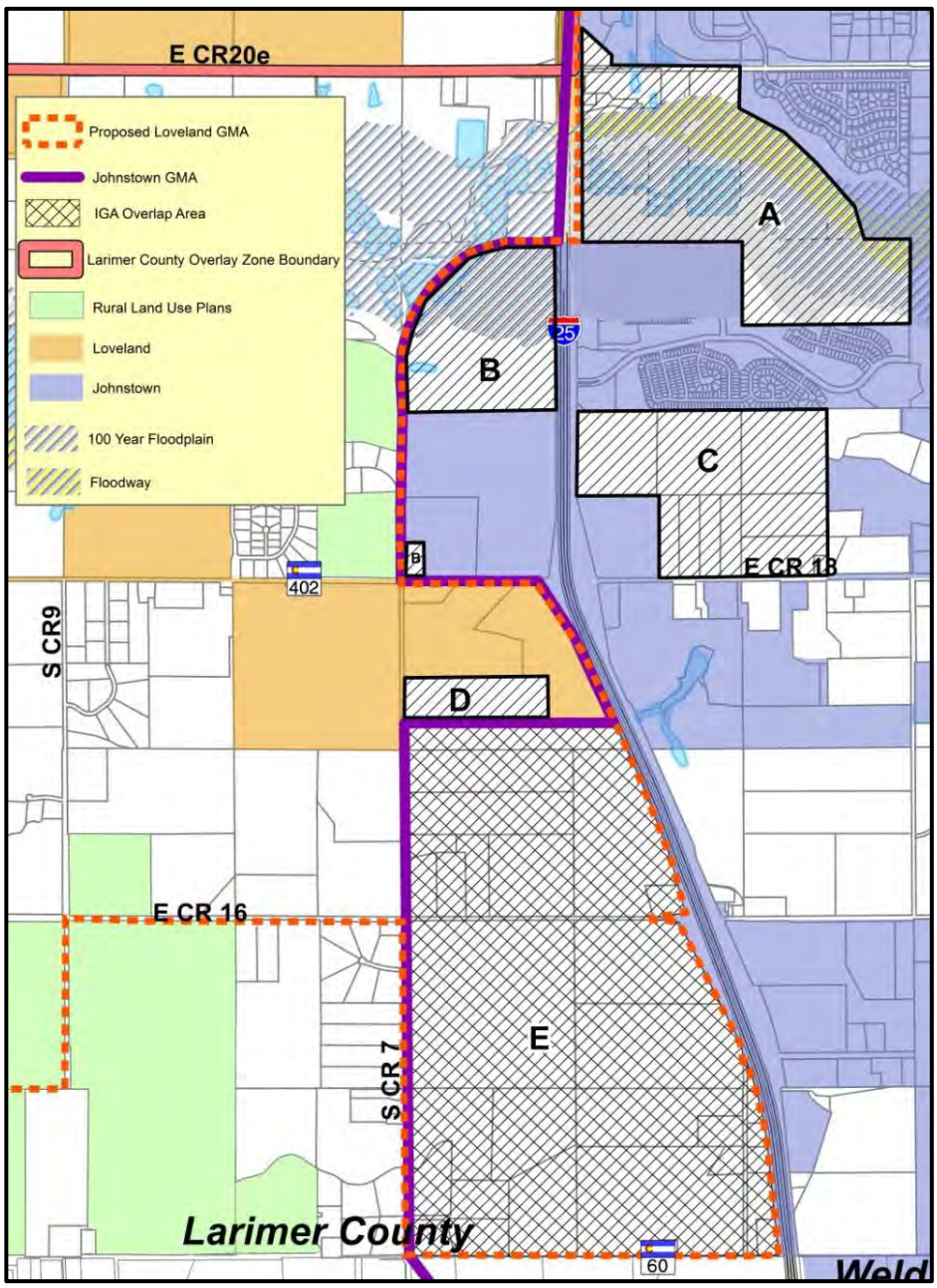
C. Parcels Affected By Changes To Growth Management Area

The changes to the GMAs of Loveland and Johnstown results in some parcel groups being removed from each, to be left solely in the GMA of the other. **Map C** on the next page depicts these parcel groups and provides a brief description of why the changes are proposed.

Map B



Map C



1. **Parcels removed from Loveland GMA:**

Parcel Group A: These parcels are almost entirely within the Big Thompson River FEMA Floodplain. Due to the configuration of the Floodplain, there is very limited development opportunity. Also, it would be very difficult for Loveland to provide utilities to these parcels.

Parcel Group B: This parcel is adjacent to and north of the Johnston property, which is the only parcel on the west side of I-25 that is currently within Johnston's city limits. Due to the location of a large conservation easement extending along the entire west boundary of the Johnston property, the only access to this parcel for future development would be through the Johnston property. The area outside the FEMA Floodplain equals approximately 43 acres

Parcel Group C: This parcel could not be annexed into Loveland due to a lack of contiguity with existing Loveland city limits.

2. **Parcels removed from Johnstown IGA**

Parcel Group D: This parcel is adjacent to and south of the Erlich property and is approximately 34 acres in size. This parcel should be in Loveland GMA due to it being contiguous to existing Loveland city limits, probable access, and utility service.

3. Parcels remaining in both GMAs:

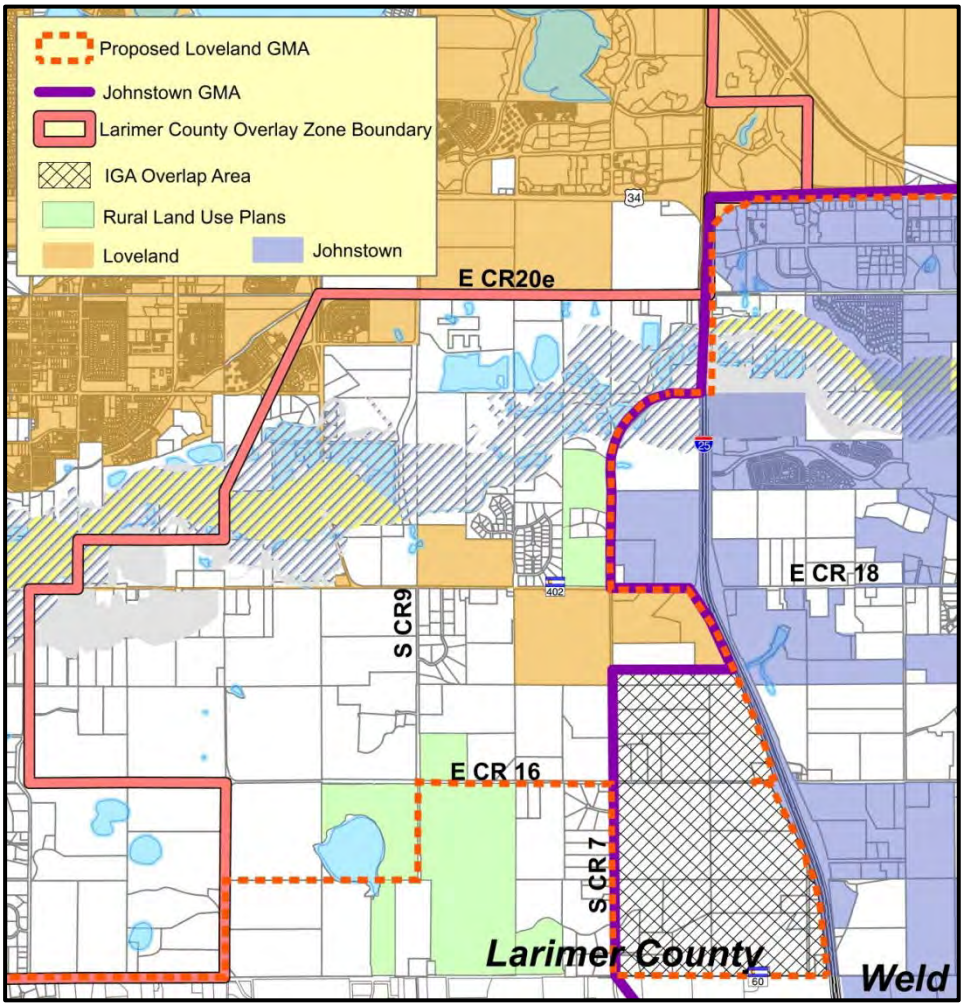
Parcel Group E: These parcels would remain in both Loveland's and Johnstown's GMAs. This area is subject to the terms of the Johnstown/Loveland IGA which has been adopted by both municipalities

These amendments were developed through a cooperative process between Loveland and Johnstown that has taken place over the last two years and involved significant work on the part of the respective staffs and managers.

IV. FINAL CONDITION

Map D shows the proposed Loveland and Johnstown GMA boundaries, the proposed GMA Overlap Area and the existing boundary of the Larimer County Overlay Zone. With adoption of this resolution amending Loveland's GMA boundary, City officials could now initiate the process with Larimer County to explore extending the Larimer County Overlay Zoning into the southeast quadrant of Loveland's GMA, providing Loveland with the opportunity to determine how the SH 402 and I-25 gateways develop.

Map D



City of Loveland

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

Planning Commission Staff Report

July 8, 2013

Agenda #: Regular Agenda - ?

Title: Intergovernmental Agreement with the Town of Johnstown *and*

Comprehensive Plan Future Land Use Plan Growth Management Area Boundary Amendment

Applicant: City of Loveland

Request: Consideration of Resolutions concerning an Intergovernmental Agreement and a City of Loveland Future Land Use Plan Amendment

Location: Generally the southeast quadrant of Loveland's Growth Management Area, north from State Highway 60 up to the Big Thompson River on both sides of I-25.

Staff Planner: Karl Barton

Staff Recommendation: Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

Recommended Motions: Move to make the findings listed in Section VII of this Planning Commission staff report dated July 8, 2013 and, based on those findings, adopt A MOTION RECOMMENDING THAT CITY COUNCIL ADOPT THE PROPOSED INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND AND TOWN OF JOHNSTOWN
and
A MOTION RECOMMENDING THAT CITY COUNCIL AMEND THE CITY OF LOVELAND "2005 COMPREHENSIVE PLAN" BY THE AMENDMENT OF SECTION 4.7 – FUTURE LAND USE PLAN MAP AS NEEDED FOR THE ANTICIPATED INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF JOHNSTOWN AND AS PROPOSED TO "CLEAN UP" LOVELAND'S GMA BOUNDARIES

Summary of Analysis

This is a public hearing to consider two separate but related items that are part of a larger strategy of cooperation with the Town of Johnstown in the handling of annexation and planning matters in the area where the two communities are adjacent.

First, an Intergovernmental Agreement (IGA) between the City of Loveland and Town of Johnstown. This IGA establishes a process for cooperation between the two municipalities when processing annexations in an area (referred to as the Overlap Area) generally being bounded by I-25 on the east, Larimer County Road 7 on the west and State Highway 60 on the south, extending north for approximately one and one half miles and defined in the IGA as the Overlap Area. Pease see Figure 1 for a depiction.

Second, an amendment to Loveland's Growth Management Area boundaries so as to remove certain properties located on the west and east sides of I-25, north of State Highway 402 and primarily south of the Big Thompson River. This amendment is being proposed as a clean-up of the GMA boundaries as it is unlikely that Loveland would be able to annex or serve any of the property being removed from the GMA. Please see Figures 2 and 3 for a depiction.

Exhibit A

Figure 1
Depiction of Overlap Area

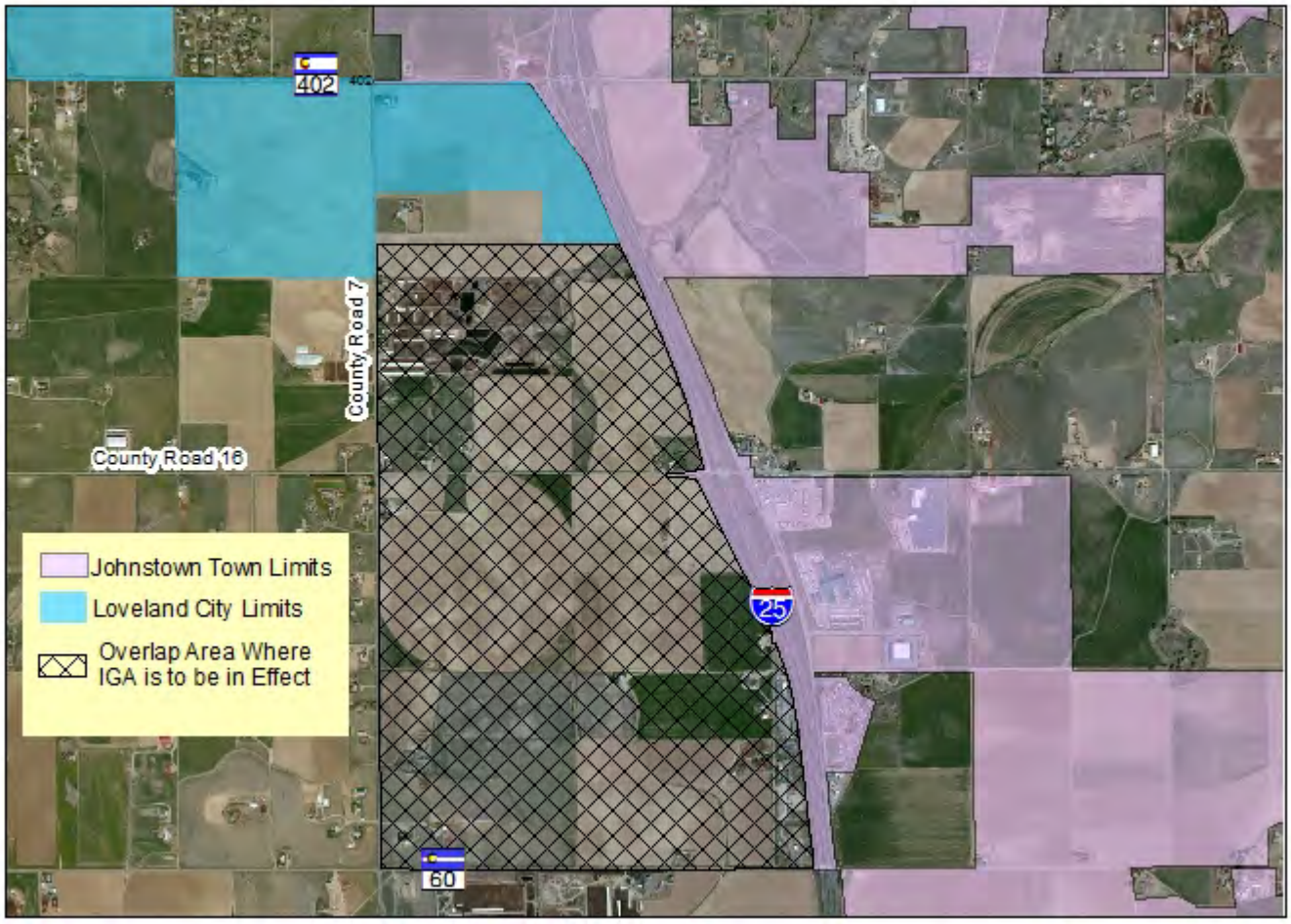


Figure 2

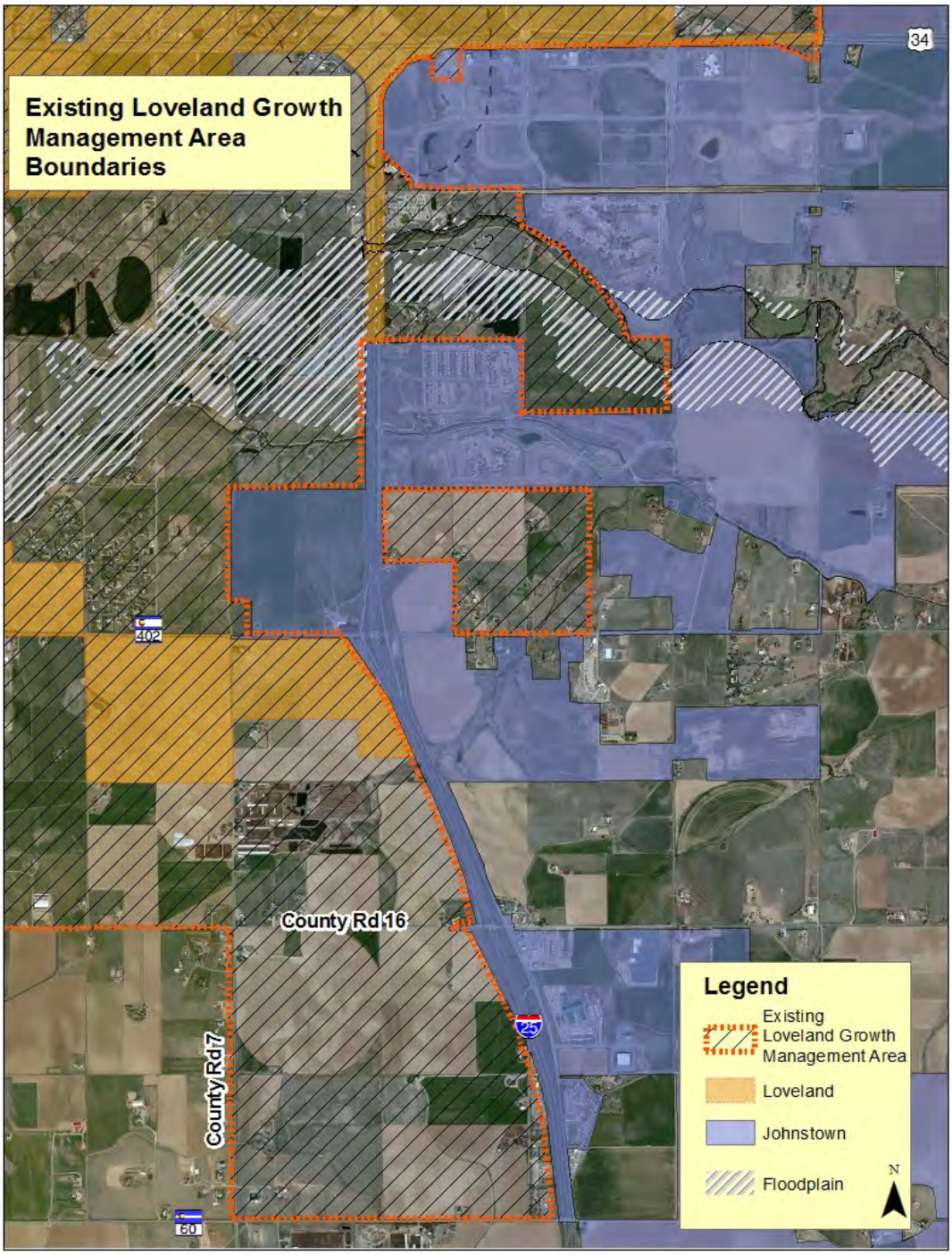
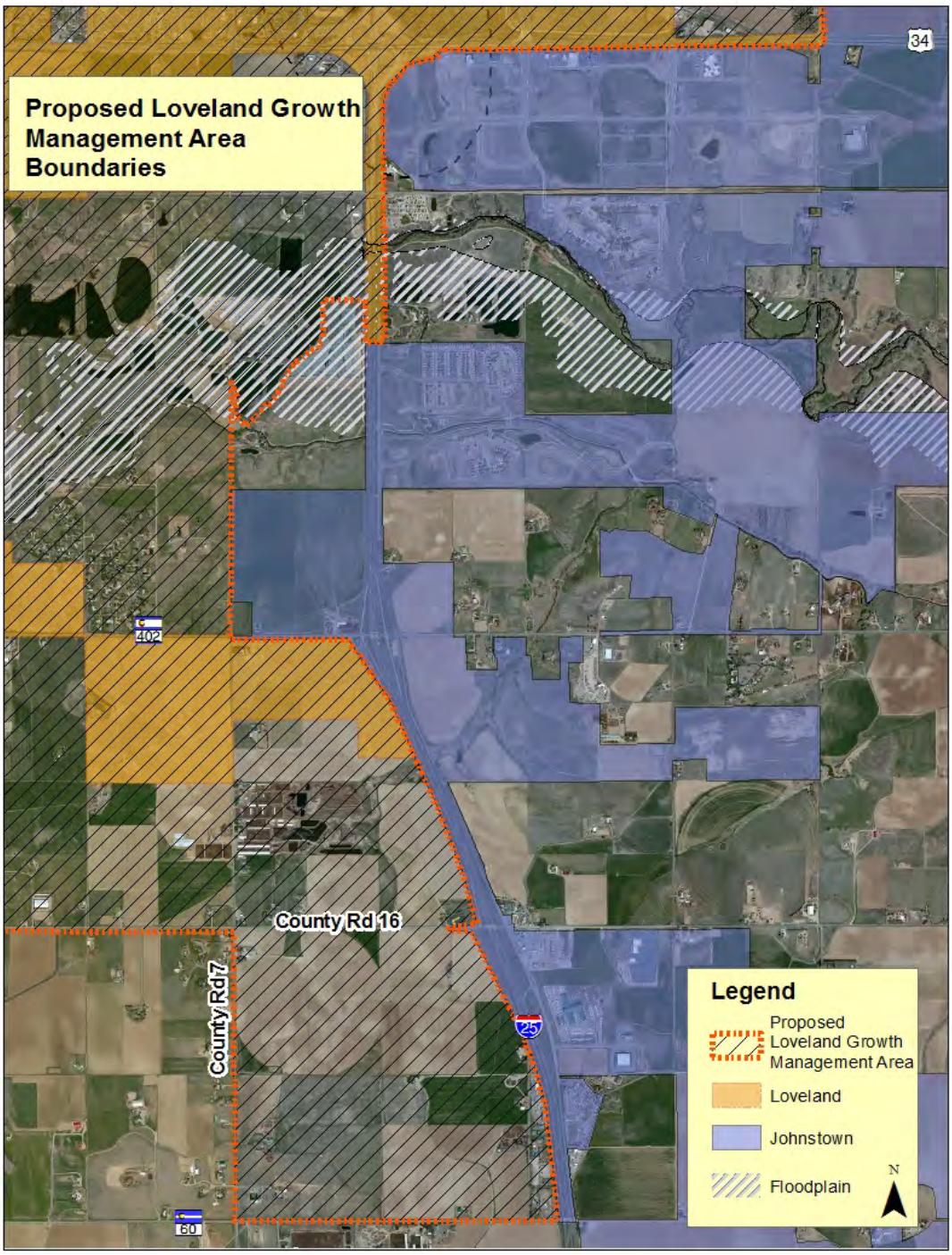

Existing Loveland Growth Management Area Boundaries
34
402
County Rd 16
County Rd 7
25
60
Legend
Existing Loveland Growth Management Area
Loveland
Johnstown
Floodplain
N

Figure 3


Proposed Loveland Growth Management Area Boundaries
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County Rd 16
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Proposed Loveland Growth Management Area
Loveland
Johnstown
Floodplain
N

I. SUMMARY

As the Northern Colorado region has grown and municipalities have annexed property to accommodate development and generate tax revenue to support it, there have been a few conflicts amongst adjacent municipalities. However, when communities are able to work together when planning for growth, there can be multiple benefits that accrue to their citizens and the region. These benefits can include harmonious land use patterns, and more efficient service and utility provision.

The Intergovernmental Agreement included here seeks to realize these benefits by creating a process of cooperation between the City of Loveland and Town of Johnstown for the processing annexation and zoning applications in what is defined in the Agreement as the Overlap Area. The Overlap Area is depicted in Figure 1 and is where the GMAs of the two communities will overlap after the proposed GMA boundary amendments.

The IGA requires meetings designed to facilitate discussion between the two communities and make a determination as to which municipality it makes the most sense for a particular property to annex into. The cooperation process begins when a landowner approaches either Loveland or Johnstown with a serious inquiry regarding annexation or an annexation petition is submitted. The decision to pursue annexation rests solely with the property owner. The IGA also contains some language that has the two communities agreeing to cooperate on other planning efforts in the Overlap Area.

The changes to Loveland's Growth Management Area are being proposed as a complementary project to the IGA. The changes to the amendments are shown by Figure 2, which has the current GMA boundaries and Figure 3 which shows the boundaries as proposed by this amendment. These changes are essentially a "clean up" amendment as the property being removed from Loveland's GMA could in the most likely scenarios not be annexed by Loveland due to previous annexations by Johnstown. Furthermore, it would be very difficult for Loveland to provide services to these properties. Also, some the property is in the floodplain of the Big Thompson River and therefore has limited development potential. Johnstown is proposing an amendment to its GMA boundary based on similar principles about which municipality it makes the most sense for a property to annex into.

Both the IGA and the GMA boundary amendments have been developed through over a year's worth of collaboration between staff and managers from Loveland and Johnstown. At this time, the IGA has been reviewed by Johnstown staff and agreement is in place on the version that is presented here. Johnstown must go through an approval process similar to Loveland's.

II. ATTACHMENTS

1. Draft Intergovernmental Agreement between the City of Loveland and Town of Johnstown
2. City of Loveland Future Land Use Map
3. City of Loveland Future Land Use Plan showing proposed amendment

Attachment 2 is the complete, current Loveland Future Land Use Plan while **Attachment 3** is the complete Future Land Use Plan with the proposed amendment included.

III. SUBSTANCE OF INTERGOVERNMENTAL AGREEMENT AND GROWTH MANAGEMENT AREA BOUNDARY AMENDMENT

Intergovernmental Agreement

The Intergovernmental Agreement establishes a process for Loveland and Johnstown to cooperate when processing annexations in the Overlap Area. **Attachment 1** is the full text of the IGA, below is a summary that contains the main points.

The Overlap Area is shown in Figure 1 and consists of those properties that will be within both the GMAs of Loveland and Johnstown after the GMA amendment proposed here and the planned Johnstown GMA amendment are approved.

The IGA is implemented when either municipality either receives a substantive inquiry regarding annexation or an annexation petition from a property owner in the Overlap Area. Per the IGA, the receiving municipality has a duty to contact the other municipality within 7 days ("Initiating Notice") to set up a meeting between the two municipalities to occur within thirty (30) days. At this meeting staff would discuss which municipality it makes the most sense for the property to be annexed into and any other agreements that may be appropriate in regards to the annexation. Within sixty (60) days of the Initiating Notice, a Three Way Meeting is to be held between the two municipalities and the property owner / Applicant. At this meeting the three parties discuss the results of the meeting between the two municipalities and how they relate to the Applicant's Plans as well as any other relevant issues.

Whichever municipality processes the annexation application shall provide notice of the public hearing to consider the application to the other municipality and shall provide opportunity for written comment.

No rights regarding annexation or land use planning, as provided by the state of Colorado, are given up by either municipality under this IGA. The municipality receiving and processing an application for annexation and zoning has the sole discretion as to whether or not to approve the application. Nor are property owners' rights impacted. The decision to apply for annexation and zoning rests solely with the property owner.

The IGA also contains agreements that Loveland and Johnstown will work together with Larimer County to establish a Growth Management Area Overlay Zoning District on properties in the Overlap Area or other areas that are within Loveland's Growth Management Area but not currently covered by said zoning district.

There are also statements that the two communities will cooperate on other planning efforts in the Overlap Area on issues such as land use plan amendments, zoning code amendments, and transportation and infrastructure.

Growth Management Area Boundary Amendment

The amendments proposed to Loveland's Growth Management Area consist of removing property from Loveland's GMA that Loveland cannot annex due to lack of contiguity to Loveland city limits or that Loveland would be highly unlikely to annex due to previous annexations by Johnstown locations unlikely to be accessed for annexation or floodplain location. In this way, this proposed amendment is functionally a "clean-up" of Loveland's GMA boundaries in preparation for cooperating with Johnstown and implementing the IGA.

See Figure 2 for a depiction of Loveland's existing Growth Management Area Boundaries and Figure 3 for a depiction of the GMA boundaries as proposed by this amendment.

Johnstown has agreed, at the staff level, to process an amendment to their Growth Management Area boundaries to remove the Ehrlich property, which has already been annexed by Loveland, and a parcel that, due to its location, is mostly likely to annex into Loveland if it ever goes through the annexation process. Johnstown's current GMA boundary is depicted in Figure 4 while the proposed amendment is depicted in Figure 5. It is intended that the Resolution that Loveland's City Council will use to approve the amendment will contain language that makes the approval contingent on Johnstown approving theirs within a certain date.

Figure 4

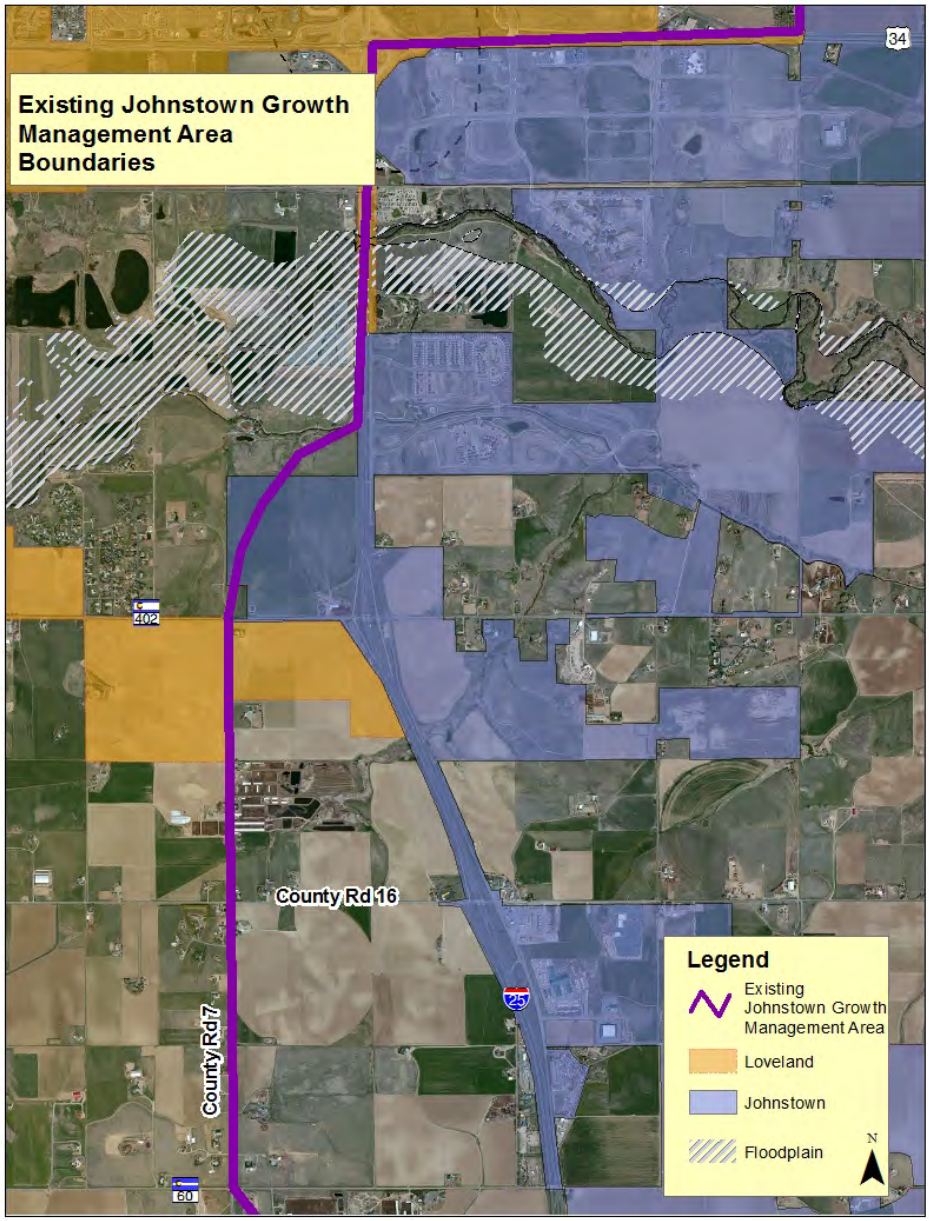
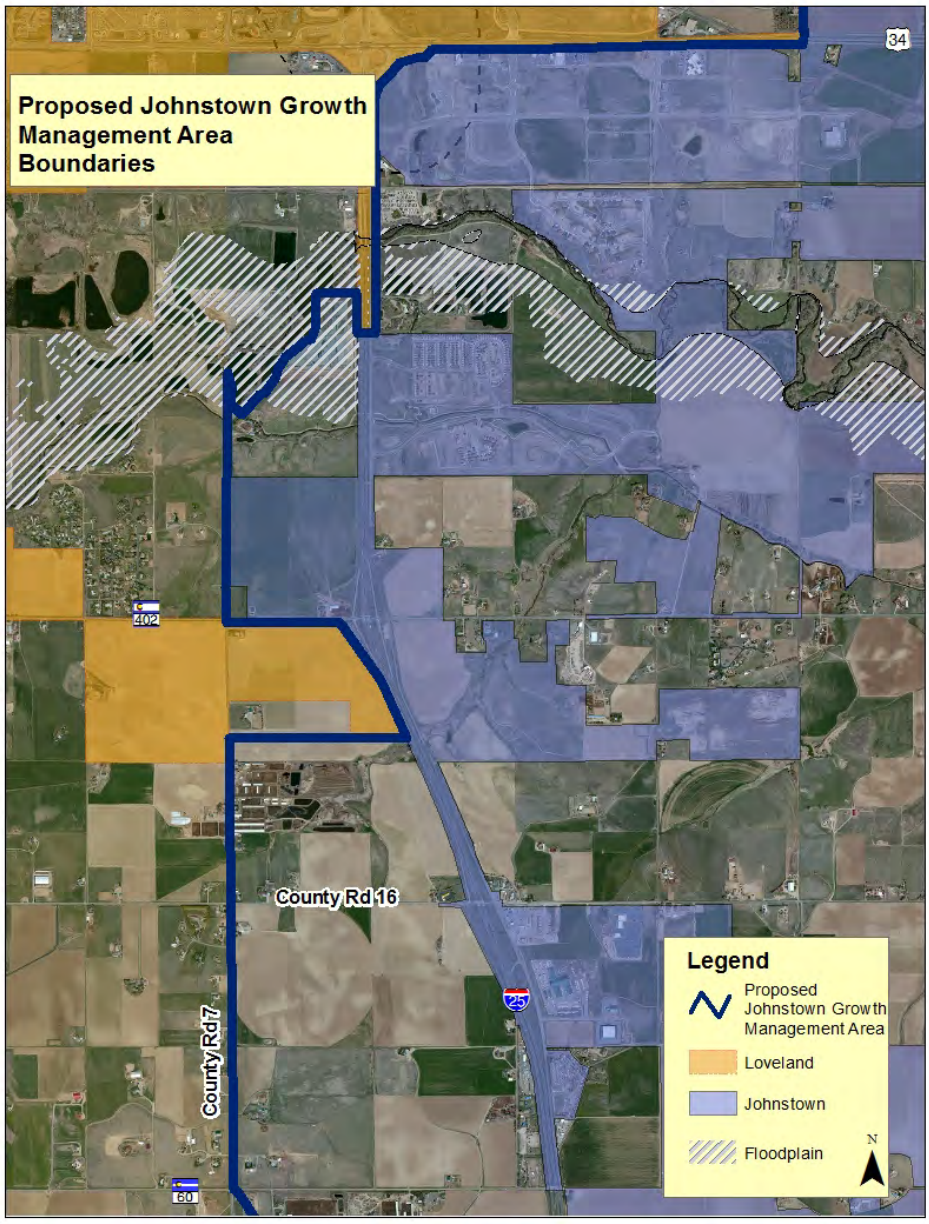


Figure 5



IV. KEY ISSUES

City staff believes that all key issues have been addressed in the amendment proposal.

V. BACKGROUND

The Intergovernmental Agreement is part of a larger suite of planning projects focused on the southeastern quadrant of Loveland's Growth Management Area and the State Highway 402 corridor. Here, Loveland and Johnstown are

cooperating to address growth management issues, specifically in the area where the GMAs of the two communities overlap (Overlap Area as defined in the IGA), but also generally where the two communities are adjacent. The first part of this suite was before you earlier this year in the form of an amendment to the Future Land Use Plan that more closely aligned Loveland's Land Use Plan with that of Johnstown. This IGA and GMA boundary amendment are the next phase.

Following this, we will be working with Johnstown and Larimer County to explore the possibility of extending the Larimer County Loveland Growth Management Area Overlay Zoning District onto properties in this area and along the 402 corridor. This zoning district sits on properties under Larimer County jurisdiction and is the mechanism by which the IGA between Loveland and Larimer County is implemented. When properties with this zoning designation approach Larimer County with a land use application that requires discretionary action on the part of the County, they are referred to Loveland to explore if annexation is possible. Previously, Larimer County has not been willing to entertain extending the Overlay Zoning District in part because the Loveland and Johnstown GMAs overlapped. With this conflict resolved through the IGA it is hopeful, though not guaranteed, that Larimer County will look more favorably on extending the Zoning District.

The final piece of this larger planning effort will for the two municipalities to collaborate in the development of a corridor plan for State Highway 402. It is essential that the question regarding the extension of the Overlay Zoning District is resolved prior to the corridor planning effort.

VI. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

1. **Notification:** All owners of property within the area of the proposed land use amendment were notified by letter sent on June 24, 2013 of this public hearing and a notice was published in the Reporter Herald on June 22, 2012.

2. **Neighborhood Outreach:** A public open house was held on June 20 with property owners to present the proposed land use amendment. The open house was held at the RV America store and property owners within the Overlap Area as well as those that were affected by the amendment to the GMA boundaries were invited. At the open house City of Loveland staff were available to present the content of the IGA and GMA boundary amendment and answer questions. The open house was attended by approximately 5 property owners. Additionally, staff has reached out to property owners, via phone and email, to see if they have any questions regarding the IGA and invite them to this Planning Commission hearing.

   This open house was not required by Chapter 6.0 - Amendment Process of the Comprehensive Plan. City staff felt it was necessary to adequately informing property owners of the IGA and GMA boundary amendment and getting their feedback.

VII. FINDINGS AND ANALYSIS FOR GROWTH MANAGEMENT AREA BOUNDARY AMENDMENT

This section contains information as the basis for making the findings required under Chapter 6 of the 2005 Comprehensive Plan to approve the proposed amendment to the Growth Management Area boundaries.

1. **Does the amendment request implement, or further, one or more of the philosophies, goals, policies, and strategies of the 2005 Comprehensive Plan?** The following Goals and Objectives relate specifically to the proposed amendment:

   a. ***Growth Management 2: Continually monitor, and revise as necessary, the Growth Management Plan to ensure that it is accomplishing the community's vision through managed growth while giving particular attention to the future community character, open space, financial, and natural resources aspects of the community.***
   The amendment being proposed is a revision to Loveland's Future Land Use Plan that has resulted from the process of monitoring the land use plan and the City's growth. Therefore, it fulfills this philosophy by addressing and accommodating anticipated change while accomplishing the community vision.

   b. ***Growth Management 3: Provide appropriate areas within the GMA with a full range of urban level services within a 20 year time frame by meeting the goals and objectives of Loveland's Growth Management Plan and associated Comprehensive Master Plan philosophies (policies) and principles.***
   This amendment proposes to remove areas from Loveland's Growth management Area. However, due to circumstances such as previous annexations, likely access points, and the floodplain of the Big Thompson River these properties would not be likely to annex into Loveland and it is unlikely that Loveland could provide the necessary services. However, in the overall scope of Loveland's Growth Management Area the properties proposed for removal are not a significant portion and there remains within Loveland's GMA sufficient land for growth in the 20 year timeframe.

   c. ***Growth Management 5: Engage in joint strategic planning efforts as appropriate, in identified Cooperative Planning Areas (CPA) with residents, landowners, adjoining municipalities and Larimer County.***
   Although the area of this proposed amendment is not located within a CPA, planners and other officials from the City of Loveland and the Town of Johnstown have been engaged for over a year in a collaboration process to create the IGA and agree to GMA boundary modifications. An open house was conducted for the owners of property within the Overlap Area and for those property owners affected by the proposed amendment to Loveland's GMA boundary. Later steps in the strategy will involve collaboration with Larimer County and broader public outreach.

   d. ***Growth Management 9: Support Larimer County Government in its effort to apply a Growth Management Area (GMA) Overlay Zoning District and supplementary regulations to the Loveland GMA.***
   Larimer County has not been willing to examine expanding the area covered by the Loveland GMA Overlay Zoning District as long as Loveland and Johnstown have not reached agreement about how to handle the overlap of their respective GMAs. The IGA and the amendment to the GMA boundaries represent the achievement of the required agreement between Loveland and Johnstown to allow them to approach Larimer County about extending the Overlay Zoning District.

   e. ***Intergovernmental Agreement 2: Maintain and enhance areas of urban development in a thoughtful and deliberate way through cooperation in land use and transportation planning, implementation of growth management policies, and the identification and preservation of open lands and natural areas.***

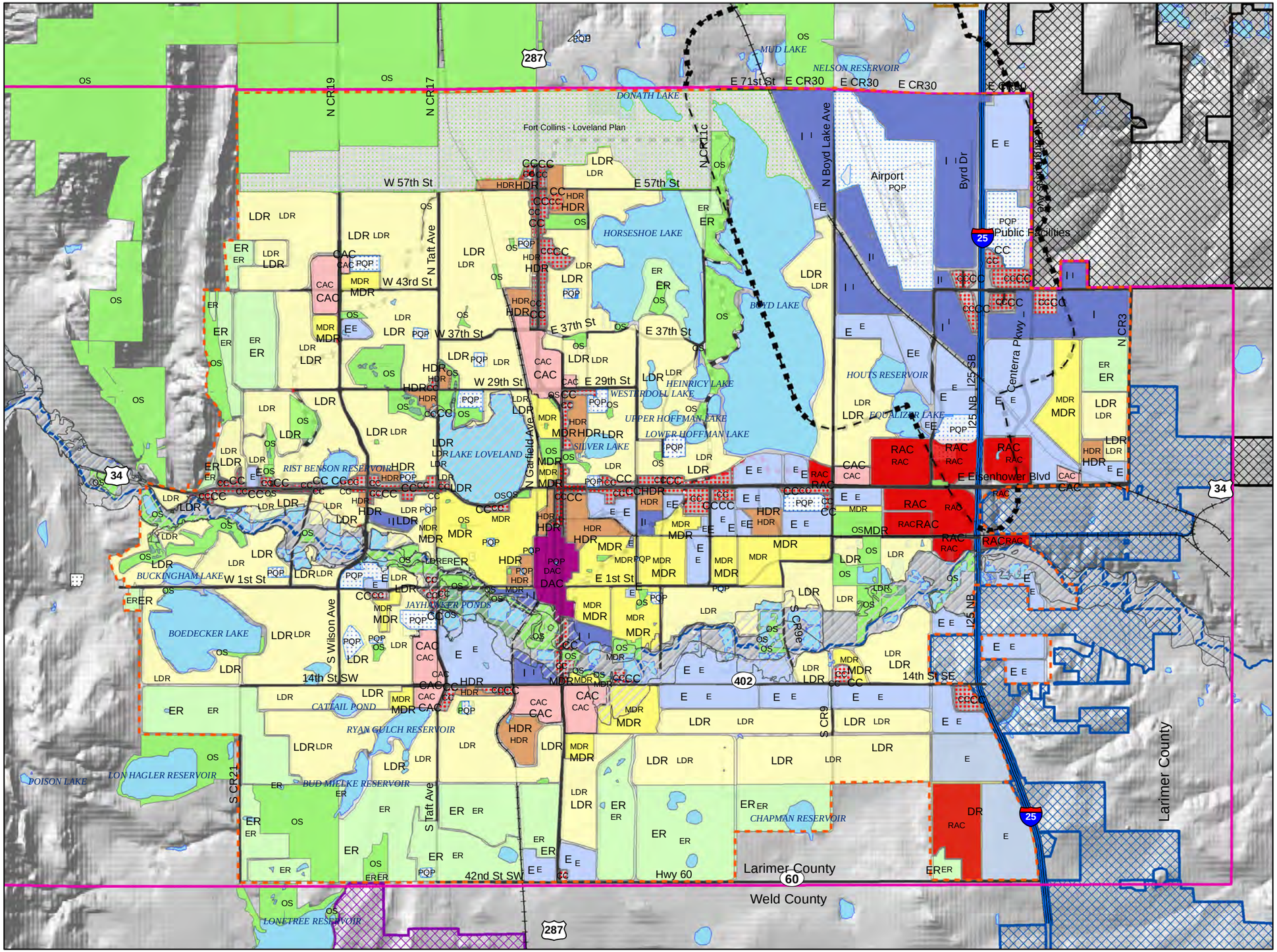
The IGA and GMA boundary amendment proposed amendment is a step in a larger strategy to promote a cooperative planning effort between the City of Loveland and the Town of Johnstown regarding land use planning, annexation, and growth management. This strategy will result in a more thoughtful, efficient and deliberate urban growth pattern.

f. ***Intergovernmental Agreement 3: Concentrate urban development in areas designated for such development.***
By promoting a cooperative planning effort with the Town of Johnstown, the IGA and GMA amendment will help to concentrate anticipated urban development in an appropriate area.

2. **Will the amendment request interfere with the existing, emerging, proposed or future land use patterns and / or densities / intensities of the surrounding neighborhood as depicted on the Land Use Plan Map and as contained within the 2005 Comprehensive Plan.**
The amendment request will not interfere with the existing, emerging, proposed or future land use patterns. While this amendment does propose removing property from Loveland's Growth Management Area, the properties will still be within the GMA of Johnstown and are therefore likely to develop in a manner that is consistent with the existing and proposed land use pattern as the future land use plans of Loveland and Johnstown are closely aligned in this area. Furthermore, the IGA creates a forum for the two communities to cooperate in the making of planning decisions. Actual development consistent with future land use plans will not occur until land owners in this area decide to annex into either the City of Loveland or the Town of Johnstown and there is a market for such development.

3. **Will the amendment request interfere with, prevent, or implement the provision of any of the area's existing, planned, or previously committed services or proposals for community facilities, or other specific public or private actions contemplated within the 2005 Comprehensive Plan?**
This amendment will not interfere with the provision of any services or community facilities. The GMA amendment and IGA will promote efficiency in planning for urban infrastructure necessary to provide services to this area in the future.

4. **Will the amendment request interfere with, prevent, or implement the provision of any of the area's existing or planned transportation system services as contemplated by the 2030 Transportation Plan?**
The amendment would allow development consistent with the 2035 Transportation Plan.



Land Use Categories

Residential Mixed-Use
- ER - Estate Residential
- LDR - Low Density Residential
- MDR - Medium Density Residential
- HDR - High Density Residential

Activity Center Mixed-Use
- RAC - Regional Activity Center
- DAC - Downtown Activity Center
- CAC - Community Activity Centers
- CC - Corridor Commercial
- E - Employment

Other Categories
- I - Industrial
- 100-Year Floodplain (FEMA)
- 100-Year Floodway (FEMA) (see note 3)
- Public Schools, Hospital, Public Facilities
- DR - Development Reserve
- Parks, Open Lands, Conservation Easements, Golf Courses and Cemeteries
- Fort Collins/Loveland Corridor Area
  Land Use generally north of 57th Street is guided by the document, "Plan for the Region Between Fort Collins and Loveland."

- Windsor City Limits
- Johnstown City Limits
- Berthoud City Limits
- Fort Collins City Limits
- Lakes and Ponds
- GMA - Growth Management Area
- CIA - Community Influence area
  For westerly boundary of the CIA - refer to the Planning Boundaries Map
- Major Streets
- Big Thompson River
- Fort Collins/Loveland Airport Influence Area (see note 2)

(1) This map is intended to serve as a guide for future land use patterns within Loveland's GMA and is advisory in nature. Land use patterns depicted on the map are generalized, recognizing that development proposals may contain a mixture of land uses and density levels which achieve the intent of the Comprehensive Master Plan. All development is subject to City standards for protection of evironmentally sensitive areas, and other performance guidelines.

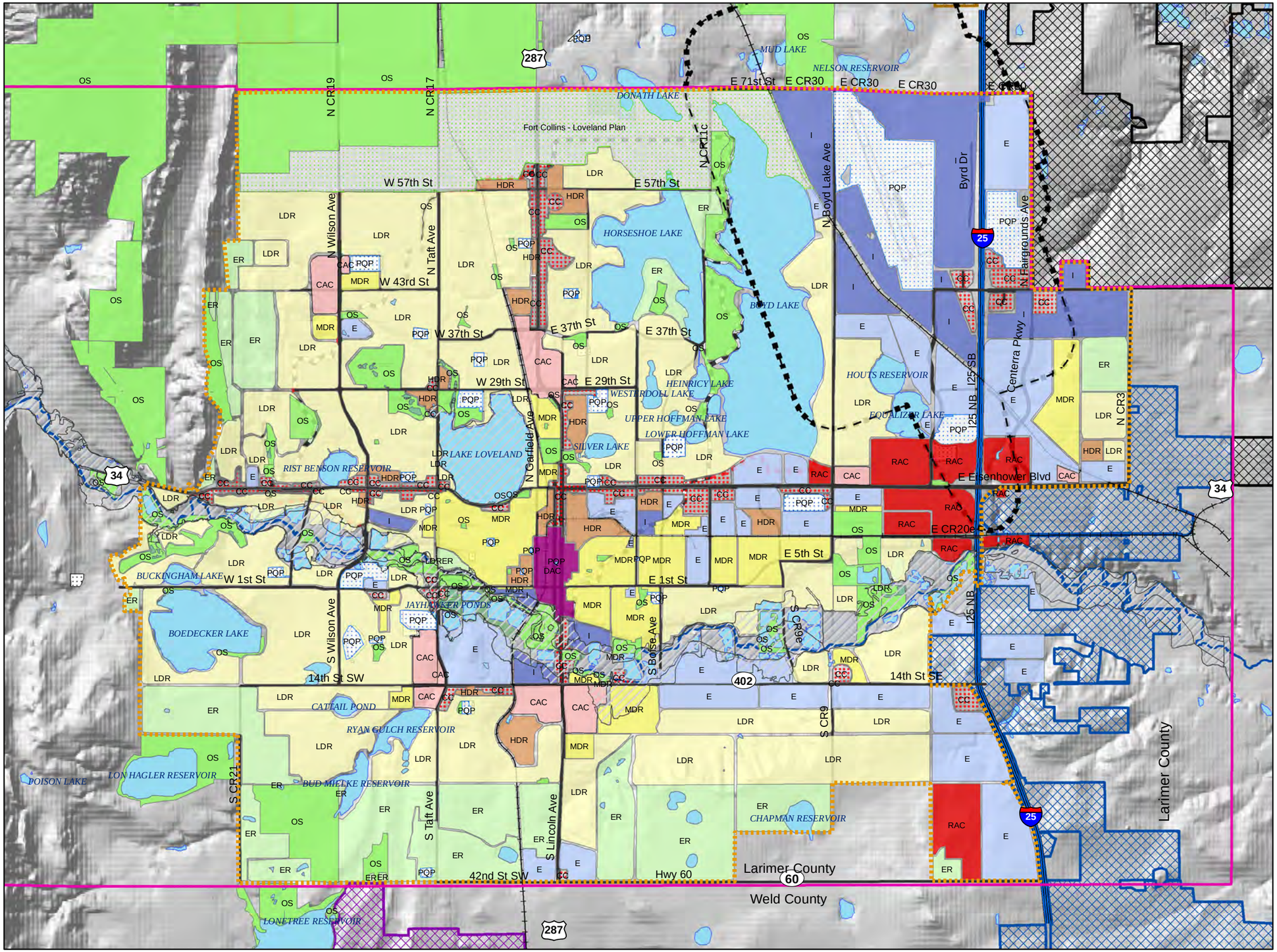
(2) For details regarding appropriate land uses within the Airport Influence Area refer to section 4.6, "Airport and Surrounding Areas" of the Comprehensive Master Plan.

(3) The 100-year Floodway is displayed only within City Limits, awaiting further data.

City of Loveland

0 0.5 1 2 Miles

CITY OF LOVELAND FUTURE LAND USE PLAN



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City of Loveland

The LOGIC System

0 0.5 1 2 Miles

CITY OF LOVELAND FUTURE LAND USE PLAN

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
July 8, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on July 8, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Dowding, and Crescibene. Members absent: Commissioners Molloy, Prior, Krenning and Ray. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney, and Karl Barton, Strategic Planning.

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

1. **Bob Paulsen, Current Planning Manager,** thanked the Commission members who attended the 06/24/13 Planning Commission Meeting simply to approve the meeting minutes from the 06/24/13 meeting. It was much appreciated.

2. **Karl Barton, Strategic Planning,** addressed the Commission to inform them of several exciting new projects that will require the Commission's time and effort in the next years to come. First is a business development plan for the U.S. 287 Highway Corridor that extends North and South, but excludes the downtown area. A decision was made to hire a consultant for this project due to limited staffing resources, and because of the time and attention it will take to complete a project of this size and scope. The focus of the plan will be to look at the development conditions along U.S. 287, and come to a determination as to what can spur private investment along the corridor in order to make it more vital. The goal is to improve the aesthetic climate along this stretch of corridor, ensure the transportation system continues to function optimally, and that the codes in place are appropriate for the conditions and development potential on the corridor. A statement of qualifications request was issued and we received responses from 9 consultant teams. Staff is currently reviewing those bids and will select 3 teams to respond to more specific requests for proposals along with a precise budget amount. The planning effort is targeted to kick off prior to the end of 2013, and continue into mid-year 2014. The second project is the 2015 Comprehensive Plan. This project has also gone through the statement of qualification process. It is a brand new Comprehensive Plan and will contain a new land use map. The objective is to determine where Loveland is now and where it will go in the future. Staff anticipates a large public outreach process during the duration of this project, as it is critical to the success of this effort. The process for choosing consultants for this work was similar to the 287 Corridor project, and Staff received proposals from 6 different planning teams. The aim is to interview the teams prior to the end of the year, and more detailed proposals will be requested once a budget has been finalized for this plan. The role of the Planning Commission will be to assist Staff and the consultant team in the creation of this plan. Staff is anticipating that the

implementation of this project will pave the way to a more useful and powerful tool in guiding the future growth of Loveland.

Mr. Paulsen assured the Commissioners that they would be kept updated with status as the projects move forward, either from himself or Karl.

3. **Mr. Paulsen** brought to the attention of the Commission that there are items on the agenda for the next two Planning Commission meetings to be held on July 22nd, and August 12th.

4. **Chair Meyers** asked Staff to prepare a ZBA update for the July 22nd or August 12th meeting.

COMMITTEE REPORTS

There were no committee reports.

COMMISSIONER COMMENTS

Commissioner Middleton thanked the City Council, Mayor, and the Loveland Fire Department for the great July 4th fireworks show over Lake Loveland. **Chair Meyers** noted that the 07/08/13 Planning Commission Meeting was the first to be streamed live online for public viewing.

APPROVAL OF THE MINUTES

Chair Meyers asked for a motion to approve the minutes from the 06/24/13 Planning Commission meeting. **Commissioner Middleton** moved to approve the minutes. Upon a second by **Commissioner Dowding**, the meeting minutes were approved four to one with **Chair Meyers** abstaining since he was absent at the 06/24/13 Planning Commission meeting.

REGULAR AGENDA

1. **Intergovernmental Agreement with Johnstown and GMA Boundary Amendment**
   This is a public hearing to consider two separate but related items that are part of a larger strategy of cooperation with the Town of Johnstown in the handling of annexation and planning matters in the area where the two communities are adjacent.

   First, an Intergovernmental Agreement (IGA) between the City of Loveland and Town of Johnstown. This IGA establishes a process for cooperation between the two municipalities when processing annexations in an area generally described as being bounded by I-25 on the east, Larimer County Road 7 on the west, and State Highway 60 on the south, extending north for approximately one and one half miles and defined in the IGA as the Overlap Area. Second, an amendment to Loveland's Growth Management Area boundaries so as to remove certain properties located on the west and east sides of I-25, north of State Highway 402, and primarily south of the Big Thompson River. This amendment is being proposed as a clean-up of the GMA boundaries as it is unlikely that Loveland would be able to annex or serve any of the property being removed from the GMA.

Mr. Barton addressed the Commission and explained that Staff is asking for recommendation of both the Loveland and Johnstown Intergovernmental Agreement (IGA) and GMA Boundary Amendment (GMA) for City Council approval. The goal is to get final approval from City Council by the August 20th Council meeting. The IGA marks a new period of cooperation and agreement between the City of Loveland and the Town of Johnstown. Regional growth in Loveland and area communities has historically caused conflict during planning and annexation pursuits. This new growth also presents possibilities for neighboring communities to work together, and allows for more harmonious land use patterns, more proficient provision of infrastructure, and other services. **Mr. Barton** presented a map to the Commission indicating adjacent areas of Loveland and Johnstown as well as the existing Growth Management Overlap Areas. The map also illustrated the Larimer County Loveland GMA Overlay Zoning District. The district represents an agreement with the City of Loveland and Larimer County that states when a landowner comes to Larimer County for a discretionary land use approval, the property owner must contact Loveland to see if annexation is possible or desirable. The area along Highway 402, and to the west side of I-25, is not covered by the overlay zoning district. The biggest reason for this omission is due to the fact that Larimer County does not want to be involved in the conflict between Loveland and Johnstown regarding the GMA overlaps. Once an agreement is accomplished, Larimer County may entertain the idea of extending the zoning district into this area. Although there is no guarantee from Larimer County, it is the hope that an approved IGA will contribute to that effort. The ultimate goal is to forge a corridor plan for Highway 402, which has been indicated as a City Council priority. The IGA itself has a geographical affected area located west of I-25 to County Road 7, north of Highway 60, south of Highway 402, but not necessarily abutting Highway 402. Given the proximity to I-25, a planned interchange at Highway 16, I-25, and State Highway 60, growth pressure should be expected; land owners will want to develop their property. The IGA allows Loveland and Johnstown to work together with the annexation applicant to make the best decision possible in relation to annexation, planning, and zoning. The IGA has a process for discussion and collaboration on other planning efforts as well. Annexation is strictly the choice of the property owner and neither municipality relinquishes any rights. **Chair Meyers** questioned whether setbacks for mineral, oil, and gas right agreements would be included in the IGA. **Mr. Barton** assured the Commission that those good faith efforts are covered in the IGA; however neither community has control over the land uses of the other. **Mr. Barton** displayed two maps, one which revealed existing GMA boundaries; the other showed the proposed GMA boundaries. The new proposed boundaries would provide a "clean up" of the GMA's and the surrounding areas by eliminating sections in the flood plains. It also would remove zones that would be too cost prohibitive for the City of Loveland to provide services to or that Loveland would not have the necessary contiguity to annex. The clean-up would provide a more accurate picture of areas that the City of Loveland expects to urbanize in the future. In return, the Town of Johnstown has agreed to relinquish the Ehrlich property from their GMA, as well as a rectangular parcel nearby. The Town of Johnstown is also presenting this IGA to their board for approval. The City of Loveland and Town of Johnstown currently has staff agreement for both the IGA and GMA's. It should be noted that a public open house was held for affected property owners. Next step for the IGA is to go before the Loveland City Council on August 20th for approval. Johnstown will follow a similar approval process and it should be communicated that both the IGA and GMA are contingent on Johnstown approval. Staff recommends that the Commission ask the City Council for approval of both these items.

Chair Meyers stated that he understood that the outreach that staff did with the open house and mailings were not required by law, but were done as a courtesy to the community. **Mr. Barton** confirmed there was no process for approving an IGA. The GMA does require a public hearing notice, and mailings and phone calls were sent to community members. In addition, a public hearing notice was published in the newspaper.

Mr. Massaro stated he understood there was a small turn out at the open house, but was curious if there was any negative feedback from the attendees. **Mr. Barton** stated that for the most part participants at the open house were curious about the IGA and GMA's, but he did not receive negative reactions.

Ms. Dowding asked what role Larimer County will play in the future process. **Mr. Barton** responded he was hopeful that Larimer County will work closely with Loveland on the overlay expansion. He explained the first step is to communicate that there is an agreement between Loveland and Johnstown, indicating that the conflict has been resolved. He acknowledged that Larimer County will be involved in any SH 402 corridor planning, and confirmed that Larimer County has been kept appraised of any planning that has already occurred.

Mr. Crescibene stated that he felt the IGA was long overdue and that it was good to see it come before the Commission. He wondered what would happen if a landowner wanted to annex their property into Loveland if their property was within the Johnstown GMA. **Mr. Barton** explained that if the landowner had contiguity, then technically Loveland would have the final decision whether to annex a property but noted that the goal of the IGA is to create a culture of cooperation between the two communities. **Mr. Paulsen** added that based on state statutory requirements, $1/6^{th}$ of a property proposed for annexation must have contiguity with existing property in Loveland in order for annexation to be considered.

Mr. Middleton thanked **Mr. Barton** for his effort and hard work that went into the creation of the IGA. He asked for the record to show that this is a public hearing; however there are no community members in the audience. He also asked if there was a shelf life for the IGA. The IGA specifically states that either community can opt out of the agreement. **Ms. Schmidt** explained that there are two provisions in the IGA; first, either party can terminate the agreement, but they must provide a year's notice. Second, the agreement is intended to run for a 10 year period and will automatically start to roll in 5 year increments unless one city or the other provides notice that they don't want it to go forward. That notice also requires a year's notice. **Mr. Middleton** clarified the question and asked how long it would take to get the agreement finalized. He said he wouldn't like to see the process drag out for 2 or 3 years. **Mr. Barton** stated that the City Council would most likely propose a timeframe for Johnstown to approve the agreement, however if it gets into a situation where it is not getting approved by Johnstown in a relatively timely fashion, it might indicate that Johnstown isn't interested in entering the IGA. **Mr. Barton** felt that was very unlikely. **Ms. Schmidt** added that IGA's typically don't contain a provision as to when it must be approved.

Chair Meyers stated he felt that in the spirit of good faith, having an expiration date in the IGA probably wouldn't be a good idea.

Mr. Massaro asked **Mr. Barton** if the IGA is on the Town of Johnstown agenda for approval. **Mr. Barton** explained that he didn't know when it would be on the Johnstown agenda, but he had been in contact with **John Franklin, Town of Johnstown Planner,** who indicated he still needed to speak with his manger regarding timing of the approval.

Mr. Massaro shared that he would be voting in favor of the IGA.

Mr. Middleton agreed that the IGA was needed and is pleased with the work done so far. He stated that he would be voting in favor of the IGA and would like to see it finalized in 120 days.

Ms. Dowding shared that she felt the IGA and GMA boundary clean-up was long overdue, and stated that both looked very solid and clean and she appreciated the effort that went into creating them.

Chair Meyers stated that the IGA demonstrated great effort on behalf of City Staff, City Managers, and City Council from both cities. He stated he was in strong support of the IGA and GMA and would be voting in support of both.

Commissioner Middleton made a motion to recommend that the City Council adopt the proposed Intergovernmental Agreement between the City of Loveland and Town of Johnstown. Upon a second from **Commissioner Dowding** the motion was unanimously approved.

Commissioner Middleton made a motion to recommend that the City Council amend the City of Loveland "2005 Comprehensive Plan" by the amendment of Section 4.7—Future land use plan map as needed for the anticipated Intergovernmental Agreement with the Town of Johnstown and as proposed to "clean up" Loveland's GMA Boundaries. Upon a second from **Commissioner Dowding** the motion was unanimously approved.

ADJOURNMENT

Vice-Chair Middleton asked for a motion to adjourn. **Commissioner Crescibene** made a motion to adjourn. Upon a second by **Commissioner Dowding**, the motion was unanimously adopted and the meeting was adjourned.

Approved by:_____
Buddy Meyers, Planning Commission Chairman

_____
Kimber Kreutzer, Planning Commission Secretary

GROWTH MANAGEMENT AREA BOUNDARY AMENDMENT

City Council

February 4, 2014

Exhibit C

Agenda

- Larger Planning Effort
- Changes: Loveland and Johnstown
- Why
- Next Steps
- Questions and Comments

Exhibit C

Larger Planning Effort

Previously

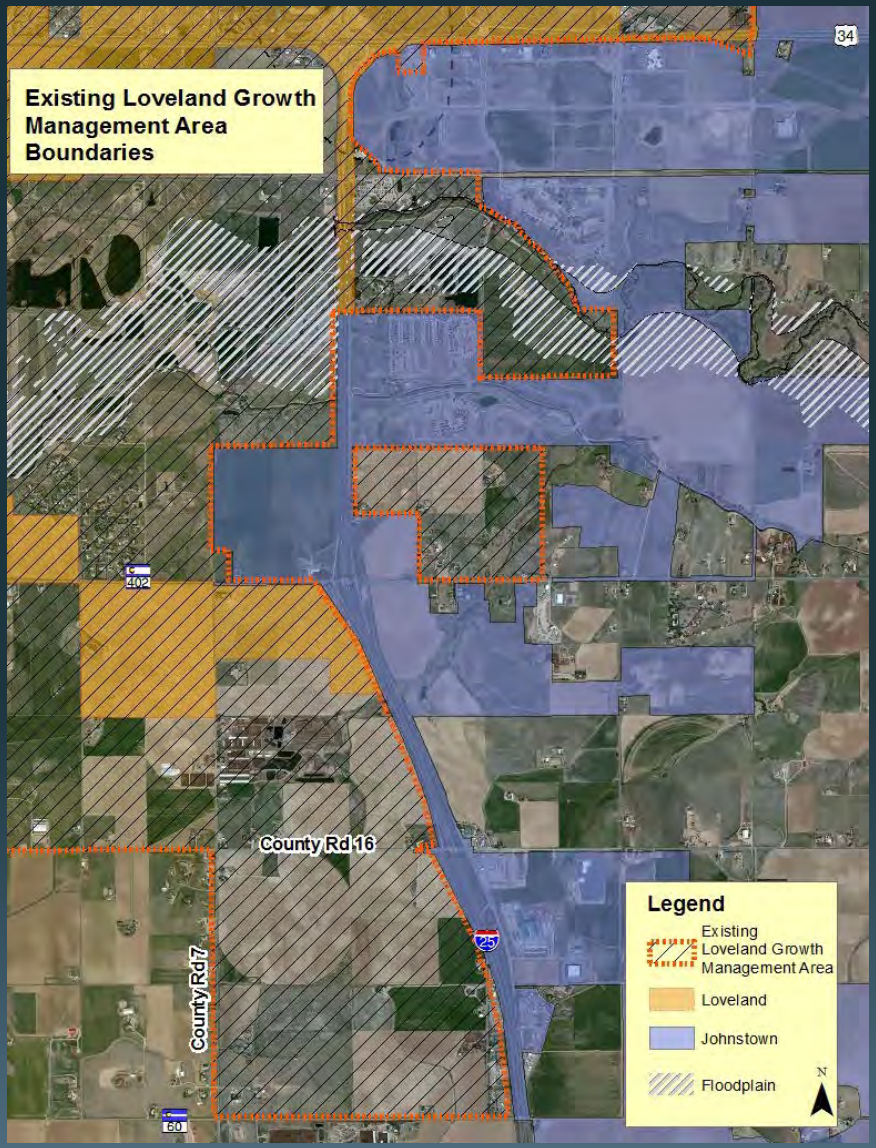
- Future Land Use Designation Amendments
- Intergovernmental Agreement – APPROVED!

Next

- Work With Larimer County: Overlay Zoning
- 402 Corridor Plan

Exhibit C

LOVELAND'S PART



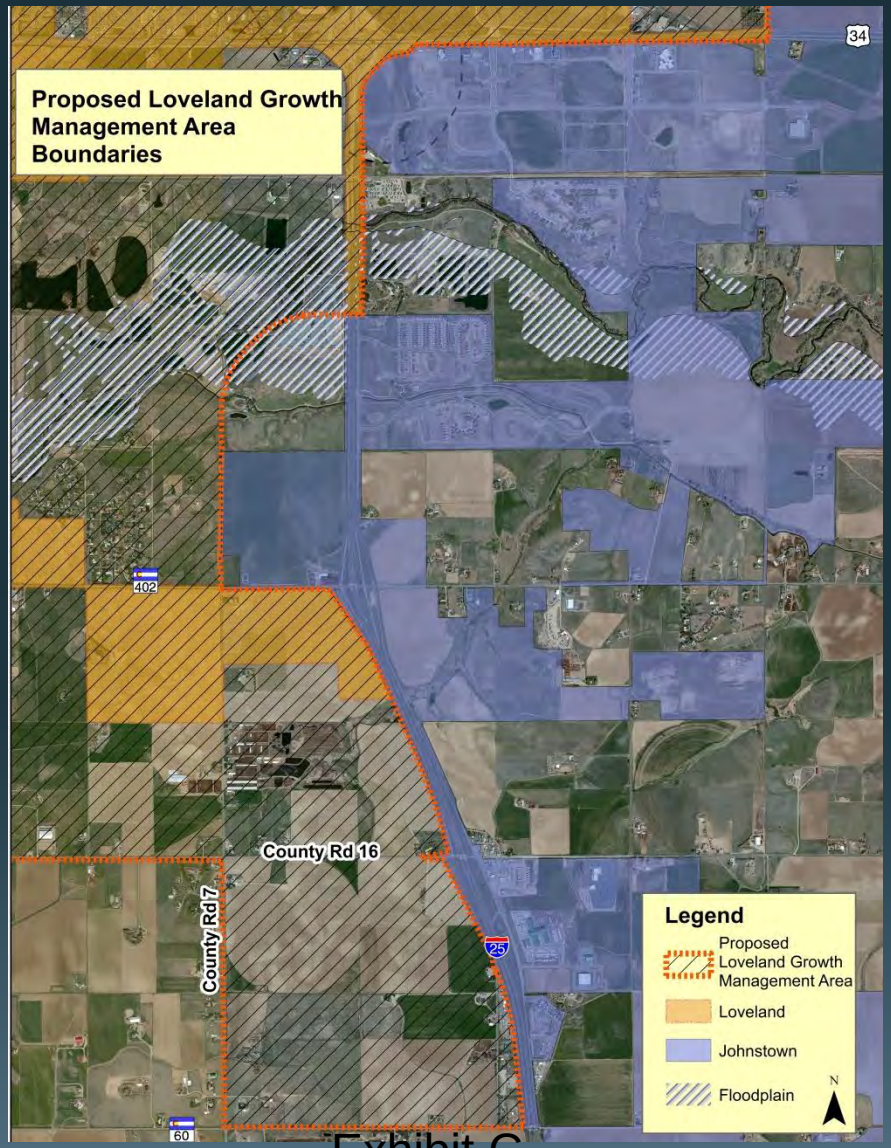
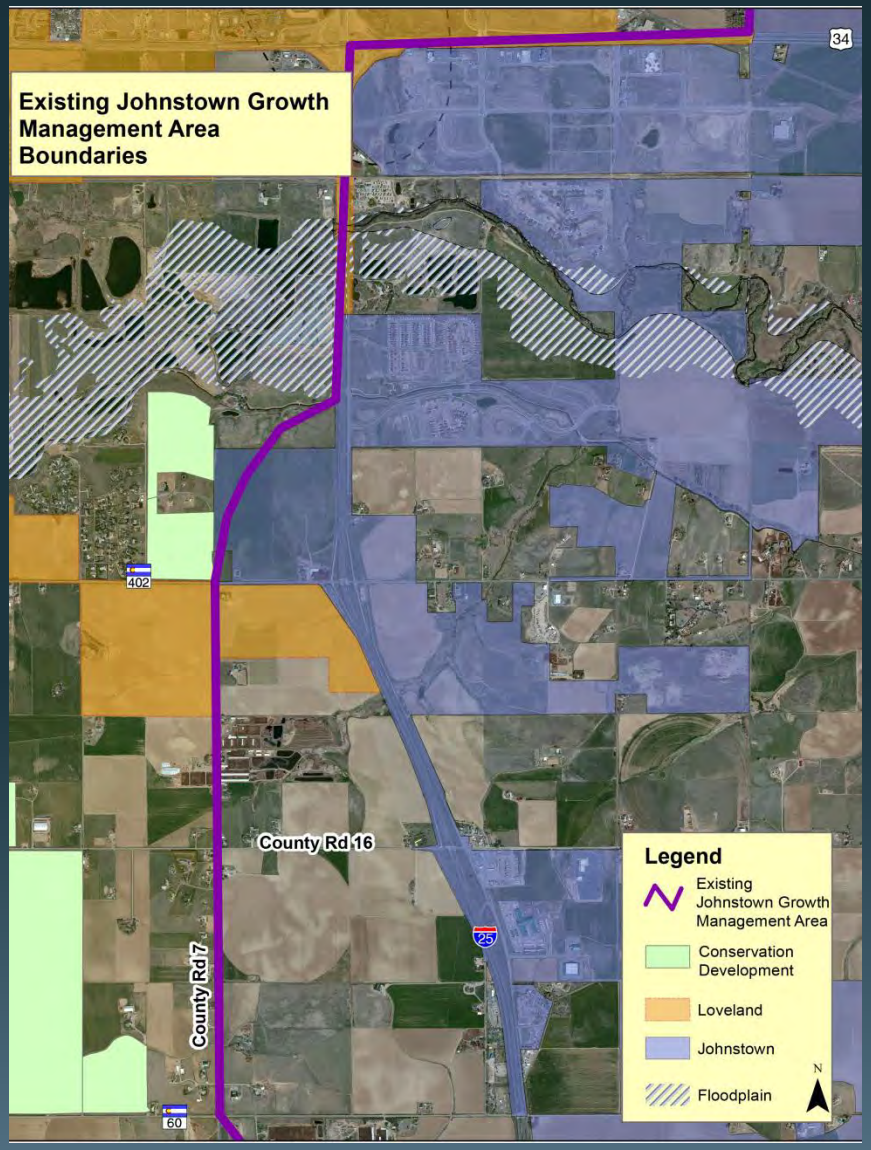


Exhibit C

JOHNSTOWN'S PART APPROVED!



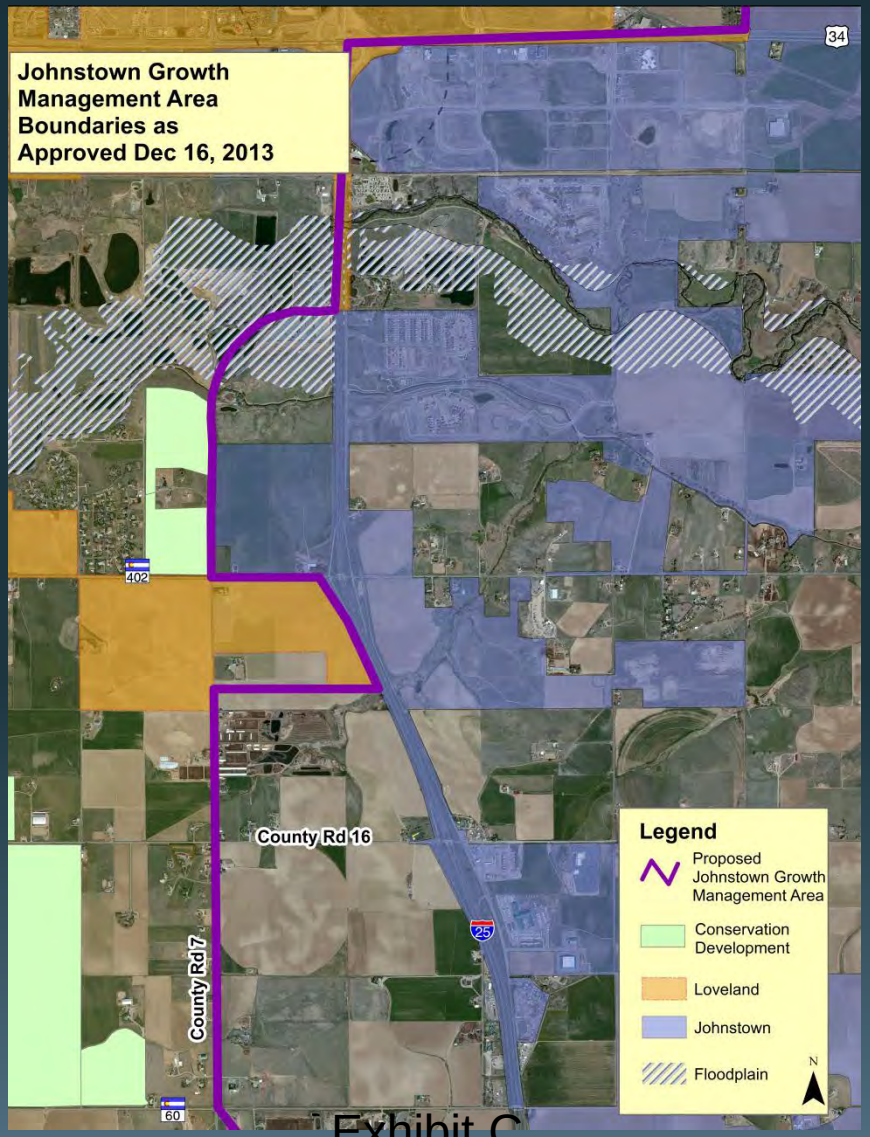


Exhibit C

WHERE WE'LL BE

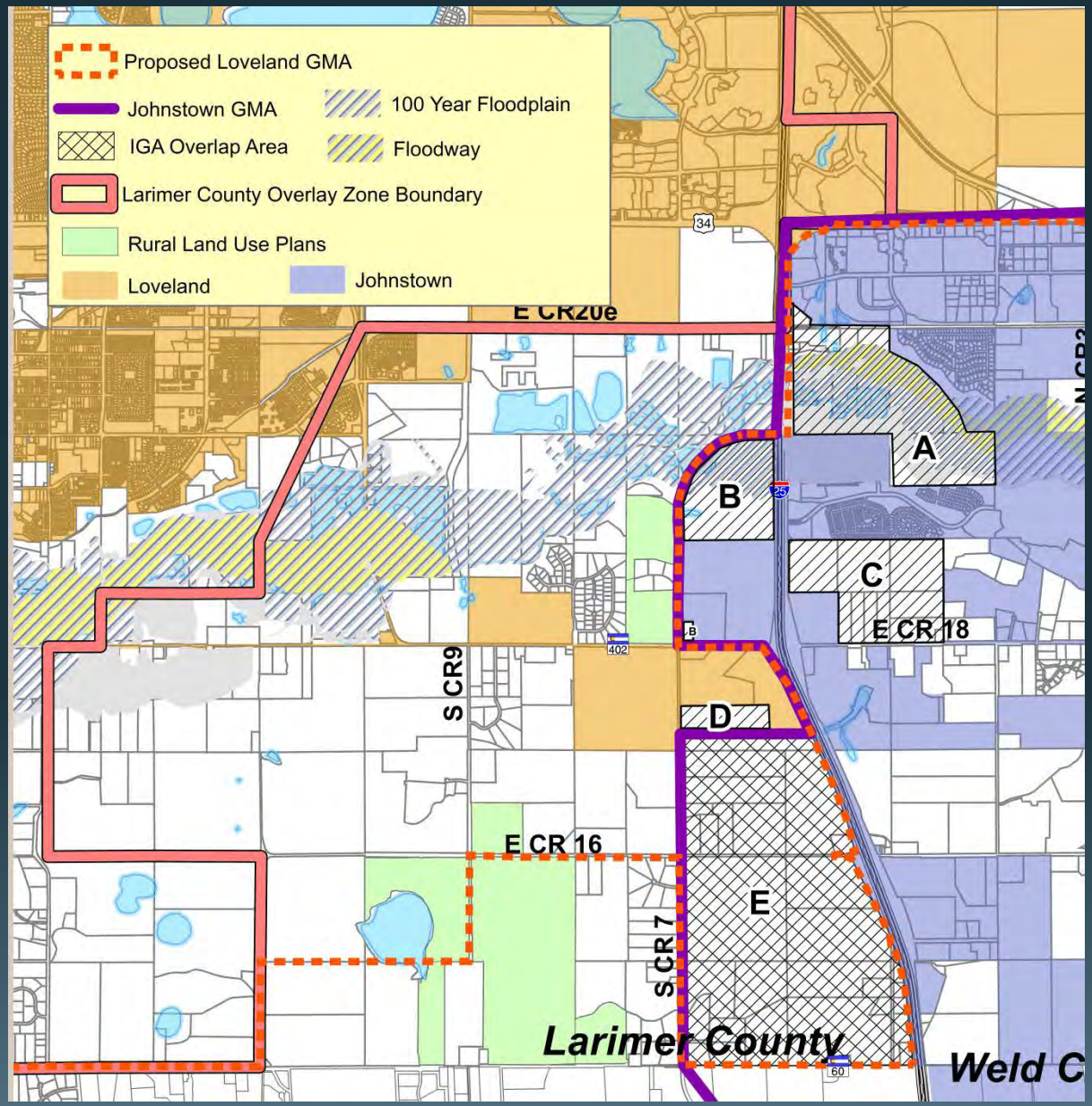


Exhibit C

Why This Is Important

- Resolve Disagreement
- Approach Larimer County: Overlay Zoning District
- Important Gateway

Next Steps

- Approach Larimer County on Overlay Zoning District

MINUTES
LOVELAND CITY COUNCIL
STUDY SESSION
TUESDAY, JANUARY 14, 20014
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

6:30 P.M. STUDY SESSION - City Council Chambers

STUDY SESSION AGENDA

ROLL CALL

Councilors present: Mayor Gutierrez, Shaffer, McKean, Farley, Taylor, Fogle, and Krenning. Councilors Clark and Trenary were absent.

1. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)

Review the Request For Expression of Interest (RFEI) by the Michaels Development Company for a Development Partnership/Exclusive Right-to-Negotiate with the City of Loveland Regarding the 3rd Street Project in Downtown Loveland

Economic Development Manager, Mike Scholl presented this item to Council to review the application by the Michaels Development Company for an exclusive right-to-negotiate with the City of Loveland for the 3rd Street Development Project, as outlined in the City's Downtown Vision Book. Vice President, Scott Puffer and Sr. Vice President, Whitney Weller were present to address Council and answer questions regarding the development of a market rate, mixed-use project in Downtown Loveland. Discussion ensued. Council directed staff to move forward after their review of the company's qualifications for developing the proposed Development Partnership/Exclusive Right-to-Negotiate. Formal consideration for entering into an agreement with Michael's Development Company will be on the agenda for the first regular meeting in February.

2. FINANCE (presenter: John Hartman)

Discussion of the Priority Based Budgeting Process, to be Incorporated into the 2015 Budget Process

City Manager, Bill Cahill presented this item to Council. Finance Staff, Brent Worthington and John Hartman were available as well. Jon Johnson and Chris Fabian from The Center for Priority Based Budgeting facilitated the discussion to review the value of the process and lay out a timeline for how each of the steps will be implemented to give Council a thorough understanding of the effort involved. During the Study Session, Council participated in "result" mapping and scoring exercises to determine the "degree" of relevance to a result. The definitions of "results" and "values and goals" are different concepts applied in different ways. The Priority Based Budgeting Process is based on the results, where "values and goals" are a means toward defining and achieving results. At the January 21, 2014, Regular meeting, the Center will facilitate a discussion with Council to develop the results expected from the programs the City provides. These results will be the basis for the process that all programs will be scored against. Council thanked staff for the presentation.

3. CITY MANAGER (presenter: Bill Cahill)

Review of Possible Topics for the City Council Workshop on January 25, 2014

City Manager, Bill Cahill introduced this item to Council. The City Council will hold its Annual Planning Workshop on January 25, 2014, at Group Publishing in Loveland. This annual event is intended for the Council to set major goals and priorities for the coming

year. Council members have submitted possible topics for discussion at this year's Workshop. Staff members have added to that list with additional items carried over from last year, which are still relevant, and other new initiatives of which staff is aware. The list of possible topics is included as Attachment 1. At the Study Session, Councilors participated in an exercise to prioritize these items for discussion on the day of the Workshop. This will allow focusing the Workshop on the topics of greatest interest to the Council. However, even the lower priority topics will be preserved in the written records of the Workshop proceedings. Mr. Cahill thanked Council for their participation.

ADJOURNMENT

Having no further business to come before Council, the January 14, 2014 Study Session was adjourned at 8:58 p.m.

Respectfully Submitted,

_____ _____

Jeannie M. Weaver, Deputy City Clerk **Cecil A. Gutierrez, Mayor**

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: **7**
MEETING DATE: 2/4/2014
TO: City Council
FROM: Keith Reester, Public Works Department
PRESENTER: Ken Cooper, Facilities Operations Manager

TITLE:
An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Service Center Expansion Project

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and approve the ordinance on first reading.

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

SUMMARY:
This is an administrative action. The ordinance on first reading appropriates funds for construction contingency on the Service Center Expansion project in the amount of $636,150.

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible

The ordinance appropriates undesignated fund balance reducing the flexibility to fund other projects. The fund balance is the result of actual revenues being higher than projected in the 2013 Budget and from projected 2014 revenue that was not appropriated in the 2014 Budget.

SUMMARY:
In August of 2013, City Council approved an appropriation to cover construction costs for the Service Center Expansion project and to award the construction contract to Golden Triangle

Construction in the amount of $12,723,060. This request is to further fund the total project cost to allow for five percent in construction contingency. The total amount requested is $636,150.

Please note this added funding will not be used to cover added project scope, but rather to cover unknown or unexpected conditions in the project. The most prominent example of this to date is for very poor soils conditions, created by the heavy rains experienced early in the project. Though the Service Center Campus did not lose operations due to the September 2013 Flood, the soils in all construction areas were severely impacted. Unexpected costs related to this situation will exceed $200,000 and include the following:

- the need for added structural fill
- the inability to reuse fill pulled from the new stormwater ditch
- heavy use of fly ash to stabilize the soils
- a curtain wall/intercept drain to dry the site, now and into the future
- delays in the construction schedule

Though the City would normally request at least ten percent in construction contingency, our project team is hopeful that five percent will be sufficient, since vertical construction is significantly underway and most of the ground issues are now resolved.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Ordinance

FIRST READING February 4, 2014

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET FOR THE SERVICE CENTER EXPANSION PROJECT

WHEREAS, the City has received and/or reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2014; 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 2014, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That revenues and/or reserves in the amount of $636,150 from current year projected revenue and fund balance in the General Government Capital Expansion Fee Fund are available for appropriation. Revenues in the total amount of $636,150 are hereby appropriated and transferred to the Capital Projects Fund 120 for the Service Center Expansion Project. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Capital Projects Fund 120

Revenues		
120-00-000-0000-37268-GF1107	Transfer from General Government CEF	636,150
Total Revenue		**636,150**
Appropriations		
120-23-250-1799-49360-GF1107	Construction	636,150
Total Appropriations		**636,150**

Supplemental Budget
General Government Capital Expansion Fee Fund 268

Revenues		
Fund Balance		636,150
Total Revenue		**636,150**
Appropriations		
268-91-902-0000-47120-GF1107	Transfer to Capital Projects Fund	636,150
Total Appropriations		**636,150**

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

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

ADOPTED this ___ day of February, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt

Deputy City Attorney

CITY OF LOVELAND
CITY ATTORNEY'S OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2540 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: **8**
MEETING DATE: 2/4/2014
TO: City Council
FROM: John Duval, City Attorney
PRESENTER: John Duval, City Attorney

TITLE:

1. A Resolution of the Loveland City Council Approving the Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement
2. A Resolution of the Loveland City Council Consenting to the Disbursement of Funds from the Centerra Metropolitan District No. 1 2008 Regional Improvements Subaccount

RECOMMENDED CITY COUNCIL ACTION:
Approve the resolutions.

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

SUMMARY:
These two resolutions are both administrative actions. The first resolution approves a Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement to designate the proposed "Parcel 505 Parking Improvements" in the Centerra development as "Local Improvements" under the Centerra MFA and to also permit Centerra Metro District No. 1 ("District") to reimburse the City for its previous construction of the "Boyd Lake Waterline" on the basis that the Fifth Amendment to the MFA recently designated Boyd Lake Avenue as a "Regional Improvement" under the MFA. The second resolution authorizes the District to use the approximately $840,000 of funds remaining in the "2008 Regional Improvements Subaccount" to be used for the construction of a wastewater lift station to serve Parcel 505 and other adjacent properties.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

The Sixth Amendment does not change in any way the current or future amount of revenues collected and disbursed under the Centerra MFA. It only expands the type of public improvements for which these revenues can be spent. The same is true with respect to the Council consenting to the requested disbursement from the 2008 Regional Improvements Subaccount.

BACKGROUND:
On January 20, 2004, the City of Loveland (the "City") and the Loveland Urban Renewal Authority ("LURA") entered into the Centerra Master Financing and Intergovernmental Agreement with Centerra Metropolitan District No. 1 (the "District"), together with other parties, (the "MFA"). Since then, the MFA has been amended five times. A sixth amendment to the MFA is being proposed (the "Sixth Amendment").

These resolutions relate to a proposed multi-user retail development in Centerra to be anchored by a Bass Pro Shops store ("Development"). The Development is planned to be located in Centerra east of I-25 on a parcel of land that is identified in the resolutions as "Parcel 505." The Development will require the construction of various public improvements.

Under the MFA, the District is authorized to fund and construct for the Development those public improvements identified in the MFA as "Local Improvements," as well as any other public improvements approved by the City Council. Although not currently defined in the MFA as "Local Improvements," the District proposes to construct, own, operate and maintain on Parcel 505 the public parking improvements needed to serve the Development and the general public. In order to do so under the MFA, the District needs the Council's consent through its approval of the proposed Sixth Amendment.

The District is also asking that the MFA be amended to allow it to use funds under the MFA to reimburse the City for the costs the City has previously incurred to build a waterline within the right of way for Boyd Lake Avenue and within part of the proposed right of way for Kendall Parkway ("Boyd Lake Waterline"). In 2003, the City and Poudre Valley Health Care, Inc. ("PVH") entered into an annexation agreement that obligated the City to build certain public improvements related to PVH's construction of Medical Center of the Rockies on the annexed land ("PVH Agreement"). The PVH Agreement obligated the City to build the Boyd Lake Waterline. The MFA defines the Boyd Lake Waterline as a "PVH Improvement" and prohibits the District from using MFA funds to pay the cost of constructing any PVH Improvements. The District is now asking that the MFA be amended to allow the District to reimburse the City for the costs it incurred to build the Boyd Lake Waterline since Boyd Lake Avenue was recently designated as a "Regional Improvement" under the MFA. This designation occurred this past November when the Council approved the Fifth Amendment to the MFA. The Sixth Amendment would allow this reimbursement.

The second resolution relates to the District's use of the balance of funds remaining in the District's "2008 Regional Improvements Subaccount," the funds from which were used under the

MFA to pay for the construction of the “Interim I-25 and U.S. 34 Interchange Improvements” and to fund, in part, the construction of the improvements for the I-25/Crossroads Boulevard Interchange. After completion of these improvements, there remains approximately $840,000 in the Subaccount. The District is proposing to use these remaining funds for its construction of a wastewater lift station to serve Parcel 505 and other adjacent properties. The Council’s consent to this use of funds as proposed in the second resolution is required under the City’s and the District’s existing agreement that these funds cannot be used by the District before October 6, 2014, without the Council’s consent. The second resolution provides this consent.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution with the Sixth Amendment attached as Exhibit A
2. Resolution approving a $840,000 disbursement from the “2008 Regional Improvements Subaccount” for a wastewater lift station to serve Parcel 505 and other adjacent properties with Exhibit A & Exhibit B.

R E S O L U T I O N #R-10-2014

A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING THE SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT

WHEREAS, on January 20, 2004, the City of Loveland (the "City") and the Loveland Urban Renewal Authority ("LURA") entered into that certain Centerra Master Financing and Intergovernmental Agreement (the "MFA"), dated January 20, 2004, with Centerra Properties West, LLC ("CPW"), Centerra Metropolitan District No. 1 (the "Service District"), Centerra Public Improvement Collection Corporation (the "PIC"), and Centerra Public Improvement Development Corporation (the "PID"); and

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereafter referred to collectively as "the Parties"; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 ("First Amendment") to include the Centerra Parkway / Crossroads Extension within the definition of "Regional Improvements" as defined in MFA Section 1.43, which First Amendment was approved by the City Council in Resolution #R-114-2006; and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 ("Second Amendment") to address various issues associated with the Mixed Use Village Center Project and to include certain parking improvements within the definition of "Local Improvements" as defined in MFA Section 1.54, which Second Amendment was approved by the City Council in Resolution #R-75-2007; and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 ("Third Amendment") to address the addition of certain real property to the URA Project Area, as defined in the MFA, and to set forth the terms and conditions pursuant to which the URA Project Area, as amended, shall benefit from property tax increment revenues generated from within the URA Project Area, which Third Amendment was approved by the City Council in Resolution #R-101-2008; and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009 ("Fourth Amendment") to address the formation of a new metropolitan district located within the URA Project Area, known as Centerra Metropolitan District No. 5, which Fourth Amendment was approved by the City Council in Resolution #R-32-2009; and

WHEREAS, the Parties entered into that certain Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 5, 2013 ("Fifth Amendment") to expand the list of Regional Improvements to include Boyd Lake Avenue from

U.S. 34 north to Kendall Parkway (37th Street), and Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast, including an underpass at Kendall Parkway and I-25, which Fifth Amendment was approved by the City Council in Resolution #R-96-2013; and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the MFA permits the funding and construction by the Service District of certain improvements identified as Local Improvements in MFA Section 1.54, and further provides that Local Improvements may also include other public improvements approved by City Council; and

WHEREAS, CPW is planning a significant multi-user retail development on Lot 2, Block 2, Millennium East First Subdivision, recorded in the Larimer County Clerk and Recorder's Office on August 13, 2004, at Reception No. 20040080052 ("Parcel 505"), located within the Commercial District; and

WHEREAS, the retail development on Parcel 505 is expected to generate significant sales tax revenues for the City, and will create many new jobs within the City; and

WHEREAS, the Service District desires to construct the public parking facilities to serve the retail development on Parcel 505; and

WHEREAS, the Service District intends to own, operate and maintain the public parking improvements on Parcel 505 for the benefit of the general public; and

WHEREAS, the Parties desire to amend the MFA to designate the public parking improvements on Parcel 505 as Local Improvements, as permitted by MFA Section 1.54; and

WHEREAS, in connection with the annexation and development of an approximately 106.8 acre parcel, located within Centerra and owned by Poudre Valley Health Care, Inc., the City, acting by and through its Water Activity Enterprise, has constructed a waterline (the "Boyd Lake Waterline") which provides or will provide water service to property located both within and without Centerra; and

WHEREAS, the Boyd Lake Waterline is located, in part, within the right of way for Boyd Lake Avenue and, in part, within the proposed right of way for Kendall Parkway; and

WHEREAS, new development in the area immediately adjacent to Boyd Lake Avenue will trigger a required reimbursement payment to the City for a portion of the costs of constructing the Boyd Lake Waterline; and

WHEREAS, the Boyd Lake Waterline is a PVH Improvement, as that term is defined in the MFA; and

WHEREAS, the MFA does not permit LURA or the Service District to pay the costs of constructing the PVH Improvements, including the Boyd Lake Waterline, if those improvements are constructed by another Governmental Authority (as defined in the MFA); and

WHEREAS, the Service District has asked the City and LURA to consider an amendment to the MFA, to permit the Service District to pay the Boyd Lake Waterline reimbursement to the City, given the designation of Boyd Lake Avenue as a Regional Improvement, and the regional benefit provided to Centerra by the Boyd Lake Waterline; and

WHEREAS, the Parties have negotiated the "Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement" attached hereto as Exhibit "A" and incorporated herein by reference (the "Sixth Amendment"); and

WHEREAS, after reviewing the Sixth Amendment, and receiving information from City staff and others, the City Council has determined that the Sixth Amendment will be in the best interests of the City and its citizens.

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

Section 1. That the City Council hereby finds that the Sixth Amendment is in the best interests of the public and will serve the public purposes of (1) providing social and economic benefits to the City; (2) furthering the City's economic goals as established in the City's economic development plan; and (3) generally benefiting the public's health, safety and welfare.

Section 2. That the Sixth Amendment is hereby approved and the Mayor is authorized and directed to execute it on behalf of the City.

Section 3. That the City Manager is authorized, as he deems necessary and in consultation with the City Attorney, to agree to minor amendments to the Sixth Amendment on behalf of the City provided that such amendments are consistent with the purposes of this Resolution and protect the City's interests.

Section 4. This Resolution shall take effect on the date and at the time of its adoption.

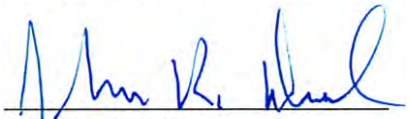
ADOPTED this 4th day of February, 2014.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

EXHIBIT "A"

SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT

SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT

THIS **SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT** (the "Sixth Amendment") is entered into this 4th day of February, 2014, by and among the **CITY OF LOVELAND, COLORADO**, a Colorado home rule municipality (the "City"); the **LOVELAND URBAN RENEWAL AUTHORITY**, a body corporate and politic ("LURA"); **CENTERRA PROPERTIES WEST, LLC**, a Colorado limited liability company ("CPW"); **CENTERRA METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "Service District"); **CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION**, a Colorado non-profit corporation (the "PIC"); and the **CENTERRA PUBLIC IMPROVEMENT DEVELOPMENT CORPORATION**, a Colorado non-profit corporation (the "PID")."

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereinafter referred to collectively as the "Parties"; and

WHEREAS, the Parties have entered into that certain Centerra Master Financing and Intergovernmental Agreement dated January 20, 2004, (together with the First, Second, Third, Fourth, and Fifth Amendments described below, referred to herein collectively as "the MFA") to provide, among other things, for the financing of "Public Improvements" and "Regional Improvements" related to the development of Centerra, as these terms in quotes are defined in the MFA; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006; and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007; and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008; and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009; and

WHEREAS, the Parties entered into that certain Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 5, 2013; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning given them in the MFA; and

WHEREAS, the MFA permits the funding and construction by the Service District of certain improvements identified as Local Improvements in MFA Section 1.54, and further

provides that Local Improvements may also include other public improvements approved by City Council; and

WHEREAS, CPW is planning a significant multi-user retail development on Lot 2, Block 2, Millennium East First Subdivision, recorded in the Larimer County Clerk and Recorder's Office on August 13, 2004, at Reception No. 20040080052 ("Parcel 505"), located within the Commercial District; and

WHEREAS, Parcel 505 is more particularly depicted in **Exhibit A** to this Sixth Amendment; and

WHEREAS, the retail development on Parcel 505 is expected to generate significant sales tax revenues for the City, and will create many new jobs within the City; and

WHEREAS, the Service District desires to construct the public parking facilities to serve the retail development on Parcel 505; and

WHEREAS, the Service District intends to own, operate and maintain the public parking improvements on Parcel 505 for the benefit of the general public; and

WHEREAS, the Parties desire to amend the MFA to designate the public parking improvements on Parcel 505 as Local Improvements, as permitted by MFA Section 1.54; and

WHEREAS, in connection with the annexation and development of an approximately 106.8 acre parcel, located within Centerra and owned by Poudre Valley Health Care, Inc., the City, acting by and through its Water Activity Enterprise, has constructed a waterline (as more particularly defined below, the "Boyd Lake Waterline") which provides or will provide water service to property located both within and without Centerra; and

WHEREAS, the Boyd Lake Waterline is located, in part within the right of way for Boyd Lake Avenue and in part within the proposed right of way for Kendall Parkway ; and

WHEREAS, new development in the area immediately adjacent to Boyd Lake Avenue will trigger a required reimbursement payment to the City for a portion of the costs of constructing the Boyd Lake Waterline; and

WHEREAS, the Boyd Lake Waterline is a PVH Improvement, as that term is defined in the MFA; and

WHEREAS, the MFA currently does not permit LURA or the Service District to pay the costs of constructing the PVH Improvements, including the Boyd Lake Waterline, if those improvements are constructed by another Governmental Authority (as defined in the MFA); and

WHEREAS, the Service District has asked the other Parties to consider an amendment to the MFA, to permit the Service District to pay the Boyd Lake Waterline reimbursement to the

City, given the designation of Boyd Lake Avenue as a Regional Improvement, and the regional benefit provided to the City and to Centerra by the Boyd Lake Waterline; and

WHEREAS, the Parties desire to amend the MFA to permit the Service District to pay the costs of constructing the Boyd Lake Waterline, via reimbursements to the City, as new development triggers such reimbursement obligations; and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the Loveland City Council approved this Agreement in Resolution _____ and also approved it sitting as the LURA's governing body in Resolution _____.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

DEFINITIONS

1. That unless the context clearly indicates otherwise, all capitalized terms used in this Sixth Amendment shall have the meaning given to them in the MFA.

2. That for purposes of this Sixth Amendment, the term "Boyd Lake Waterline" shall mean that certain 24" and 16" waterline originally constructed by the City, acting by and through its Water Utility Enterprise, pursuant to the PVH Agreement and as more particularly depicted on **Exhibit B** to this Sixth Amendment, attached hereto and incorporated herein by reference.

3. That for purposes of this Sixth Amendment, the term "Parcel 505 Parking Improvements" shall mean the public parking facilities to be constructed and owned by the Service District, to serve the retail development on Parcel 505, within the Commercial District, as generally depicted on **Exhibit C** to this Sixth Amendment, attached hereto and incorporated herein by reference.

PARCEL 505 PARKING IMPROVEMENTS

4. That the first sentence of Section 1.54 of the MFA shall be amended to include the Parcel 505 Parking Improvements, but shall remain unchanged in all other respects.

5. That Section 1.80 of the MFA shall be amended to read in full as follows:

1.80 **"Private Parking"** shall mean and refer to any parking improvements required by City Regulations to serve, in whole or in part, a Private Improvement, except the parking improvements for the Lifestyle Center, which are to be owned by the Service District or the Commercial District, which improvements are depicted on **Exhibit E** to the MFA, and the Parcel

505 Parking Improvements, which are to be owned by the Service District or the Commercial District, which are depicted on **Exhibit C** to this Sixth Amendment.

BOYD LAKE WATERLINE

6. That the final paragraph of Section 1.57 of the MFA shall be amended to read in full as follows:

The Metro District Improvements shall include the PVH Improvements, but only to the extent the PVH Improvements, as a result of the termination of the PVH Agreement, are not Constructed by any other Governmental Authority; provided, however, the Boyd Lake Waterline shall be considered a Metro District Improvement notwithstanding the fact that the Boyd Lake Waterline was originally installed by the City.

7. That Section 4.2 of the MFA shall be amended to read in full as follows:

4.2 PVH Improvements. Neither the LURA nor the Service District shall Construct, or pay the cost of constructing, any Public Improvements within Centerra that any other Governmental Authority is obligated to Construct, and/or pay the cost of Constructing, pursuant to the PVH Agreement, so long as the PVH Agreement remains in effect; provided, however, the Service District shall be authorized to make reimbursement payments to the City to reimburse the City for all or a portion of the City's costs in constructing the Boyd Lake Waterline as required by City Regulations.

MISCELLANEOUS

8. That the City, LURA, and the Service District each finds and determines that the execution of this Sixth Amendment is in the best interest of the public health and general welfare of the City, LURA, and the Service District respectively, and that it will serve the public purposes of providing significant social and economic benefits to the City, LURA, and the Service District.

9. That except as expressly provided in this Sixth Amendment, all other terms and conditions of the MFA shall remain unchanged and in full force and effect.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties have executed this Sixth Amendment or counterpart copies thereof as of the date first written above.

CITY OF LOVELAND, COLORADO, a Colorado municpal coporation

By: _____
Cecil Gutierrez, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LOVELAND URBAN RENEWAL AUTHORITY,
a Colorado body corporate and politic

By: _____
Cecil Gutierrez, Chairman

ATTEST:

By: _____
_____, Secretary

APPROVED AS TO FORM:

_____
City Attorney

CENTERRA METROPOLITAN DISTRICT NO. 1,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Kim L. Perry, President

ATTEST:

By: _____
Tom Hall, Secretary

CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION, a Colorado non-profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PUBLIC IMPROVEMENT DEVELOPMENT CORPORATION, a Colorado non-profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PROPERTIES WEST, LLC
a Colorado Limited Liability Corporation

By: McWhinney Real Estate Services, Inc.,
a Colorado Corporation, Manager

By: _____
Douglas L. Hill, Executive Vice President

EXHIBIT A

Parcel 505

DRAWING NUMBER 6 of 8

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
RECYCLED BY PART NUMBER 65552
PANTONE 656U Or PRINT ON THIS LINE

DRAWING NUMBER 4728

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
RECYCLED BY PART NUMBER 65552
PANTONE 656U Or PRINT ON THIS LINE

DRAWING NUMBER 6 of 8

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
RECYCLED BY PART NUMBER 65552
PANTONE 656U Or PRINT ON THIS LINE

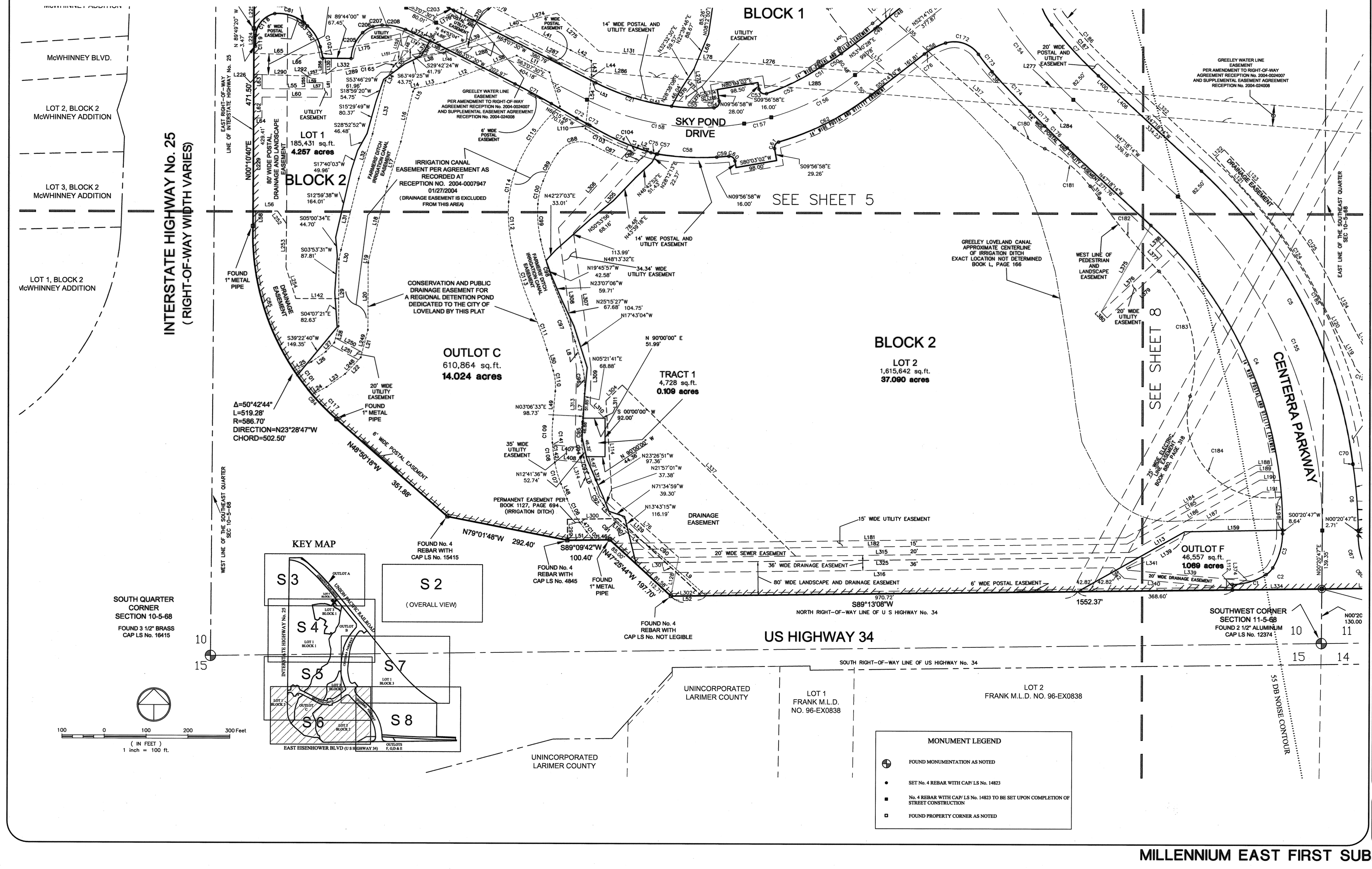
DRAWING NUMBER 4728

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
RECYCLED BY PART NUMBER 65552
PANTONE 656U Or PRINT ON THIS LINE

S:\Survey Jobs\CEP\DWG\CEP FINAL PLAT.dwg

MILLENNIUM EAST FIRST SUBDIVISION

BEING A SUBDIVISION OF TRACT A, McWHINNEY ADDITION AND PARCELS B-1, B-2, B-3, B-4 AND C, MILLENNIUM ADDITION, EAST REGION, LOCATED IN SECTIONS 10 AND 11, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.



MONUMENT LEGEND

- FOUND MONUMENTATION AS NOTED
- SET No. 4 REBAR WITH CAP/ LS No. 14823
- No. 4 REBAR WITH CAP/ LS No. 14823 TO BE SET UPON COMPLETION OF STREET CONSTRUCTION
- FOUND PROPERTY CORNER AS NOTED

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown hereon.

SECTIONS:10&11 | TOWNSHIP: 5 N | RANGE: 68 W

NORTHERN ENGINEERING SERVICES, INC.
420 South Howes Street, Suite 202, Fort Collins, Colorado 80521
Phone: (970) 221-4158 Fax: (970) 221-4159
www.northernengineering.com

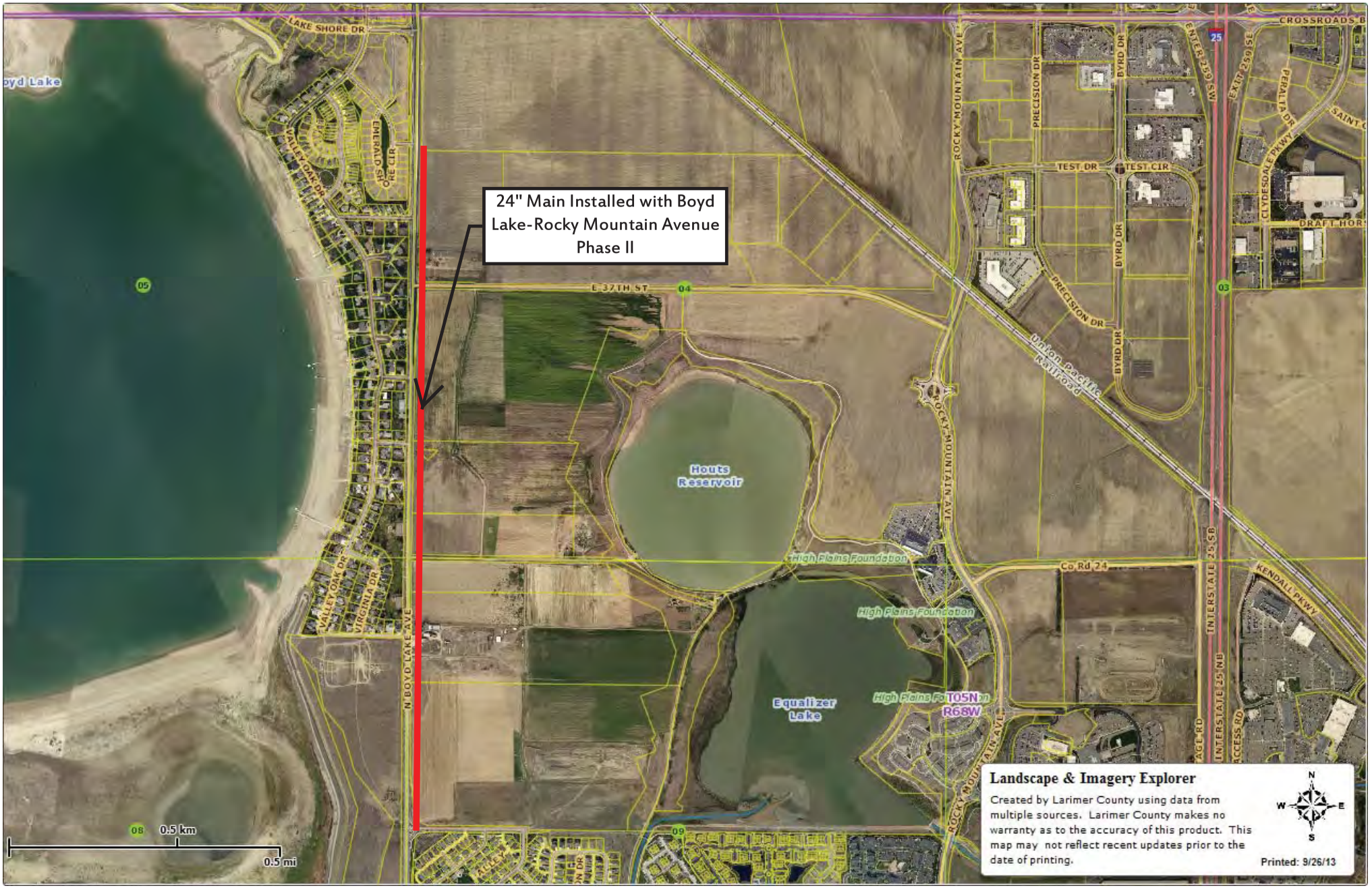
PROJECT: CEP: 03-214 | DATE: 06/21/04
CLIENT: McWHINNEY | SCALE: AS SHOWN
DRAWN BY: JAA | REVIEWED BY: C. Gilliland

MILLENNIUM EAST FIRST SUBDIVISION
CITY OF LOVELAND

Sheet 6 / 8 Sheets

EXHIBIT B

Depiction of Boyd Lake Waterline


24" Main Installed with Boyd Lake-Rocky Mountain Avenue Phase II
Houts Reservoir
Equalizer Lake
T05N R68W
Landscape & Imagery Explorer
Created by Larimer County using data from multiple sources. Larimer County makes no warranty as to the accuracy of this product. This map may not reflect recent updates prior to the date of printing.
Printed: 9/26/13
0.5 km
0.5 mi

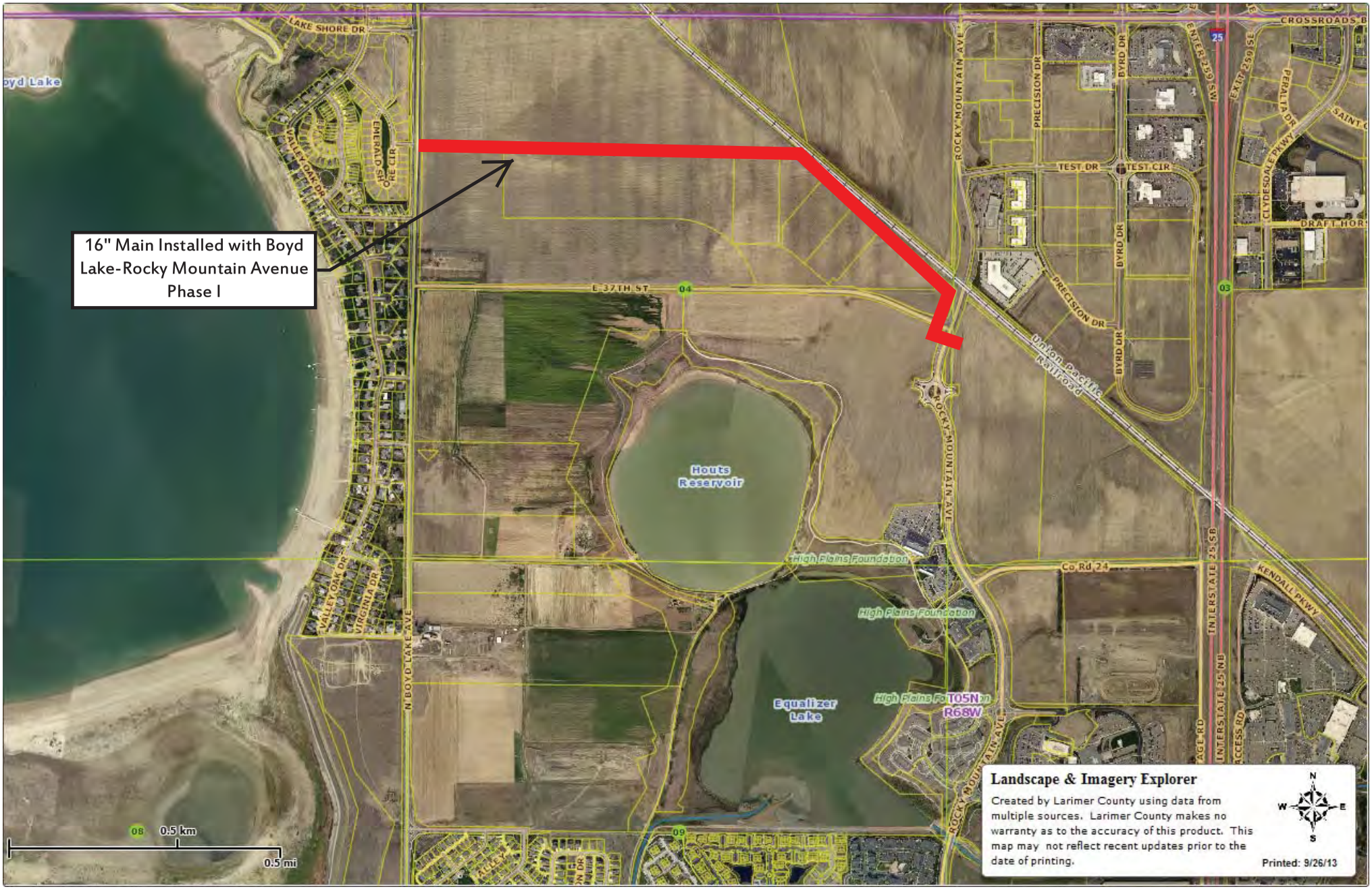
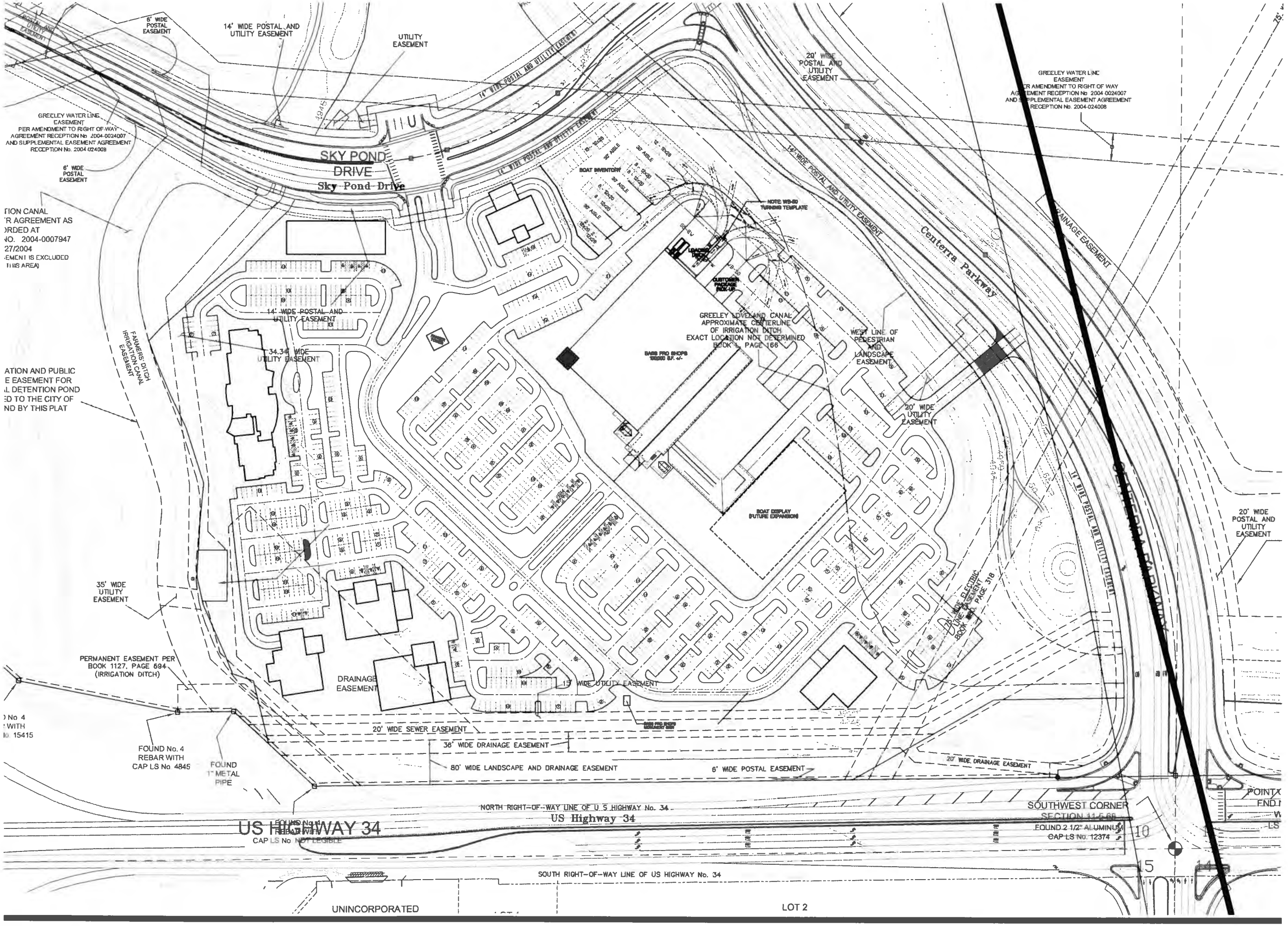

16" Main Installed with Boyd Lake-Rocky Mountain Avenue Phase I
Houts Reservoir
Equalizer Lake
T05N R68W
Landscape & Imagery Explorer
Created by Larimer County using data from multiple sources. Larimer County makes no warranty as to the accuracy of this product. This map may not reflect recent updates prior to the date of printing.
Printed: 9/26/13
0.5 km
0.5 mi

EXHIBIT C

Depiction of Parcel 505 Parking Improvements



Shops at Centerra – Parcel 505

R E S O L U T I O N #R-11-2014

A RESOLUTION OF THE LOVELAND CITY COUNCIL CONSENTING TO THE DISBURSEMENT OF FUNDS FROM THE CENTERRA METROPLITAN DISTRICT NO. 1 2008 REGIONAL IMPROVEMENT SUBACCOUNT

WHEREAS, on January 20, 2004, the City of Loveland (the "City") and the Loveland Urban Renewal Authority ("LURA") entered into that certain Centerra Master Financing and Intergovernmental Agreement dated January 20, 2004, with Centerra Properties West, LLC ("CPW"), Centerra Metropolitan District No. 1 (the "Service District"), Centerra Public Improvement Collection Corporation, and Centerra Public Improvement Development Corporation, as subsequently amended on December 5, 2006, November 20, 2007, October 28, 2008, April 7, 2009, and November 5, 2013 (the "MFA"); and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning given them in the MFA; and

WHEREAS, the MFA permits the funding and construction by the District of certain improvements identified as Local Improvements in MFA Section 1.54; and

WHEREAS, CPW is planning a significant multi-user retail development on Lot 2, Block 2, Millennium East First Subdivision, recorded in the Larimer County Clerk and Recorder's Office on August 13, 2004, at Reception No. 20040080052 ("Parcel 505"), located within the Commercial District (the "Parcel 505 Retail Center"); and

WHEREAS, Parcel 505 is more particularly depicted on **Exhibit A**, attached hereto and incorporated herein by reference; and

WHEREAS, the Parcel 505 Retail Center is expected to generate significant sales tax revenues for the City, and will create many new jobs within the City; and

WHEREAS, the Service District desires to construct a wastewater lift station to serve the Parcel 505 Retail Center and other adjacent properties (the "Lift Station"); and

WHEREAS, the Lift Station is planned to be constructed on real property more particularly described and depicted on **Exhibit B**, attached hereto and incorporated herein by reference; and

WHEREAS, the Lift Station qualifies as a Metro District Improvement and Local Improvement pursuant to the terms of the MFA; and

WHEREAS, in reliance upon certain revenue sources established in the MFA, the Service District issued its $112,000,000 Centerra Metropolitan District No. 1 Variable Rate Refunding and Improvement Bonds Series 2008 (the "2008 Bonds"); and

WHEREAS, in connection with the issuance of the 2008 Bonds, the Service District and American National Bank, as Trustee, entered into that certain Master Indenture of Trust dated as of March 1, 2008 (the "Indenture"); and

WHEREAS, the Indenture established and created the "2008 Regional Improvement Subaccount" (the "Subaccount") within the "Series 2008 Project Account" ("Project Account"); and

WHEREAS, funds held in the Subaccount were to be used for paying Project Costs, as defined in the Indenture, relating to the construction of the Interim I-25 and US Highway 34 Interchange Regional Improvements**,** as defined in the MFA (the "25-34 Interim Improvements"); and

WHEREAS, pursuant to Section 7.04(d) of the Indenture, $12,000,000 of the proceeds received from the sale of the 2008 Bonds were deposited into the Subaccount; and

WHEREAS, on July 21, 2009, the City Council consented to, via Resolution #R-68-2009, that certain First Supplemental Indenture of Trust dated as of July 21, 2009, between the Service District and the Trustee, which authorized the disbursement of $414,000 from the Subaccount to the City to be applied to costs associated with the construction of certain improvements located at the I-25/Crossroads Boulevard Interchange, and to disburse $76,000 from the Subaccount to the Project Account, with a remaining principal balance in the Subaccount of $11,510,000 upon such disbursements; and

WHEREAS, on October 6, 2009, the City Council consented to, via Resolution #R97-2009, that certain Second Supplemental Indenture of Trust dated as of October 19, 2009, between the Service District and the Trustee (the "Second Supplemental Indenture") which provides that any funds remaining in the Subaccount upon substantial completion of the functional/safety component of the 25-34 Interim Improvements and upon release of final retainage for the same to the general contractor, shall be disbursed to pay any Project Costs; provided, however, that prior to October 6, 2014, such disbursements from the Subaccount shall be subject to the prior written consent of the City Council; and

WHEREAS, the functional/safety component of the 25-34 Interim Improvements have been completed, and final retainage for the same has been released to the general contractor, following which approximately $840,000 remains in the Subaccount; and

WHEREAS, pursuant to Section 1.01 of the Indenture, Project Costs includes the Service District's costs properly permitted under the MFA and attributable to the Project (as such term is defined in the Indenture) or any part thereof; and

WHEREAS, pursuant to MFA Section 5.2, the Service District is permitted to pay all costs and expenses incurred to acquire and construct or cause to be constructed all Local Improvements that qualify as Metro District Improvements, which, per MFA Section 1.57, includes any and all improvements that could be acquired, owned or Constructed by the Service

District for the benefit, in whole or in part, of the Commercial District or Regional District to the maximum extent permitted by the Special District Act and the Service Plan; and

WHEREAS, the Service District's costs to construct the Lift Station represent Project Costs under the Indenture; and

WHEREAS, the Service District seeks consent from the City Council for the disbursement of the remaining funds from the Subaccount to be applied to the Service District's costs to construct the Lift Station; and

WHEREAS, after reviewing the request to consent to the disbursement of funds from the Subaccount to pay the Service District's costs to construct the Lift Station, and receiving information from City staff and others, the City Council has determined that consenting to the disbursement of funds from the Subaccount to pay for the construction of the Lift Station will be in the best interests of the City and its citizens.

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

Section 1. That the City Council hereby finds that consenting to the disbursement of funds from the Subaccount to fund the construction of the Lift Station is in the best interests of the public and will serve the public purposes of (1) providing social and economic benefits to the City including, but not limited to, increasing jobs and sales tax revenues for the City; (2) furthering the City's economic goals as established in the City's economic development plan; and (3) generally benefiting the public's health, safety and welfare.

Section 2. The City Council hereby finds that the disbursement of all remaining funds from the 2008 Regional Improvement Subaccount for application to the Service District's costs to construct the Lift Station is hereby approved.

Section 3. This Resolution shall take effect on the date and at the time of its adoption.

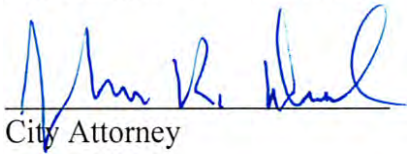
ADOPTED this 4th day of February, 2014.

Cecil Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

EXHIBIT A

Parcel 505

EXHIBIT B

Planned Location of Lift Station

DRAWING NUMBER 6 of 8

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
RECYCLED BY PART NUMBER 65552
PRINTED SIDE OF PAINT ON THIS SIDE

DRAWING NUMBER 4728

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
RECYCLED BY PART NUMBER 65552
PRINTED SIDE OF PAINT ON THIS SIDE

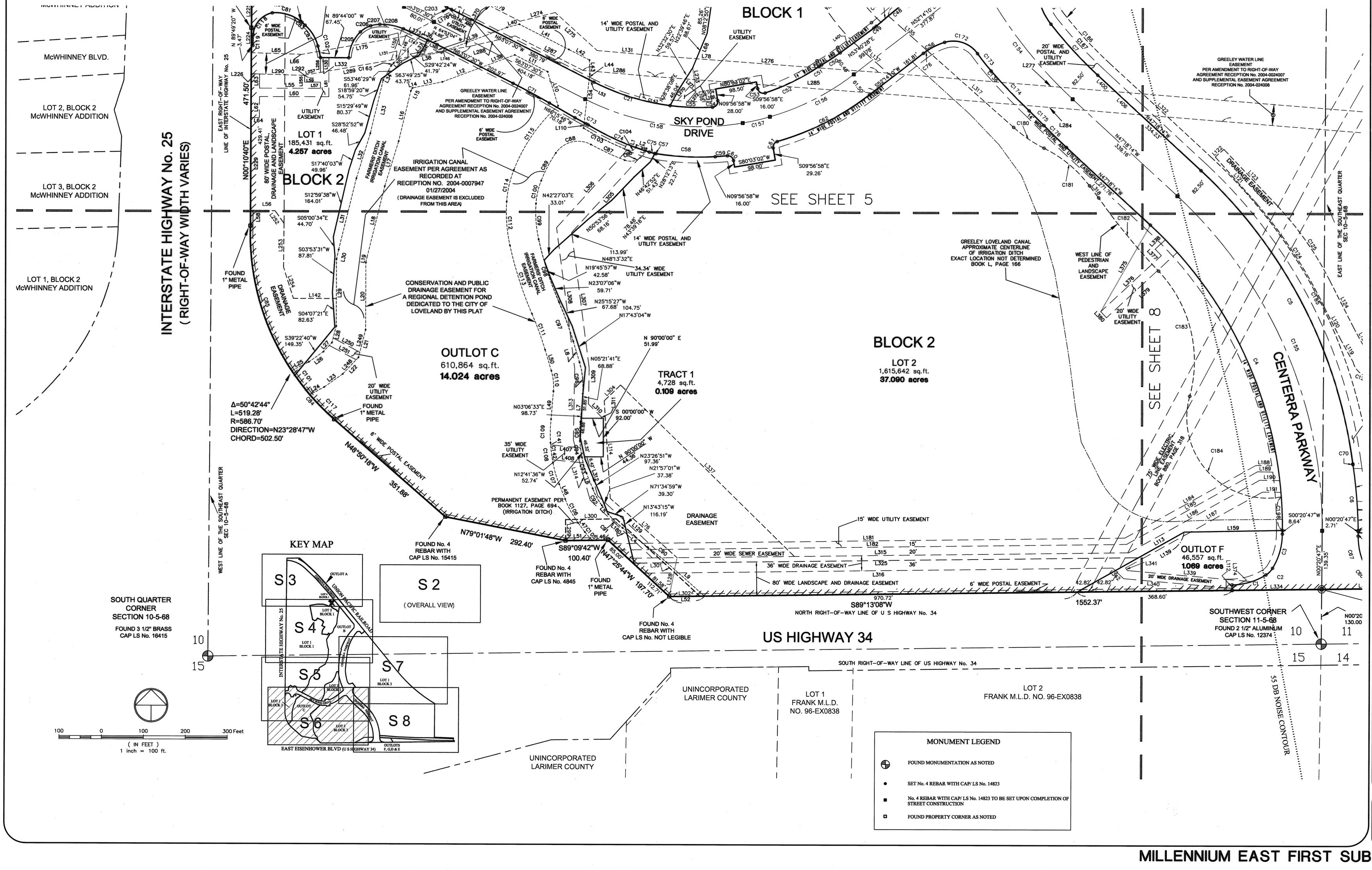
DRAWING NUMBER 4728

SAFCO PRODUCTS • NEW HOPE, MINNESOTA
RECYCLED BY PART NUMBER 65552
PRINTED SIDE OF PAINT ON THIS SIDE

S:\Survey Jobs\CEP\DWG\CEP FINAL PLAT.dwg

MILLENNIUM EAST FIRST SUBDIVISION

BEING A SUBDIVISION OF TRACT A, McWHINNEY ADDITION AND PARCELS B-1, B-2, B-3, B-4 AND C, MILLENNIUM ADDITION, EAST REGION, LOCATED IN SECTIONS 10 AND 11, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.



NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown hereon.

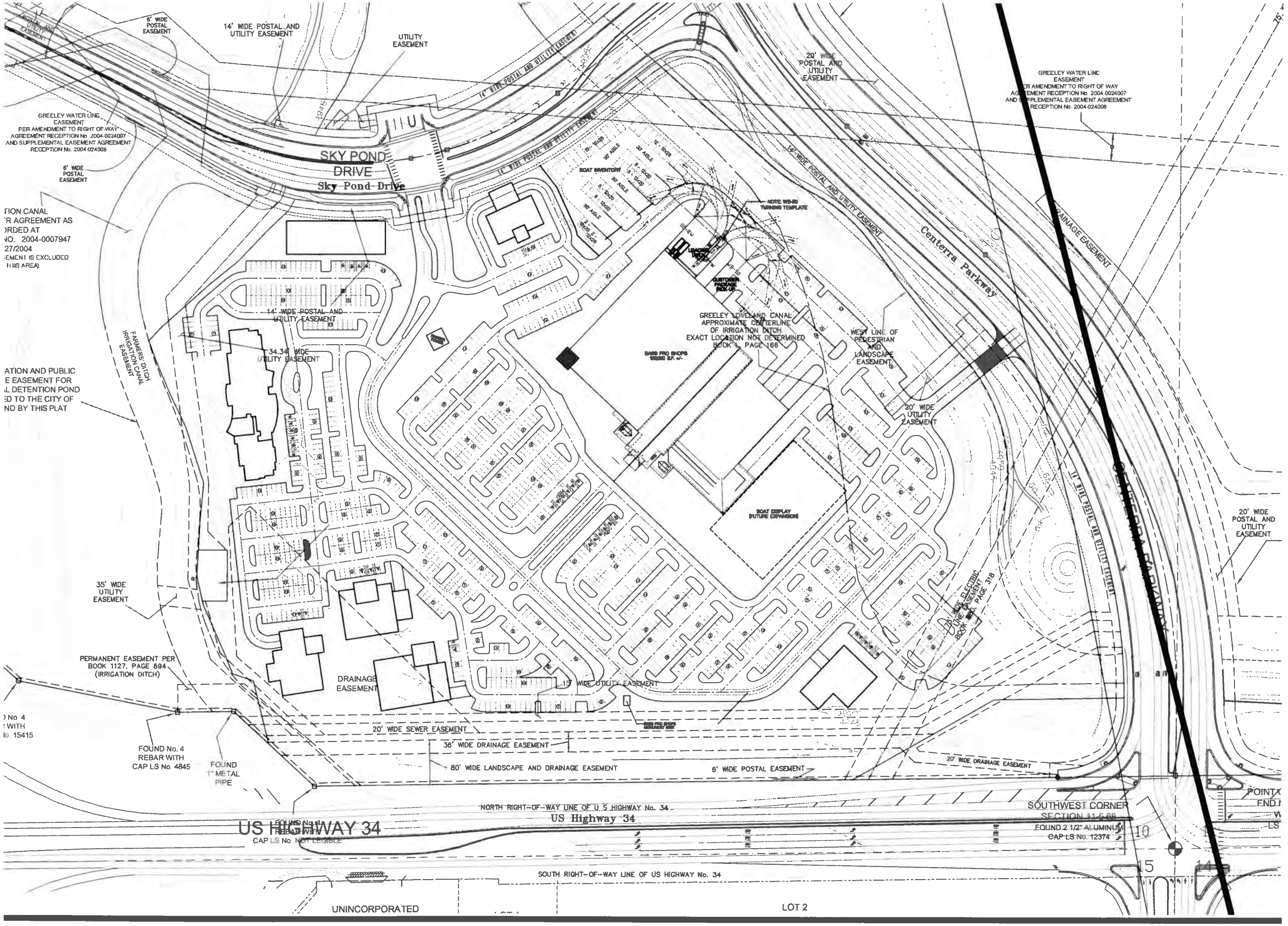
SECTIONS:10&11 | TOWNSHIP: 5 N | RANGE: 68 W

NORTHERN ENGINEERING SERVICES, INC.
420 South Howes Street, Suite 202, Fort Collins, Colorado 80521
Phone: (970) 221-4158 Fax: (970) 221-4159
www.northernengineering.com

PROJECT: CEP: 03-214 | DATE: 06/21/04
CLIENT: McWHINNEY | SCALE: AS SHOWN
DRAWN BY: JAA | REVIEWED BY: C. Gilliland

MILLENNIUM EAST FIRST SUBDIVISION
CITY OF LOVELAND

Sheet 6 / 8 Sheets



Shops at Centerra – Parcel 505

CITY OF LOVELAND
CITY ATTORNEY'S OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2540 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: **9**
MEETING DATE: 2/4/2014
TO: City Council as LURA Governing Board
FROM: John Duval, City Attorney
PRESENTER: John Duval, City Attorney

TITLE:
A Resolution of the Loveland Urban Renewal Authority Approving the Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement

RECOMMENDED CITY COUNCIL ACTION:
Approve the resolution.

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

SUMMARY:
This is an administrative action. The Resolution approves a Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement to designate the proposed "Parcel 505 Parking Improvements" in the Centerra development as "Local Improvements" under the Centerra MFA and to also permit Centerra Metro District No. 1 ("District") to reimburse the City for its previous construction of the "Boyd Lake Waterline" on the basis that the Fifth Amendment to the MFA recently designated Boyd Lake Avenue as a "Regional Improvement" under the MFA.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

The Sixth Amendment does not change in any way the current or future amount of revenues collected and disbursed under the Centerra MFA. It only expands the type of public improvements for which these revenues can be spent.

BACKGROUND:
On January 20, 2004, the City of Loveland (the "City") and the Loveland Urban Renewal Authority ("LURA") entered into the Centerra Master Financing and Intergovernmental Agreement with Centerra Metropolitan District No. 1 (the "District"), together with other parties, (the "MFA"). Since then, the MFA has been amended five times. A sixth amendment to the MFA is being proposed (the "Sixth Amendment").

This Resolution relates to a proposed multi-user retail development in Centerra to be anchored by a Bass Pro Shops store ("Development"). The Development is planned to be located in Centerra east of I-25 on a parcel of land that is identified in the Resolution as "Parcel 505." The Development will require the construction of various public improvements.

Under the MFA, the District is authorized to fund and construct for the Development those public improvements identified in the MFA as "Local Improvements," as well as any other public improvements approved by the City Council. Although not currently defined in the MFA as "Local Improvements," the District proposes to construct, own, operate and maintain as Local Improvements on Parcel 505 the public parking improvements needed to serve the Development and the general public. In order for the District to be able to do this under the MFA, LURA must agree to the Sixth Amendment.

The District is also asking that the MFA be amended to allow it to use funds under the MFA to reimburse the City for the costs the City has previously incurred to build a waterline within the right of way for Boyd Lake Avenue and within part of the proposed right of way for Kendall Parkway ("Boyd Lake Waterline"). In 2003, the City and Poudre Valley Health Care, Inc. ("PVH") entered into an annexation agreement that obligated the City to build certain public improvements related to PVH's construction of Medical Center of the Rockies on the annexed land ("PVH Agreement"). The PVH Agreement obligated the City to build the Boyd Lake Waterline. The MFA defines the Boyd Lake Waterline as a "PVH Improvement" and prohibits the District from using MFA funds to pay the cost of constructing any PVH Improvements. The District is now asking that the MFA be amended to allow the District to reimburse the City for the costs it incurred to build the Boyd Lake Waterline since Boyd Lake Avenue was recently designated as a "Regional Improvement" under the MFA. This designation occurred this past November when the City Council approved the Fifth Amendment to the MFA. The Sixth Amendment would allow this reimbursement.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:
1. Resolution with the Sixth Amendment attached as Exhibit A

R E S O L U T I O N #R-12-2014

A RESOLUTION OF THE LOVELAND URBAN RENEWAL AUTHORITY APPROVING THE SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT

WHEREAS, on January 20, 2004, the City of Loveland (the "City") and the Loveland Urban Renewal Authority ("LURA") entered into that certain Centerra Master Financing and Intergovernmental Agreement (the "MFA"), dated January 20, 2004, with Centerra Properties West, LLC ("CPW"), Centerra Metropolitan District No. 1 (the "Service District"), Centerra Public Improvement Collection Corporation (the "PIC"), and Centerra Public Improvement Development Corporation (the "PID"); and

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereafter referred to collectively as "the Parties"; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 ("First Amendment") to include the Centerra Parkway / Crossroads Extension within the definition of "Regional Improvements" as defined in MFA Section 1.43, which First Amendment was approved by the City Council in Resolution #R-114-2006; and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 ("Second Amendment") to address various issues associated with the Mixed Use Village Center Project and to include certain parking improvements within the definition of "Local Improvements" as defined in MFA Section 1.54, which Second Amendment was approved by the City Council in Resolution #R-75-2007; and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 ("Third Amendment") to address the addition of certain real property to the URA Project Area, as defined in the MFA, and to set forth the terms and conditions pursuant to which the URA Project Area, as amended, shall benefit from property tax increment revenues generated from within the URA Project Area, which Third Amendment was approved by the City Council in Resolution #R-101-2008; and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009 ("Fourth Amendment") to address the formation of a new metropolitan district located within the URA Project Area, known as Centerra Metropolitan District No. 5, which Fourth Amendment was approved by the City Council in Resolution #R32-2009; and

WHEREAS, the Parties entered into that certain Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 5, 2013 ("Fifth Amendment") to expand the list of Regional Improvements to include Boyd Lake Avenue from

U.S. 34 north to Kendall Parkway (37th Street), and Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast, including an underpass at Kendall Parkway and I-25, which Fifth Amendment was approved by the City Council in Resolution #R-96-2013; and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the MFA permits the funding and construction by the Service District of certain improvements identified as Local Improvements in MFA Section 1.54, and further provides that Local Improvements may also include other public improvements approved by City Council; and

WHEREAS, CPW is planning a significant multi-user retail development on Lot 2, Block 2, Millennium East First Subdivision, recorded in the Larimer County Clerk and Recorder's Office on August 13, 2004, at Reception No. 20040080052 ("Parcel 505"), located within the Commercial District; and

WHEREAS, the retail development on Parcel 505 is expected to generate significant sales tax revenues for the City, and will create many new jobs within the City; and

WHEREAS, the Service District desires to construct the public parking facilities to serve the retail development on Parcel 505; and

WHEREAS, the Service District intends to own, operate and maintain the public parking improvements on Parcel 505 for the benefit of the general public; and

WHEREAS, the Parties desire to amend the MFA to designate the public parking improvements on Parcel 505 as Local Improvements, as permitted by MFA Section 1.54; and

WHEREAS, in connection with the annexation and development of an approximately 106.8 acre parcel, located within Centerra and owned by Poudre Valley Health Care, Inc., the City, acting by and through its Water Activity Enterprise, has constructed a waterline (the "Boyd Lake Waterline") which provides or will provide water service to property located both within and without Centerra; and

WHEREAS, the Boyd Lake Waterline is located in part within the right of way for Boyd Lake Avenue and in part within the proposed right of way for Kendall Parkway; and

WHEREAS, new development in the area immediately adjacent to Boyd Lake Avenue will trigger a required reimbursement payment to the City for a portion of the costs of constructing the Boyd Lake Waterline; and

WHEREAS, the Boyd Lake Waterline is a PVH Improvement, as that term is defined in the MFA; and

WHEREAS, the MFA does not permit LURA or the Service District to pay the costs of constructing the PVH Improvements, including the Boyd Lake Waterline, if those improvements are constructed by another Governmental Authority (as defined in the MFA); and

WHEREAS, the Service District has asked the City and LURA to consider an amendment to the MFA, to permit the Service District to pay the Boyd Lake Waterline reimbursement to the City, given the designation of Boyd Lake Avenue as a Regional Improvement, and the regional benefit provided to Centerra by the Boyd Lake Waterline; and

WHEREAS, the Parties have negotiated the "Sixth Amendment to the Centerra Master Financing and Intergovernmental Agreement" attached hereto as Exhibit "A" and incorporated herein by reference (the "Sixth Amendment"); and

WHEREAS, after reviewing the Sixth Amendment, and receiving information from City staff and others, the governing body of the LURA has determined that the Sixth Amendment will be in the best interests of the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE LOVELAND URBAN RENEWAL AUTHORITY:

Section 1. That the Sixth Amendment is in the best interests of LURA and will be consistent with and further the goals and purposes of the U.S. 34/Crossroads Corridor Renewal Plan approved by Resolution #R-8-2004 adopted by the City Council on January 20, 2004, as the same has been subsequently modified by City Council action.

Section 2. That the Sixth Amendment is hereby approved and the Mayor, as Chairman of LURA, and the City Clerk, as the Assistant Secretary of LURA, are hereby authorized and directed to execute it on behalf of LURA.

Section 3. That the Loveland City Manager is authorized, as he deems necessary and in consultation with the Loveland City Attorney, to approve minor amendments to the Sixth Amendment on behalf of LURA provided that such amendments are consistent with the purposes of the Resolution and protect LURA's interests. The Chairman of LURA is authorized to agree on behalf of LURA to any minor amendments to the Sixth Amendment approved by the City Manager under this Section.

Section 4. This Resolution shall take effect on the date and at the time of its adoption.

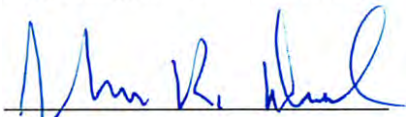
ADOPTED this 4th day of February, 2014.

Cecil A. Gutierrez, Chairman

ATTEST:

Secretary

APPROVED AS TO FORM:



City Attorney

EXHIBIT "A"

SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT

SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT

THIS **SIXTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT** (the "Sixth Amendment") is entered into this 4th day of February, 2014, by and among the **CITY OF LOVELAND, COLORADO**, a Colorado home rule municipality (the "City"); the **LOVELAND URBAN RENEWAL AUTHORITY**, a body corporate and politic ("LURA"); **CENTERRA PROPERTIES WEST, LLC**, a Colorado limited liability company ("CPW"); **CENTERRA METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "Service District"); **CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION**, a Colorado non-profit corporation (the "PIC"); and the **CENTERRA PUBLIC IMPROVEMENT DEVELOPMENT CORPORATION**, a Colorado non-profit corporation (the "PID")."

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereinafter referred to collectively as the "Parties"; and

WHEREAS, the Parties have entered into that certain Centerra Master Financing and Intergovernmental Agreement dated January 20, 2004, (together with the First, Second, Third, Fourth, and Fifth Amendments described below, referred to herein collectively as "the MFA") to provide, among other things, for the financing of "Public Improvements" and "Regional Improvements" related to the development of Centerra, as these terms in quotes are defined in the MFA; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006; and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007; and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008; and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009; and

WHEREAS, the Parties entered into that certain Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 5, 2013; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning given them in the MFA; and

WHEREAS, the MFA permits the funding and construction by the Service District of certain improvements identified as Local Improvements in MFA Section 1.54, and further

provides that Local Improvements may also include other public improvements approved by City Council; and

WHEREAS, CPW is planning a significant multi-user retail development on Lot 2, Block 2, Millennium East First Subdivision, recorded in the Larimer County Clerk and Recorder's Office on August 13, 2004, at Reception No. 20040080052 ("Parcel 505"), located within the Commercial District; and

WHEREAS, Parcel 505 is more particularly depicted in **Exhibit A** to this Sixth Amendment; and

WHEREAS, the retail development on Parcel 505 is expected to generate significant sales tax revenues for the City, and will create many new jobs within the City; and

WHEREAS, the Service District desires to construct the public parking facilities to serve the retail development on Parcel 505; and

WHEREAS, the Service District intends to own, operate and maintain the public parking improvements on Parcel 505 for the benefit of the general public; and

WHEREAS, the Parties desire to amend the MFA to designate the public parking improvements on Parcel 505 as Local Improvements, as permitted by MFA Section 1.54; and

WHEREAS, in connection with the annexation and development of an approximately 106.8 acre parcel, located within Centerra and owned by Poudre Valley Health Care, Inc., the City, acting by and through its Water Activity Enterprise, has constructed a waterline (as more particularly defined below, the "Boyd Lake Waterline") which provides or will provide water service to property located both within and without Centerra; and

WHEREAS, the Boyd Lake Waterline is located, in part within the right of way for Boyd Lake Avenue and in part within the proposed right of way for Kendall Parkway ; and

WHEREAS, new development in the area immediately adjacent to Boyd Lake Avenue will trigger a required reimbursement payment to the City for a portion of the costs of constructing the Boyd Lake Waterline; and

WHEREAS, the Boyd Lake Waterline is a PVH Improvement, as that term is defined in the MFA; and

WHEREAS, the MFA currently does not permit LURA or the Service District to pay the costs of constructing the PVH Improvements, including the Boyd Lake Waterline, if those improvements are constructed by another Governmental Authority (as defined in the MFA); and

WHEREAS, the Service District has asked the other Parties to consider an amendment to the MFA, to permit the Service District to pay the Boyd Lake Waterline reimbursement to the

City, given the designation of Boyd Lake Avenue as a Regional Improvement, and the regional benefit provided to the City and to Centerra by the Boyd Lake Waterline; and

WHEREAS, the Parties desire to amend the MFA to permit the Service District to pay the costs of constructing the Boyd Lake Waterline, via reimbursements to the City, as new development triggers such reimbursement obligations; and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the Loveland City Council approved this Agreement in Resolution _____ and also approved it sitting as the LURA's governing body in Resolution _____.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

DEFINITIONS

1. That unless the context clearly indicates otherwise, all capitalized terms used in this Sixth Amendment shall have the meaning given to them in the MFA.

2. That for purposes of this Sixth Amendment, the term "Boyd Lake Waterline" shall mean that certain 24" and 16" waterline originally constructed by the City, acting by and through its Water Utility Enterprise, pursuant to the PVH Agreement and as more particularly depicted on **Exhibit B** to this Sixth Amendment, attached hereto and incorporated herein by reference.

3. That for purposes of this Sixth Amendment, the term "Parcel 505 Parking Improvements" shall mean the public parking facilities to be constructed and owned by the Service District, to serve the retail development on Parcel 505, within the Commercial District, as generally depicted on **Exhibit C** to this Sixth Amendment, attached hereto and incorporated herein by reference.

PARCEL 505 PARKING IMPROVEMENTS

4. That the first sentence of Section 1.54 of the MFA shall be amended to include the Parcel 505 Parking Improvements, but shall remain unchanged in all other respects.

5. That Section 1.80 of the MFA shall be amended to read in full as follows:

1.80 **"Private Parking"** shall mean and refer to any parking improvements required by City Regulations to serve, in whole or in part, a Private Improvement, except the parking improvements for the Lifestyle Center, which are to be owned by the Service District or the Commercial District, which improvements are depicted on **Exhibit E** to the MFA, and the Parcel

505 Parking Improvements, which are to be owned by the Service District or the Commercial District, which are depicted on **Exhibit C** to this Sixth Amendment.

BOYD LAKE WATERLINE

6. That the final paragraph of Section 1.57 of the MFA shall be amended to read in full as follows:

The Metro District Improvements shall include the PVH Improvements, but only to the extent the PVH Improvements, as a result of the termination of the PVH Agreement, are not Constructed by any other Governmental Authority; provided, however, the Boyd Lake Waterline shall be considered a Metro District Improvement notwithstanding the fact that the Boyd Lake Waterline was originally installed by the City.

7. That Section 4.2 of the MFA shall be amended to read in full as follows:

4.2 PVH Improvements. Neither the LURA nor the Service District shall Construct, or pay the cost of constructing, any Public Improvements within Centerra that any other Governmental Authority is obligated to Construct, and/or pay the cost of Constructing, pursuant to the PVH Agreement, so long as the PVH Agreement remains in effect; provided, however, the Service District shall be authorized to make reimbursement payments to the City to reimburse the City for all or a portion of the City's costs in constructing the Boyd Lake Waterline as required by City Regulations.

MISCELLANEOUS

8. That the City, LURA, and the Service District each finds and determines that the execution of this Sixth Amendment is in the best interest of the public health and general welfare of the City, LURA, and the Service District respectively, and that it will serve the public purposes of providing significant social and economic benefits to the City, LURA, and the Service District.

9. That except as expressly provided in this Sixth Amendment, all other terms and conditions of the MFA shall remain unchanged and in full force and effect.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties have executed this Sixth Amendment or counterpart copies thereof as of the date first written above.

CITY OF LOVELAND, COLORADO, a Colorado municpal coporation

By: _____
Cecil Gutierrez, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LOVELAND URBAN RENEWAL AUTHORITY,
a Colorado body corporate and politic

By: _____
Cecil Gutierrez, Chairman

ATTEST:

By: _____
_____, Secretary

APPROVED AS TO FORM:

_____
City Attorney

CENTERRA METROPOLITAN DISTRICT NO. 1,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Kim L. Perry, President

ATTEST:

By: _____
Tom Hall, Secretary

CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION, a Colorado non-profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PUBLIC IMPROVEMENT DEVELOPMENT CORPORATION, a Colorado non-profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PROPERTIES WEST, LLC
a Colorado Limited Liability Corporation

By: McWhinney Real Estate Services, Inc.,
a Colorado Corporation, Manager

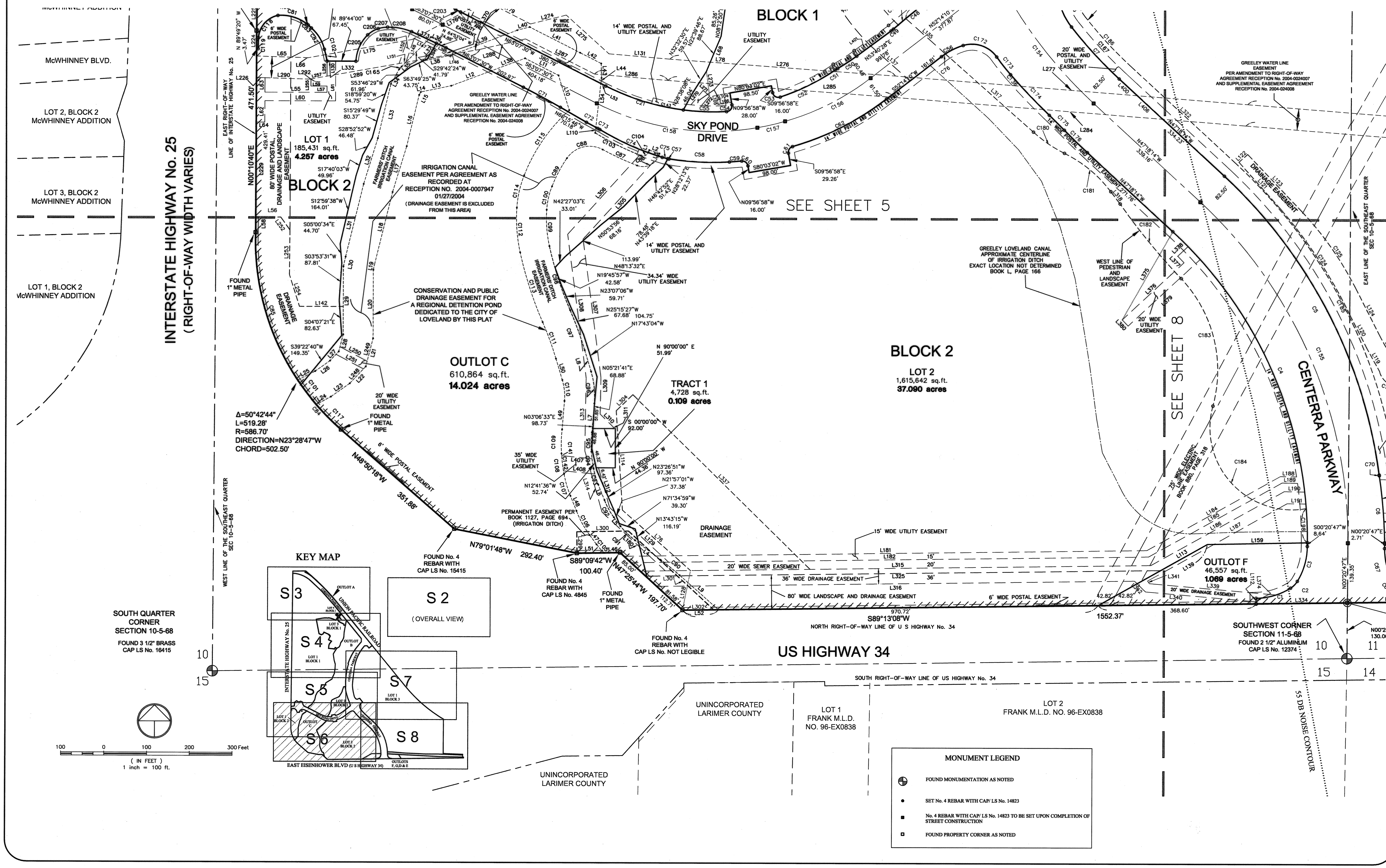
By: _____
Douglas L. Hill, Executive Vice President

EXHIBIT A

Parcel 505

MILLENNIUM EAST FIRST SUBDIVISION

BEING A SUBDIVISION OF TRACT A, McWHINNEY ADDITION AND PARCELS B-1, B-2, B-3, B-4 AND C, MILLENNIUM ADDITION, EAST REGION, LOCATED IN SECTIONS 10 AND 11, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.



NOTICE:
According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown hereon.

SECTIONS: 10&11 | TOWNSHIP: 5 N | RANGE: 68 W

NORTHERN ENGINEERING SERVICES, INC.
420 South Howes Street, Suite 202, Fort Collins, Colorado 80521
Phone: (970) 221-4158, Fax: (970) 221-4159
www.northernengineering.com

PROJECT: CEP: 03-214 | DATE: 06/21/04
CLIENT: McWHINNEY | SCALE: AS SHOWN
DRAWN BY: JAA | REVIEWED BY: G. Gilliland

MILLENNIUM EAST FIRST SUBDIVISION
CITY OF LOVELAND

Sheet 6 / 8 Sheets

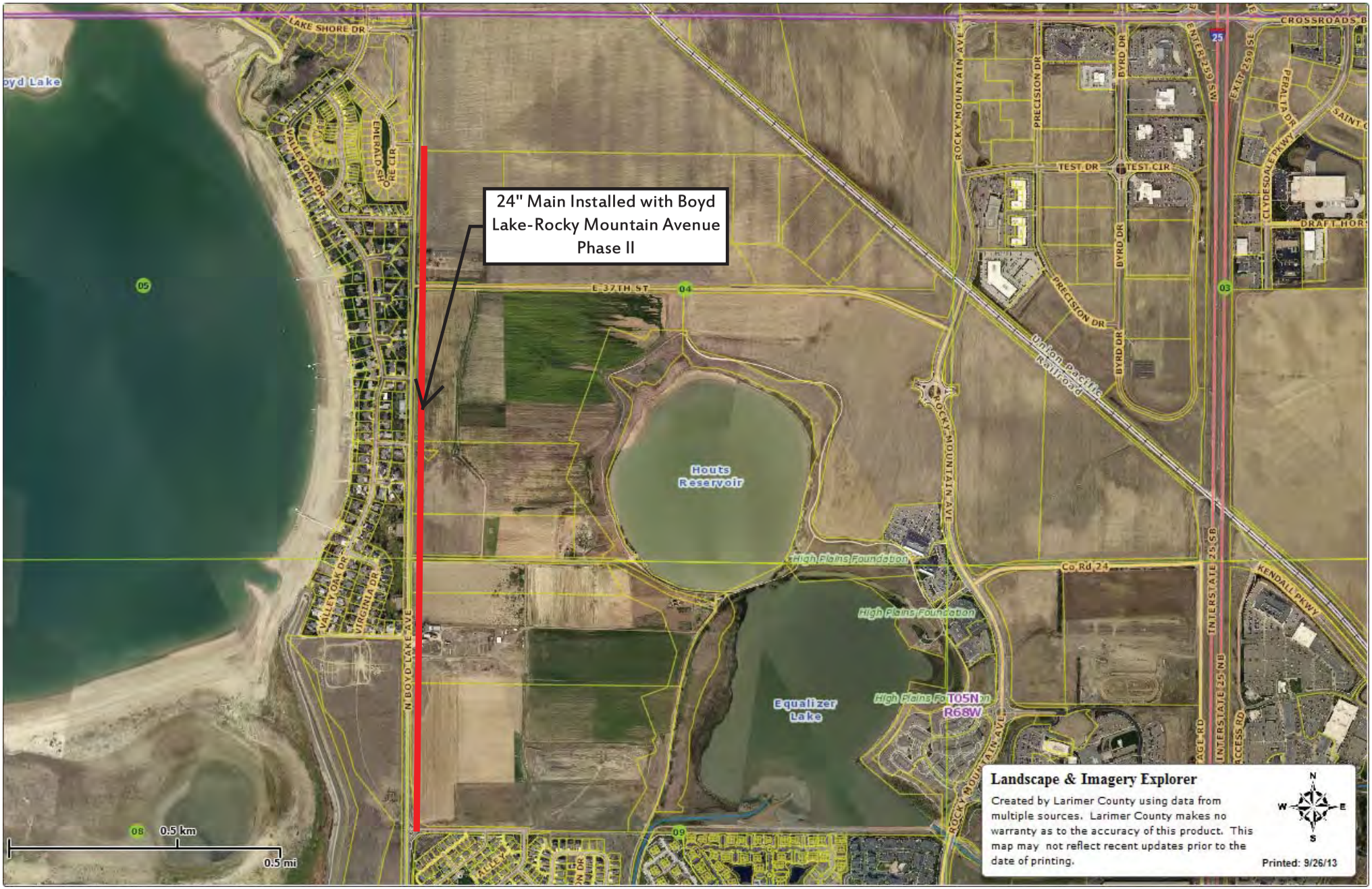
S:\Survey Jobs\CEP\DWG\CEP FINAL PLAT.dwg

DRAWING NUMBER 4728
DRAWING NUMBER 6 of 8
DRAWING NUMBER 4728
DRAWING NUMBER 6 of 8

SAFCO PRODUCTS • NEW HOPE, MINNESOTA REORDER BY PART NUMBER 6552

EXHIBIT B

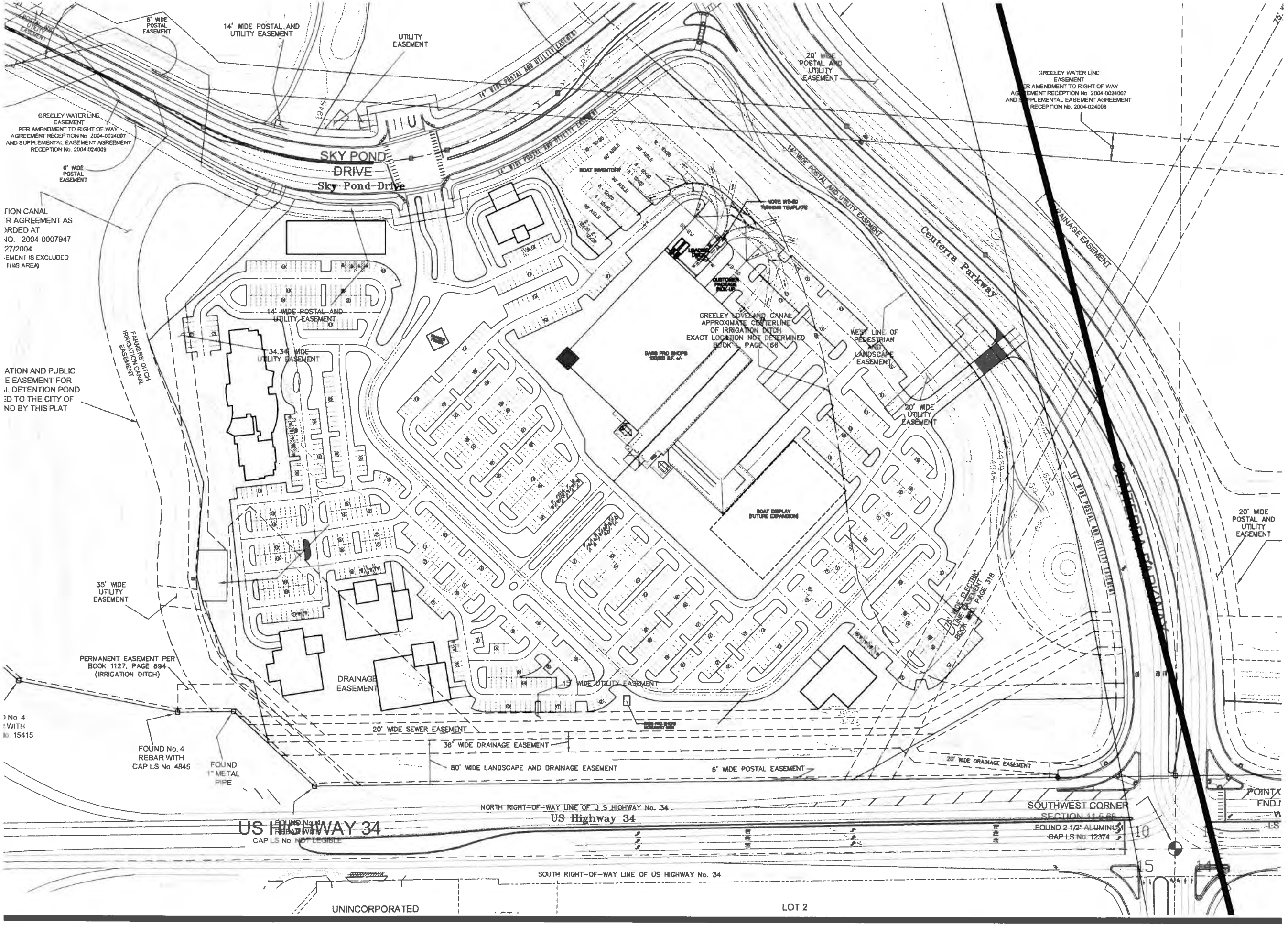
Depiction of Boyd Lake Waterline


24" Main Installed with Boyd Lake-Rocky Mountain Avenue Phase II
LAKE SHORE DR
E 37TH ST
N BOYD LAKE AVE
ROCKY MOUNTAIN AVE
PRECISION DR
BYRD DR
TEST DR
TEST CIR
CROSSROADS
Union Pacific Railroad
Houts Reservoir
Equalizer Lake
High Plains Foundation
Co Rd 24
KENDALL PKWY
INTERSTATE 25 NB
T05N
R68W
Landscape & Imagery Explorer
Created by Larimer County using data from multiple sources. Larimer County makes no warranty as to the accuracy of this product. This map may not reflect recent updates prior to the date of printing.
Printed: 9/26/13
0.5 km
0.5 mi


16" Main Installed with Boyd Lake-Rocky Mountain Avenue Phase I
Landscape & Imagery Explorer
Created by Larimer County using data from multiple sources. Larimer County makes no warranty as to the accuracy of this product. This map may not reflect recent updates prior to the date of printing.
Printed: 9/26/13
N
E
S
W
Houts Reservoir
Equalizer Lake
Union Pacific Railroad
ROCKY MOUNTAIN AVE
N BOYD LAKE AVE
INTERSTATE 25 SB
INTERSTATE 25 NB
BYRD DR
PRECISION DR
TEST DR
KENDALL PKWY
CLYDESDALE PKWY
PERALTA DR
CROSSROADS BLVD
Co Rd 24
E 37TH ST
VALLEY OAK DR
LAKE SHORE DR
EMERALD SHORE CIR
VIRGINIA DR
High Plains Foundation
T05N
R68W
Boyd Lake
0.5 km
0.5 mi

EXHIBIT C

Depiction of Parcel 505 Parking Improvements



Shops at Centerra – Parcel 505

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: 2/4/2014
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:
A Resolution Abolishing the "Request For Dismissal Of No Proof Of Insurance Fee" and Amending the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the City of Loveland, Other than Services Provided by the Water and Power Department and the Stormwater Enterprise, and Superseding all Prior Resolutions Establishing Such Rates, Charges, and Fees

RECOMMENDED CITY COUNCIL ACTION:
Consider approval of the resolution.

OPTIONS:
1. Adopt the resolution, abolishing the fee.
2. Deny the action, retaining the fee.
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

SUMMARY:
This is an administrative action. The Resolution amends the Schedule of Rates, Charges and Fees for Services provided by the City of Loveland by eliminating the "Request for dismissal of no proof of insurance fee".

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible

The fee generated revenue within the General Fund to fund the provision of City services. The 2013 actual collections from this fee totaled $2,835. The 2014 Budget projected revenue from this fee of $3,000 will not be realized if the Resolution is adopted.

BACKGROUND:
In January, Council directed staff to return this matter to consider amending the City's fee schedule to eliminate the fee for dismissal of the "No Proof of Insurance fee". This fee is applied when a citizen is cited during a traffic stop because they do not produce proof of insurance. Dismissal of the charge is allowed by State law if the person cited subsequently can provide proof of insurance. The fee is charged to recover a portion of the court administrative costs and staff time related to the dismissal request.

This will be the second full consideration of this matter by the Council. Following a request by Troy Krenning in February of 2013, the Council reviewed the issue at the April 2, 2013 Council meeting and Council consensus was not to change or remove the fee at that time. The agenda packet material from that meeting is Attachment 2 and is still relevant.

The Council is requested to consider appropriate action on the NPOI fee.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:
1. Resolution
2. Previous Agenda Materials

RESOLUTION #R- 13-2014

A RESOLUTION ABOLISHING THE "REQUEST FOR DISMISSAL OF NO PROOF OF INSURANCE FEE" AND AMENDING THE 2014 SCHEDULE OF RATES, CHARGES, AND FEES FOR SERVICES PROVIDED BY THE CITY OF LOVELAND, OTHER THAN SERVICES PROVIDED BY THE WATER AND POWER DEPARTMENT AND THE STORMWATER ENTERPRISE, AND SUPERSEDING ALL PRIOR RESOLUTIONS ESTABLISHING SUCH RATES, CHARGES, AND FEES

WHEREAS, Section 3.04.025 of the Loveland Municipal Code provides that the City Council shall, by resolution, fix the rates, charges, and fees to be collected by the City for goods and services provided by the City; and

WHEREAS, the City Council last set the rates, charges, and fees for services provided by the City, other than services provided by the Water and Power Department and the Stormwater Enterprise ("Schedule of Rates, Charges, and Fees"), in Resolution #R-78-2013; and

WHEREAS, the City Council desires to abolish the "Request for Dismissal of No Proof of Insurance Fee" and amend the Schedule of Rates, Charges, and Fees to reflect this change.

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

Section 1. That the "Request for Dismissal of No Proof of Insurance Fee" is hereby abolished, and the Schedule of Rates, Charges and Fees is hereby amended to remove the reference to said fee.

Section 2. That this Resolution shall supersede in all respects all previous resolutions of the City Council which set the fee now being abolished, including Resolution #R-78-2013.

Section 3. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 4th day of February, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

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

AGENDA ITEM: **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: William D. Cahill

LIST OF ATTACHMENTS:

1. **Staff memo**

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BUDGET DIVISION
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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 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 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.

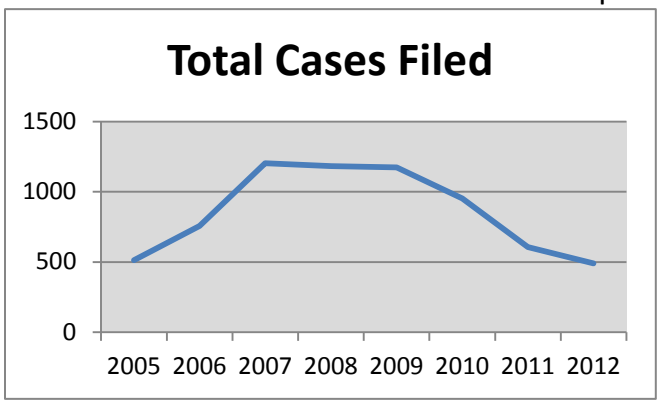

Figure 1

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).

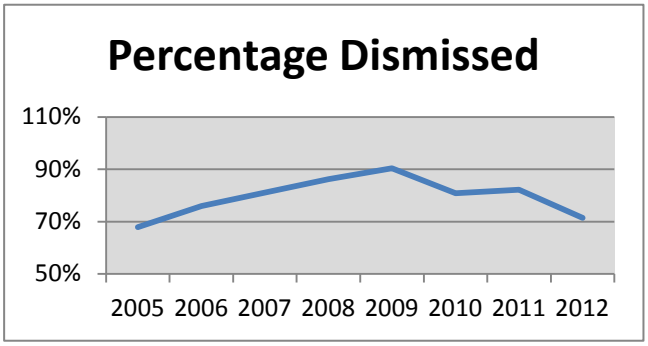

Figure 2

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.

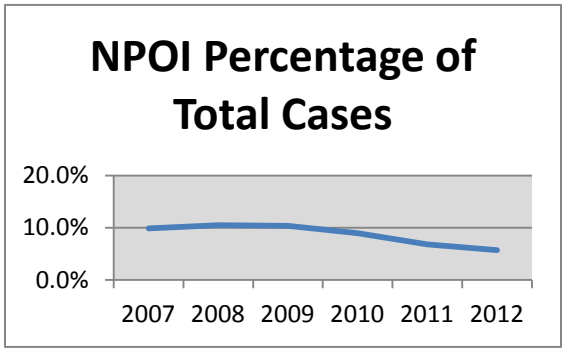

Figure 4

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 NPOI 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 NPOI 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
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

** 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.*

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.