AGENDA
LOVELAND CITY COUNCIL MEETING
TUESDAY, AUGUST 19, 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 FROM U.S. FOREST SERVICE TO LOVELAND STAFF FOR IDYLWILDE DAM (presenters: Ranger Edwards and Ranger Atchley)

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 MEETING MINUTES

1. A Motion to Approve the City Council Study Session Minutes for the July 8, 2014 Study Session

This is an administrative action to approve the City Council Study Session minutes for the July 8, 2014 Study Session.

2. A Motion to Approve the City Council Study Session Minutes for the July 22, 2014 Study Session

This is an administrative action to approve the City Council Study Session meeting minutes for the July 22, 2014 Study Session.

3. A Motion to Approve the City Council Meeting Minutes for the August 5, 2014 Regular Meeting

This is an administrative action to approve the City Council meeting minutes for the August 5, 2014 regular meeting.

2. CITY MANAGER (presenter: Bill Cahill)

BOARDS & COMMISSIONS APPOINTMENTS

Appointment of Members to the Affordable Housing Commission

1. **A Motion to Appoint Correy Fuqua to the Affordable Housing Commission for a Partial Term Effective Until June 30, 2015**
2. **A Motion to Appoint Mechelle Martz-Mayfield to the Affordable Housing Commission for a Term Effective Until June 30, 2017**

These are administrative actions recommending the appointment of members to the Affordable Housing Commission.

3. INFORMATION TECHNOLOGY (presenter: Bill Westbrook)

SUPPLEMENTAL APPROPRIATION FOR FIBER OPTIC CABLE INSTALL

A Motion to Approve and Order Published on Second Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Installation of Fiber Optic Cable on 29th Street from Taft Avenue to Wilson Avenue

This is an administrative action. The appropriation funds a project to bury, install, and terminate a fiber optic cable on 29th Street to provide connection to the new Fire Station 2, the Olde Course and the Cattail Creek Golf Courses. Revenues in the total amount of $112,910 are hereby requested for appropriation and transfer to the Capital Projects for installation of fiber optic cable. Fund balance is used for the Golf Enterprise's share and reduces the flexibility to fund other projects in the Enterprise. This ordinance was approved unanimously on first reading by Council at the August 5, 2014 regular meeting.

4. PUBLIC WORKS (presenter: Dave Klockeman)

PUBLIC HEARING

IGA & SUPPLEMENTAL APPROPRIATION TO UPDATE CDOT TRAFFIC OPERATIONS CENTER EQUIPMENT

1. **A Motion to Adopt Resolution #R-52-2014 Approving an Intergovernmental Agreement between the City of Loveland, Colorado, and the State of Colorado, Acting by and through the Colorado Department of Transportation (CDOT), to update equipment at the Traffic Operations Center (TOC) in the City of Loveland**
2. **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 to Update Equipment at the Traffic Operations Center (TOC) in the City of Loveland**

These are administrative actions. The City has received a Federal grant, not to exceed $205,000 of the $247,615 total project cost, through the STP-Metro program to fund the upgrade of equipment at the existing TOC. This item includes consideration of a resolution approving an IGA between the City of Loveland and CDOT for the project and consideration of the first reading ordinance to appropriate the funds included in the IGA. The City of Loveland local match funds are in the amount of $42,615. The City funds are included within the approved 2014 Budget for Public Works Transportation Capital Improvement Projects.

5. PUBLIC WORKS (presenter: Dave Klockeman)

PUBLIC HEARING

IGA & SUPPLEMENTAL APPROPRIATION FOR ROADWAY WEATHER INFORMATION UPDATES

1. **A Motion to Adopt Resolution #R-53-2014 Approving an Intergovernmental**

Agreement between the City of Loveland, Colorado, and the State of Colorado, Acting by and Through the Colorado Department of Transportation (CDOT), to Update the Existing Roadway Weather Information System in the City of Loveland

2. 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 to Update the Existing Roadway Weather Information System in the City of Loveland

These are administrative actions. The City has received a CDOT grant, not to exceed $304,000 of the $380,000 total project cost, through the Responsible Acceleration of Maintenance and Partnerships (RAMP) program to fund the expansion and upgrade of the roadway weather information system throughout the City of Loveland. This item includes consideration of a resolution approving an intergovernmental agreement between the City of Loveland and CDOT for the project and consideration of the first reading of an ordinance to appropriate the funds included in the intergovernmental agreement. The City of Loveland local match funds are in the amount of $76,000. The City funds are included within the approved 2014 Budget for Public Works Transportation Capital Improvement Projects.

6. <u>PUBLIC WORKS</u> (presenter: Dave Klockeman)

PUBLIC HEARING

GRANT AGREEMENT AND SUPPLEMENTAL APPROPRIATION FOR THE I-25/CROSSROADS ANTI-ICING SYSTEM

1. A Motion to Adopt Resolution #R-54-2014 Approving an Intergovernmental Agreement between the City of Loveland, Colorado, and the State of Colorado, Acting by and Through the Colorado Department of Transportation (CDOT), for an Anti-Icing System at the Highway I-25 and Crossroads Boulevard Interchange

2. A Motion to Approve and Order Published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the Transportation Fund Capital Program for I-25/Crossroads Anti-Icing System

These are administrative actions. The City has received a CDOT grant, not to exceed $200,000 of the $250,000 total project cost, through the Responsible Acceleration of Maintenance and Partnerships (RAMP) program for the expansion and upgrade of the roadway weather information system throughout the City. This item includes consideration of a resolution approving an intergovernmental agreement between the City and CDOT for the project and consideration of the first reading of an ordinance to appropriate the funds included in the intergovernmental agreement. The City of Loveland local match funds are in the amount of $50,000. The City funds are included within the approved 2014 budget for Public Works Transportation Capital Improvement Projects.

7. <u>DEVELOPMENT SERVICES</u> (presenter: Brian Burson)

PUBLIC HEARING

EASEMENT VACATION FOR RESURRECTION FELLOWSHIP CHURCH

A Motion to Approve and Order Published on First Reading an Ordinance Vacating an Emergency Access Easement Across Lot 1, Block 1, Kness Addition, City of Loveland, County of Larimer, State of Colorado

This item is a legislative action to adopt an ordinance vacating a public emergency access easement on Lot 1, Block 1, Kness Addition to the City of Loveland. The applicant and owner of the property is Resurrection Fellowship Church.

8. <u>DEVELOPMENT SERVICES</u> (presenter: Kerri Burchett)

PUBLIC HEARING

AMENDMENT TO BOYD LAKE VILLAGE CONCEPT MASTER PLAN

A Motion to Approve and Order Published on First Reading an Ordinance

Approving a First Amendment to the Conceptual Master Plan for the Waterfall Fourth Subdivision and the Waterfall Fifth Subdivision, City of Loveland, County of Larimer, State of Colorado, also Known as Boyd Lake Village

This item is a quasi-judicial action to consider amending the Boyd Lake Village Conceptual Master Plan (the "Master Plan"). The applicant is McWhinney Inc. Currently, the Master Plan designates specific primary and non-primary land uses for each lot so that at build out the project satisfies the zoning requirement that 60% of the land area is developed into primary jobs. There are seven vacant lots remaining in the 32-acre development located on the north side of East Eisenhower Boulevard, south of Boyd Lake. The removal of the specific designations will provide the applicant greater flexibility in locating primary and non-primary jobs on the remaining vacant lots within the development. Development standards contained in the Master Plan will ensure that the mix of primary and non-primary jobs remain in compliance with the zone district requirements. The amendment would not change the designations of existing uses or alter the design standards approved for the development.

9. WATER & POWER (presenter: Melissa Morin)

TEMPORARY WORK SPACE EASEMENT FOR PUBLIC SERVICE COMPANY

A Motion to Approve Resolution #R-55-2014 Granting a Temporary Work Space Easement to the Public Service Company of Colorado

This is an administrative action to grant a temporary easement to Public Service Company of Colorado to permit the use of a city owned property for access to their facilities within an existing easement. To access their facilities, they are seeking access through the City's water tank property located at the southwest corner of County Road 14 and County Road 17 (South Taft Ave).

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

AMENDMENT TO IGA BETWEEN LFRA AND JOHNSTOWN FIRE PROTECTION DISTRICT

A Motion to Adopt Resolution #R-56-2014 Approving an Amendment to the Exhibits Attached to the Intergovernmental Automatic Response Agreement Between the Loveland Fire Rescue Authority and the Johnstown Fire Protection District

This is an administrative action to approve the amendment to the exhibits attached the intergovernmental automatic mutual aid agreement between Loveland Fire Rescue Authority (LFRA) and the Johnstown Fire Protection District (JFPD) are based on a recent evaluation of the response plans by both organizations based on resource location and availability. The areas of auto aid response are expanded for both the aid provided by LFRA to JFPD and the aid provided by JFPD to LFRA based on the relocation of LFRA Station 2 and the coverage area proposed within the plan for the development of an Authority between the JFPD and the Milliken Fire Protection District (MFPD). The Loveland Fire Rescue Authority Board approved this amendment July 10, 2014.

11. POLICE (presenter: Tim Brown)

AMENDMENT ADDING A SEX OFFENDER REGISTRATION FEE

A Motion to Approve Resolution #R-57-2014 Amending the 2014 Schedule of Rates, Charges and Fees for Police Records and Services Provided by the City of Loveland, Colorado by Adding a Sex Offender Registration Fee

This is an administrative action. This resolution sets fees for State-mandated sex offender registration and provides for a waiver of fees for indigency. The $75 and $25 registration fee will offset a small portion of the cost to the City to administer the State-mandated sex offender registration. It is anticipated that the fees collected under this

structure would be approximately $5200 per year.

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.*

1. Presentation from Long-Term Recovery Group (presenter: Glorie Magrum)

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

12. CULTURAL SERVICES (presenter: Susan Ison)
AMENDMENT OF THE RIALTO THEATER CENTER RATES AND FEES
A Motion to Approve Resolution #R-58-2014 Amending the 2014 Schedule of Rates, Charges and Fees for City Services, Other than Services Provided by the Water and Power Department and the Stormwater Enterprise
This is an administrative action. The Rialto Theater Center Business Plan presented to City Council on July 1, 2014, included a revision of rates, charges and fees for both the theater-side and the event-side. The accompanying resolution identifies the proposed rates, charges and fees for adoption by City Council, effective September 1, 2014. The Resolution increases Rates and Fees for the Theater-side of the Rialto Theater Center and reduces fees for the Event-side, which should increase overall revenue.

13. DEVELOPMENT SERVICES (presenter: Brian Burson)
PUBLIC HEARING
AMENDMENTS TO LOVELAND EISENHOWER 1ST SUBDIVISION CONCEPT MASTER PLAN
A Motion to Approve and Order Published on First Reading an Ordinance Approving a First Amendment to the Conceptual Master Plan and a First Amendment to the Annexation and Development Agreement for the Loveland Eisenhower First Subdivision, City of Loveland, County of Larimer, State of Colorado
This is a legislative action to amend the annexation and development agreement and a quasi-judicial action to amend the Concept Master Plan for the Loveland Eisenhower 1st Subdivision. The amendments would allow development of 240-368 apartment units in the northeasterly portion of the site as an additional non-primary workplace use under the MAC zoning. With the proposed amendments, the original requirement set forth in the Concept Master Plan for a minimum of 23.9 acres of land area and 300,000 square feet of floor area to be developed for primary jobs would still be met. The applicant is Greg Parker representing Loveland Eisenhower Investments, Inc.

14. DEVELOPMENT SERVICES (presenter: Greg George)
AMENDMENT OF OIL AND GAS CAPITAL EXPANSION FEES

A Motion to Approve Resolution #R-59-2014 Amending Resolution #R-81-2012 Adopting the 2013 Schedule of Capital Expansion Fees for Fire and Rescue, Law Enforcement and General Government and Resolution #R-97-2012 Adopting the 2013 Schedule of Street Capital Expansion Fees to Include New Capital Expansion Fees for Oil and Gas Facilities Pursuant to Section Chapter 16.38 of the Loveland Municipal Code

This item is an administrative action to adopt a resolution establishing capital expansions fees (CEFs) for oil and gas development within the city limits of the City of Loveland. This resolution amends the "2013 Schedule of Capital Expansion Fees for Fire and Rescue, Law Enforcement and General Government" and the "2013 Schedule of Street Capital Expansion Fees," both of which establish CEFs for the years 2013 – 2017. The fees for law enforcement and general government would be based on the same fee rate as currently applied to other types of industrial development within the City. The streets CEFs would also be based on the same rate currently being charged for other new development, which is $238.21 per trip end. The fee rate for fire protection would be higher than for other types of industrial development to reflect the likelihood that there may be a greater demand for emergency response and capital needs for fire protection. In order to collect CEFs, the subject resolution must be legally effective prior to the City accepting its first application for oil and gas development. City staff anticipates receiving our first application in the very near future.

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
STUDY SESSION
TUESDAY, JULY 8 2014
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

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

ROLL CALL

Councilors present: Gutierrez, Farley, Taylor, Clark, Shaffer, Fogle, McKean, Trenary, and Krenning. City Manager, Bill Cahill was also present.

STUDY SESSION AGENDA

1. PROCLAMATION RECOGNIZING GARY HAVENER'S OUTSTANDING SERVICE TO THE CITY OF LOVELAND

Mayor Gutierrez read the proclamation and presented it to Parks and Recreation Director Gary Havener. Mr. Havener thanked Council, the City employees, his department employees and the citizens for the honor of working for the City of Loveland.

2. FINANCE (presenters: Rod Wensing & Brent Worthington; 60 min)
NINE-MONTH FLOOD RECOVERY UPDATE

Assistant City Manager, Rod Wensing presented this item to Council as an informational update summarizing the City's flood recovery efforts, including: overall flood recovery efforts, specific flood recovery costs, reimbursements, and pending reimbursement applications. Finance Director, Brent Worthington was present to give updated numbers on reimbursements received and outstanding reimbursements still in process. Discussion occurred on the FEMA approved Idylwilde Dam as an Alternate Project (Solar Generating Facility), the Urban Land Institute Resilience Advisory Panel's visit and report, and ongoing recovery efforts. Water and Power Director, Steve Adams was present to address Council and answer questions. Council thanked staff for the update.

3. PARKS & RECREATION (presenter: Gary Havener; 60 min)
DIRECTION AND VISION FOR LOVELAND OPEN LANDS PROGRAM

Parks and Recreation Director, Gary Havener introduced this item to Council. The Open Lands Advisory Commission last updated City Council in 2009 regarding direction and vision of the Open Lands Program. With the recent completion of the Parks & Recreation Master Plan, Chairman Gale Bernhardt, along with members of the commission, led the discussion regarding current and future plans and priorities for Open Lands. The Larimer County Commissioners will consider 2014 ballot language for a possible extension of the Help Preserve Open Spaces Tax that is due to expire in 2018. Larimer County staff has recently asked for input from the municipalities by July 11th. Mr. Havener presented the financial scenarios for the sales tax split remaining the same or changing the county/city split to 50%/50% and impacts to the City's open lands acquisition. The city's Open Lands Advisory Commission unanimously opposed the 50/50 split. County Commissioner Tom Donnelly addressed the group stating that key to the tax extension is reducing the amount the county is required to apply to land acquisition. From the county's current share, 70% is mandated and that would drop to 35%. Discussion ensued. Council favored the current open spaces sales tax split and did not favor changing the makeup of the county open lands board. Council thanked Gary Havener, the County Open Lands Board representatives, County Commissioner

Tom Donnelly, and the City's Open Lands Commission members for their participation in the discussion.

ADJOURNMENT

Having no further business to come before Council, the July 8, 2014 Study Session was adjourned at 10:29 p.m.

Respectfully Submitted,

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

MINUTES
LOVELAND CITY COUNCIL
STUDY SESSION
TUESDAY, JULY 22, 2014
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

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

ROLL CALL

Councilors present: Gutierrez, Farley, Clark, Shaffer, Fogle, Trenary, and Krenning. Councilors McKean and Taylor were absent. Assistant City Manager, Rod Wensing was also present.

STUDY SESSION AGENDA

1. POLICE (presenters: Captain Tim Brown, Tree Ablao, Judge Bill Starks and Susanne Durkin-Schindler)

RESTORATIVE JUSTICE AND TEEN COURT

Assistant City Attorney, Tree Ablao presented this item to Council to provide current information regarding youth offender programs, specifically Restorative Justice and Teen Court, to assist youth in the community who have, or are alleged to have, committed state law or ordinance violations. Captain Tim Brown gave an update on Loveland's history with the program discontinued in 2005, current available programs in the community and information regarding the opportunity to partner with the Thompson School District (TSD) and the Restorative Justice Community Council (RJCC). Susanne Durkin-Schindler from RJCC presented a proposal for the City as a funding partner for a diversion program that aims to have teens take responsibility for actions and work to repair the harm. Cheryl O'Shell from TSD explained the proactive restorative practice skills training and peer conflict resolution program she administers. Municipal Judge, Bill Starks presented information on the Teen Court Program in which youth are sentenced by their peers. Dr. Margaret Crespo was available to address Council and answer questions about the Restorative Justice and Teen Court Programs. Discussion ensued. Council requested additional information on both programs and directed staff to expediently move forward exploring and instituting the two programs. Council thanked the group for their presentations.

2. ECONOMIC DEVELOPMENT (presenters: Betsey Hale and rep from Water Valley, McWhinney and Sylvan Dale; 60 min)

GO NOCO REGIONAL TOURISM AUTHORITY APPLICATION

Economic Development Director, Betsey Hale introduced this item to Council. The presentation includes participation from three private landowners and developers related to a Northern Colorado Regional Tourism Act application (RTA). The RTA is legislation to provide financial support for the development of regional tourism attractions and associated amenities. The purpose is to increase the attraction of out-of-state visitors and increase visitor spending. The RTA provides for the establishment of an authority which will use the State of Colorado sales tax increment collected in a designated RTA zone for the purpose of financing eligible projects. This is a discussion only item, but City staff will be making a request for financial support for the development of the RTA application in partnership with the private non-profit group GO NOCO to the State of Colorado Economic Development Commission. Staff is recommending Council consider a request for $50,000 of Lodging Tax Reserves and $125,000 of Economic Development Incentive Funds, at a future meeting. Developers Jay Hardy from McWhinney and Martin

Lind from Water Valley addressed Council with details of the project concept areas located at the Larimer County Ranch and Fairgrounds; Centerra; and Water Valley property in Loveland and Windsor. Representatives from Sylvandale Guest Ranch gave a detailed account of the history and tourism impact that the ranch has had in the area and how they could rebuild, improve and benefit as a project in the concept area. Discussion ensued. Council thanked the group for their presentation and directed staff to bring the request for funding to a regular meeting.

ADJOURNMENT

Having no further business to come before Council, the July 22, 2014 Study Session was adjourned at 10:24 p.m.

Respectfully Submitted,

_____ _____

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

MINUTES
LOVELAND CITY COUNCIL MEETING
THE WATER ENTERPRISE BOARD
TUESDAY, AUGUST 5, 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: Fogle, Gutierrez, Shaffer, Taylor, Clark, Farley, McKean, Trenary and Krenning responded.

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
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 asked to move Item #9 to the Regular Agenda. Councilor Shaffer moved to approve the Consent Agenda with the exception of Item #9. Councilor Trenary seconded the motion which carried with all councilors present voting in favor thereof.

1. <u>CITY CLERK</u> (presenter: Terry Andrews)
APPROVAL OF MEETING MINUTES
1. A Motion to Approve the Council Study Session Minutes for the June 24, 2014 Study Session was approved.
This is an administrative action to approve the City Council Study Session minutes for the June 24, 2014 Study Session.
2. A Motion to Approve the Council Meeting Minutes for the July 1, 2014 Regular Meeting was approved.
This is an administrative action to approve the City Council meeting minutes for the July 1, 2014 regular meeting.
3. A Motion to Approve the Council Meeting Minutes for the July 15, 2014 Regular Meeting was approved.

This is an administrative action to approve the City Council meeting minutes for the July 15, 2014 regular meeting.

2. CITY MANAGER (presenter: Bill Cahill)

BOARDS & COMMISSIONS APPOINTMENTS

Appointment of Members to the Citizens' Finance Advisory Board, Human Services Commission, Loveland Utilities Commission, Senior Advisory Board, and Transportation Advisory Board

1. A motion to appoint Victor Palomares to the Citizens' Finance Advisory Board for a partial term effective until December 31, 2014 was approved.

2. A motion to appoint Sonnette Greenidge to the Human Services Commission for a term effective until June 30, 2017 was approved.

3. A motion to reappoint April Lewis to the Human Services Commission for a term effective until June 30, 2017 was approved.

4. A motion to appoint Jo Anne Warner to the Human Services Commission for a term effective until June 30, 2017 was approved.

5. A motion to appoint Rebecca Paulson as an alternate member on the Human Services Commission for a term effective until June 30, 2015 was approved.

6. A motion to appoint Marcy Yoder as an alternate member on the Human Services Commission for a term effective until June 30, 2015 was approved.

7. A motion to appoint Jennifer Gramling to the Loveland Utilities Commission for a full term effective until June 30, 2017 was approved.

8. A motion to reappoint Phoebe Hawley as the McKee Medical Center Seasons Club representative on the Senior Advisory Board for a term effective until August 5, 2016 was approved.

9. A motion to reappoint Irene Fortune to the Transportation Advisory Board for a term effective until June 30, 2017 was approved.

10. A motion to reappoint Dave Martinez to the Transportation Advisory Board for a term effective until June 30, 2017 was approved.

11. A motion to reappoint Bob Massaro to the Transportation Advisory Board for a term effective until June 30, 2017 was approved.

These are administrative actions recommending the appointment of members to the Citizens' Finance Advisory Board, the Human Services Commission, the Loveland Utilities Commission, the Senior Advisory Board, and the Transportation Advisory Board.

3. DEVELOPMENT SERVICES (presenter: Bethany Clark)

HISTORIC LANDMARK DESIGNATION FOR THE SCOTT HOUSE

A Motion to Approve and Order Published on Second Reading Ordinance #5870 Designating as a Historic Landmark the Scott House Located at 719 East 5th Street in Loveland, Colorado was approved.

This is a legislative action. The owner of a Craftsman-style home on East 5th Street is requesting Loveland Historic Landmark designation to recognize the building's architecture and cultural significance in Loveland. The Historic Preservation Commission acknowledges the building's significance and recommends that City Council designate the building to the Loveland Historic Register. This ordinance was approved unanimously on first reading by Council at the July 15, 2014 regular meeting.

4. PARKS & RECREATION (presenter: Janet Meisel-Burns)

SUPPLEMENTAL APPROPRIATION FOR MOREY/MARIANA RIVERWORK AND VIESTENZ-SMITH MOUNTAIN PARK

A Motion to Approve and Order Published on Second Reading Ordinance #5871 Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland

Budget for Engineering Work to Develop River Modeling Along the River Reaches of the Morey Wildlife Reserve/Mariana Butte Golf Course, River's Edge Natural Area and Viestenz-Smith Mountain Park was approved.

This is an administrative action. The ordinance on second reading appropriates funding for engineering costs to determine the scope for 4 park and recreation projects that require hydraulic modeling and river scour analysis prior to the full restoration of the sites. The total appropriation is $500,000. Depending on the final determination from FEMA, some of these costs may be eligible for reimbursement and other grant opportunities that may arise. In particular the costs for Mariana Butte Golf Course's share will likely not be reimbursed but the Viestenz-Smith Mountain Park costs may be covered under the reimbursement from FEMA if the project is selected for the Alternative Pilot Program. This ordinance was approved unanimously on first reading by Council at the July 15, 2014 regular meeting.

5. ECONOMIC DEVELOPMENT (presenter: Betsey Hale)

SUPPLEMENTAL APPROPRIATION FOR LEGAL COSTS ASSOCIATED WITH NEW DOWNTOWN ORGANIZATION

A Motion to Approve and Order Published on Second Reading Ordinance #5872 Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for Legal Costs to Assist in the Formation of a New Downtown Organization was approved.

This is an administrative action requesting a supplemental budget and appropriation of $50,000 for the purpose of hiring legal counsel to assist with the formation of a downtown leadership organization. The ordinance is funded by fund balance in the General Fund that reduces the flexibility to fund other projects. The ordinance was approved unanimously on first reading by Council at the July 15, 2014 regular meeting.

6. ECONOMIC DEVELOPMENT (presenter: Marcie Erion)

SUPPLEMENTAL APPROPRIATION AND FEE WAIVER AGREEMENT FOR THARP CABINET CORPORATION

A Motion to Approve and Order Published on Second Reading Ordinance #5873 Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for Incentives to Tharp Cabinet Corporation for the Expansion of its Current Facility was approved.

This is an administrative action. The incentive request on behalf of Tharp Cabinet Corporation will waive City of Loveland fees and taxes associated with an expansion of their current facility. The City of Loveland is being asked to waive up to but not to exceed $100,000 of fees and taxes based on final fee calculations provided at time of building permit issuance. The funds to backfill the Capital Expansion Fees and System Impact Fees will come out of the Economic Development Incentive Fund contingent upon City Council approval. Based on the current fee estimate, the fee waivers amount to $40,000 with the backfill of Capital Expansion Fees and System Impact Fees in the amount of $60,000. These figures may change based on final building plan submittal. The ordinance was approved unanimously on first reading by Council at the July 15, 2014 regular meeting.

7. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)

SUPPLEMENTAL APPROPRIATION FOR SOUTH CATALYST PROJECT

A Motion to Approve and Order Published on Second Reading Ordinance #5874 Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Purchase of Property for the South Catalyst Project was approved.

This is an administrative action. The ordinance on second reading appropriates $6.25 million to fund the acquisition of Downtown property in support of the South Catalyst

redevelopment project. The proposed project, a partnership with the Michaels Development Company and Larimer County, is expected to result in a vertically dense mixed-use project that would include office, residential and retail. The total investment is expected to generate between $50 to $70 million. The project was originally conceived in the 2010 Downtown Vision book as the South Catalyst project. The Vision book also conceived the recently completed North Catalyst project, the Gallery Flats apartment buildings. Staff identified the Michaels Development Company as a private sector development partner for the project and Council approved a six month exclusive right to negotiate in February of 2014. The negotiations are moving forward with Michaels and we expect an update to Council by August 5, 2014. The ordinance is funded by General Fund Reserves ($2,250,000) and Council Capital Reserve ($4,000,000) that reduces the flexibility to fund other projects. The current balance in the General Fund Reserves is $13,393,673. The new balance, pending approval of this supplemental appropriation request, will be $11,143,673. The Council Capital Reserve balance is $4,063,570 and pending approval of this supplemental appropriation request the new balance will be $63,570. This ordinance was approved unanimously by Council at the July 15, 2014 regular meeting.

8. INFORMATION TECHNOLOGY (presenter: Bill Westbrook)
SUPPLEMENTAL APPROPRIATION FOR FIBER OPTIC CABLE INSTALL
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 Installation of Fiber Optic Cable on 29th Street from Taft Avenue to Wilson Avenue was approved.
This is an administrative action. The appropriation funds a project to bury, install, and terminate a fiber optic cable on 29th Street to provide connection to the new fire station 2, the Olde Course and the Cattail Creek Golf Courses. Revenues in the total amount of $112,910 are hereby requested for appropriation and transfer to the Capital Projects for installation of fiber optic cable. Fund balance is used for the Golf Enterprise's share and reduces the flexibility to fund other projects in the Enterprise.

9. DEVELOPMENT SERVICES (presenter: Alison Hade)
ANNUAL ACTION PLAN AND GRANT APPLICATION FOR CBDG
This item was moved to the Regular Agenda**.**

10. WATER & POWER (presenter: Gretchen Stanford)
IGA FOR DEMAND SIDE MANAGEMENT PROGRAM PARTNERSHIP
A Motion to Adopt Resolution #R-50-2014 Approving an Intergovernmental Agreement Among the Town of Estes Park, the City of Fort Collins, the City of Longmont, the City of Loveland, and Platte River Power Authority for Demand Side Management Program Partnership was approved.
This is an administrative action to approve an agreement under which Platte River Power Authority will contract for Demand Side Management (DSM) programs to be offered to Loveland's water and power customers. These programs are designed to reduce our customers' water and electric consumption, which will benefit the utilities, its customers, and the community as a whole. DSM programs are currently budgeted for in the Water and Power budget. The IGA does not necessarily increase DSM program costs, but it does provide a mechanism for increasing DSM programming (thereby increasing costs). No DSM programs would be contracted for in excess of funds appropriated and budgeted in the Water and Power Budget.

11. FINANCE (presenter: Brent Worthington)
FINANCIAL REPORT JUNE 2014

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 June 30, 2014.

12. CITY MANAGER (presenter: Alan Krcmarik)

INVESTMENT REPORT JUNE 2014

This is an information only item. The 2014 budget projection for investment earnings for 2014 is $2,025,920 which equates to an annual interest rate of 0.94%. For June, the amount posted to the investment account is $219,024. For the year-to-date, the amount posted is $982,941. Actual earnings are now below the year-to-date budget projection by $56,758. Based on the monthly statement, the estimated annualized yield in June on the securities held by US Bank was 0.99%, 0.03% lower than May. Due to the demands for draws from the fund balances to pay for the cost of flood response and project repair, the portfolio has a significantly lower fund balance than it would otherwise.

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.*

1) *John Meadors, Loveland resident expressed concern regarding radio frequency meters at his home.*

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

9. DEVELOPMENT SERVICES (Presenter: Alison Hade)

ANNUAL ACTION PLAN AND GRANT APPLICATION FOR CBDG

Community Partnership Administrator, Alison Hade, introduced this item to Council. This is an administrative action. Each year, the Community Partnership Office submits a report to the U.S. Department of Housing and Urban Development (HUD) called the Annual Action Plan which identifies the housing and public services projects that will be funded with a Community Development Block Grant (CDBG) during the next grant year. This resolution approves the Action Plan and grant application for 2014-2015 so they can be submitted to HUD. CDBG funding for 2014-2015 is expected to be $301,648. **Councilor Shaffer moved** t**o Adopt Resolution #R-49-2014 of the City Council of the City of Loveland, Colorado Approving a Community Development Block Grant Annual Action Plan and Grant Application for 2014-2015. The motion seconded by Councilor Trenary, carried with eight Councilors voting in favor and Councilor Krenning voting against.**

13. CITY MANAGER (presenter: Bill Cahill)

APPOINTMENT OF A NOMINATED MEMBER TO THE SENIOR ADVISORY BOARD

City Manager, Bill Cahill introduced this item to Council. This is administrative action

recommending the appointment of a Senior Advisory Board nominated member. Councilor Fogle recused himself due to the personal relationship with his wife, Donita Fogle. **Councilor Shaffer moved to Reappoint Donita Fogle as the Housing Authority of the City of Loveland Representative on the Senior Advisory Board for a Term Effective Until August 5, 2016. The motion which was seconded by Councilor Farley carried with all councilors present voting in favor thereof.**

14. WATER AND POWER (presenter: Chris Matkins)
SUPPLEMENTAL APPROPRIATION FOR WATER TREATMENT PLANT EXPANSION AND WATERLINE REPAIRS

This is an administrative action. Because of construction bids coming in higher than expected for the WTP expansion project and because of uncertainty regarding when the Water Utility will be reimbursed by FEMA and the State for costs associated with the Flood of 2013, there is a need to appropriate more funding in order to award the contracts for construction and services during construction for the WTP expansion project. Staff is proposing to add to the $9.865 million fund balance included in the 2014 budget by appropriating additional revenue from three sources: a) the available balance on the previously authorized $10 million loan from Wells Fargo (approximately $9.9 million); b) an internal loan from the Raw Water Utility in the amount of $13 million; and c) a new external borrowing sufficient to provide net loan proceeds that range from zero to $3 million. Part of this supplemental appropriation is simply to move expenditures forward from 2015 and 2016 into 2014 in order to award the construction and services during construction contracts for the water treatment plant (WTP) expansion project. The supplemental appropriation addresses an increase in the cost of this project and the need to acquire additional funds while the City awaits funding from FEMA. This ordinance was approved with a vote of 8-1 on first reading by Council at the July 15, 2014 regular meeting. **Councilor Shaffer moved to Approve and Order Published on Second Reading Ordinance #5875 enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Water Treatment Plant Expansion Project and Repair of Water Lines Damaged in the 2013 Flood. The motion which was seconded by Councilor Farley, carried with eight councilors voting in favor and Mayor Pro tem Clark voting against.**

CITY COUNCIL ADJOURNED AND CONVENED AS THE WATER ENTERPRISE BOARD AT 7:28 P.M.

15. WATER AND POWER (presenter: Chris Matkins)
PUBLIC HEARING
EMERGENCY ORDINANCE FOR PHASE 2 OF WATER TREATMENT PLANT CONSTRUCTION CONTRACT AWARD

Water Utilities Manager, Chris Matkins introduced this item to Council. This is an administrative item to adopt an Emergency Ordinance awarding a construction contract to Moltz Construction, Inc. for the Chasteen Grove (Phase 2) Water Treatment Plant Expansion Project. The Water Enterprise will authorize and execute the contract because it is a multi-year fiscal contract. The contract is for $24,374,213, including the Soda Ash Alternate and will have a concurrently executed deductive change order for approximately $400,000 in staff recommended value engineering Contract changes. The Contractor is obligated to hold his bid for 60 days after the bid opening (June 12, 2014). The Emergency Ordinance on first and only reading requires an affirmative vote of 2/3 of the entire Council (6 votes) under Charter Section 4-10. **Councilor Shaffer moved to Approve and Order Published on First and Only Reading Emergency Ordinance #5876 of the Loveland City Council by and through the Water Enterprise Board Approving and Authorizing the Execution of a Multi-Fiscal Year Contract with**

Moltz Construction, Inc. for Phase 2 of the Water Treatment Plant Expansion Project. The motion which was seconded by Councilor Farley, carried with eight councilors voting in favor and Mayor Pro tem voting against.

THE WATER ENTERPRISE BOARD ADJOURNED AND RECONVENED AS CITY COUNCIL AT 7:32 P.M.

16. CITY ATTORNEY (presenter: Judy Schmidt)
MODIFICATION TO THE CONSOLIDATED SERVICE PLAN-CENTERRA METRO DISTRICTS 1-4

Acting City Attorney, Judy Schmidt introduced this item to Council. Centerra Metro-District Attorney, Alan Pogue gave Council details. This is an administrative matter. The Internal Revenue Service ("IRS") recently announced a policy change that requires political subdivisions, including metropolitan districts, to include residential property in their boundaries in order to be considered a good issuer of tax-exempt debt. As a result, Centerra Metropolitan District No. 1 (the "District") desires to include property into its boundaries that will have future residents in order for it to be considered a good issuer of tax-exempt debt. This is a time-sensitive issue, as the District desires to complete its next financing this summer so that it may complete the infrastructure for Parcel 505, which includes, among other uses, the Bass Pro Outdoor World store. This item has no impact on the City's budget. The Mayor opened the public hearing at 8:54 p.m. and hearing no comment, closed the public hearing at 8:54p.m. **Councilor Shaffer moved to Adopt Resolution #R-51-2014 Approving a Material Modification to the Consolidated Service Plan for Centerra Metropolitan Districts Nos. 1 through 4 Permitting the Inclusion of Additional Real Property into Centerra Metropolitan District No. 1. The motion which was seconded by Councilor Farley, carried with eight councilors voting in favor and Councilor Krenning voting against.**

17. CITY ATTORNEY (presenter: Judy Schmidt)
PROPOSED EAGLE CROSSING-LOVELAND METROPOLITAN DISTRICTS NOS. 1-4

Acting City Attorney, Judy Schmidt introduced this item to Council. The Development was represented by Attorney, Bill Ankele. This is an information only item. Eagle Crossing Development, Inc., as Developer, is proposing to create four new metropolitan districts to provide all or part of the activities necessary for the development of Eagle Crossing, which consists of approximately 56 acres located at the southeast intersection of Fairgrounds Avenue and Crossroads Avenue. The Developer has requested an opportunity to present information regarding metropolitan districts generally, and the need for these four metropolitan districts in particular, to City Council prior to bringing forward the Service Plan to City Council for approval.

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.*

Trenary: Will be attending the Governor's Award ceremony in September for Downtown Excellence in Fort Collins.

Farley: Announced the Sculpture Events this weekend in Loveland; Asked for an update from the Citizen's Finance Committee with resident, George Cornileus, regarding the City's investment practices.

Krenning: Discussed a "mini-bond" process in Denver, which raised $12 million in 1 hour, and requested that Staff look into the process and report back to Council if that type of investment structure would be feasible in the City of Loveland.

McKean: Addressed the July 19, 2014 meeting going until 2am. Requested Council review their meeting management; Requested Council revisit prior commitments

when considering “new” spending of reserves. Council McKean asked Staff to help in that endeavor, whenever possible.

Clark: Asked Staff to provide educational materials to Council and the public, regarding issuance of water meters, which was addressed by Mr. Meadors this evening in public comment. Staff will provide the education materials that they send to the public**.**

Shaffer Announced there would be no North Front Range Metropolitan Planning Organization (NFRMPO) meeting this month; Announced there would not be an I-25 mtg; Announced that the Upper Front Range meeting Colorado Department of Transportation (CDOT) indicated they would have funds available in the rural communities Region 4 in CDOT to coordinate projects, but would not give any allowance to set aside to contribute to I-25.

Fogle The Rotary Club will be hosting their annual Ducks in the River Race at the Old Fashioned Corn Roast Festival on August 23, 2014. There will be a booth at the "Art in the Park" event this weekend, for people to purchase the ducks.

Gutierrez Thanked Rich Harris, Rialto Theater Manager, who oversaw the Foote Lagoon Concerts this year and Kaiser Permanente for their sponsorship of the event; Updated Council on the Fire Chief Hiring process.

CITY MANAGER REPORT

1) **Pulliam Building Grant Opportunity and Update.** City Manager Bill Cahill, told Council that Staff discovered there is another grant cycle for April 2015. Mr. Cahill indicated the Pulliam building would need to have Historical Designation to qualify for the funding. Staff is preparing documents for the quiet title process. This item will be back in front of Council at a later date.

CITY ATTORNEY REPORT

None.

ADJOURNMENT

Having no further business to come before Council, the August 5, 2014, Regular Meeting was adjourned at 9:54 p.m.

Respectfully Submitted,

_____ _____

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

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

AGENDA ITEM: **2**
MEETING DATE: 8/19/2014
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill, City Manager

TITLE:
Appointment of Members to the Affordable Housing Commission

RECOMMENDED CITY COUNCIL ACTION:
1. A motion to appoint Correy Fuqua to the Affordable Housing Commission for a partial term effective until June 30, 2015.
2. A motion to appoint Mechelle Martz-Mayfield to the Affordable Housing Commission for a term effective until June 30, 2017.

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

SUMMARY:
These are administrative actions recommending the appointment of members to the Affordable Housing Commission.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
During the Spring recruiting cycle the **Affordable Housing Commission** had one term vacancy. Subsequently, Ted Schlagenhauf resigned in late June, creating a partial term vacancy. During the recruiting process, two applications were received. Interviews were conducted with both individuals. The committee recommends the appointment of Corey Fuqua to the Affordable Housing Commission for a partial term effective until June 30, 2016. The committee recommends the appointment of Mechelle Martz-Mayfield to the commission for a full term effective until June 30, 2017.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:
None

CITY OF LOVELAND
INFORMATION TECHNOLOGY DEPARTMENT
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2335 • FAX (970) 962-2909 • TDD (970) 962-2620

AGENDA ITEM: **3**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Bill Westbrook, Information Technology Department
PRESENTER: Bill Westbrook, Director of Information Technology

TITLE:
An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Installation of Fiber Optic Cable on 29th Street from Taft Avenue to Wilson Avenue

RECOMMENDED CITY COUNCIL ACTION:
Approve the ordinance on second reading.

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

SUMMARY:
This is an administrative action. The appropriation funds a project to bury, install, and terminate a fiber optic cable on 29th Street to provide connection to the new fire station 2, the Olde Course and the Cattail Creek Golf Courses. This ordinance was approved unanimously on first reading by Council at the August 5, 2014 regular meeting.

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible

Fiber Optic lease revenues are anticipated to be over the budgeted amount in 2014 and fund the General Fund portion of the project. Revenues and/or reserves in the amount of $75,300 from fiber optic lease revenue in the General Fund 100 and $37,610 from the fund balance in the Golf Enterprise Fund 375 are available for appropriation. Revenues in the total amount of $112,910 are hereby requested for appropriation and transfer to the Capital Projects Fund 120

for installation of fiber optic cable. Fund balance is used for the Golf Enterprise's share and reduces the flexibility to fund other projects in the Enterprise.

BACKGROUND:

The new Fire Station 2's initial and only fiber connection, as designed, is traffic fiber being installed along Wilson Avenue. This proposed project along 29th Street offers a redundant path for the fire station's data network access. Fiber installation along the south side of 29th Street between Taft and Wilson Avenues is projected to cost $75,310 as no usable conduit exists and the entire run is required to be bored instead of trenched. The cost covers conduit, fiber optic cable, and connections to traffic and Platte River fiber infrastructure.

The golf cost of the project is estimated to be $37,610 which provides conduit, fiber, connectivity, and equipment to attach both courses to the fiber to be installed on 29th. This results in t1 connections to the Olde Course and Cattail Creek being replaced by 10 gigabit network connections at each course, providing the courses a connection that is over 6,632 times faster than before. The T1 connections are approximately $250 each per month. The fiber replaces those lines resulting in a little over six year cost recovery with no additional monthly costs after that time.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Ordinance
2. Map

FIRST READING August 5, 2014

SECOND READING August 19, 2014

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET FOR THE INSTALLATION OF FIBER OPTIC CABLE ON 29TH STREET FROM TAFT AVENUE TO WILSON AVENUE

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 $75,300 from fiber optic lease revenue in the General Fund 100 and $37,610 from the fund balance in the Golf Enterprise Fund 375 are available for appropriation. Revenues in the total amount of $$112,910 are hereby appropriated and transferred to the Capital Projects Fund 120 for installation of fiber optic cable. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
General Fund 100

Revenues		
100-00-000-0000-30602	Fiber Optic Lease	75,300
Total Revenue		**75,300**
Appropriations		
100-91-999-0000-47120	Transfer to Capital Projects Fund	75,300
Total Appropriations		**75,300**

Supplemental Budget
Capital Projects Fund 120

Revenues		
120-00-000-0000-37100	Transfer from General Fund	75,300
120-00-000-0000-37375	Transfer from Golf Enterprise	37,610
Total Revenue		**112,910**
Appropriations		
120-16-161-0000-49360	Construction	112,910
Total Appropriations		**112,910**

Supplemental Budget
Golf Enterprise Fund 375

Revenues		
Fund Balance		37,610
Total Revenue		**37,610**
Appropriations		
375-51-510-0000-47120	Transfer to Capital Projects Fund	37,610
Total Appropriations		**37,610**

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

ADOPTED this ___ day of August, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney


W 29TH ST
New
Fire
Station #2
WILSON
TAFT
EISENHOWER BLVD
Proposed Fiber Optic to
New Fire Station #2
Traffic Signal
Traffic Fiber in Progress
Project Proposed Fiber Optic
Platte River Fiber Optic Installed
0
500
1,000
1,500
2,000
Feet
N

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: **4**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Dave Klockeman, Public Works Department
PRESENTER: Dave Klockeman, Acting Public Works Director / City Engineer

TITLE:

1. A Resolution Approving an Intergovernmental Agreement (IGA) between the City of Loveland, Colorado, and the State of Colorado, Acting by and through the Colorado Department of Transportation (CDOT), to update equipment at the Traffic Operations Center (TOC) in the City of Loveland
2. An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget to update equipment at the Traffic Operations Center (TOC) in the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:

1. Adopt the resolution.
2. 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:

These are administrative actions. The City has received a Federal grant, not to exceed $205,000 of the $247,615 total project cost, through the STP-Metro program to fund the upgrade of equipment at the existing TOC. This item includes consideration of a resolution approving an IGA between the City of Loveland and CDOT for the project and consideration of the first reading ordinance to appropriate the funds included in the IGA.

BUDGET IMPACT:

☒ Positive
☐ Negative
☐ Neutral or negligible

The project is funded from federal funds, not to exceed $205,000, and City of Loveland local match funds, $42,615, for a total project cost of $247,615. The City funds are included within the approved 2014 budget for Public Works Transportation Capital Improvement Projects.

BACKGROUND:
The work to be completed in the Loveland Traffic Operations Center (TOC) project includes the purchase of equipment such as a backup generator, computers, software, closed-circuit television (CCTV) switches and an additional operator station to upgrade the Loveland TOC. This equipment will enhance the TOC to facilitate information sharing with the public and the CDOT and improve safety through two way communications of data and video on cotrip.org, which allows people to view live traffic and weather conditions. In addition, the purchase of a backup generator will ensure the TOC remains operational during inclement weather and in emergency situations.

This project is currently in preliminary planning stage with design to be completed by mid-2015. Construction is planned for the summer/fall of 2015 and is anticipated to take 3 to 4 months.

Funding Summary:		
Federal Funds		$205,000
Local Agency Match Funds*	$ 42,615	
Local Over-Matching Funds**	$ 0	
Subtotal Local Funds	$ 42,615	$ 42,615
Total Project Funds:		$247,615

* Local Agency Match Funds are defined as funding required to be provided by a local entity as part of the Federal grant process. For STP-Metro Funding, the Local Agency Match is 17.21% of the Total Project Funds (not including Local Over-Matching Funds).
** Local Over-Matching Funds are defined as funding provided by a local entity above the required amount of Local Agency Match Funds in order to complete a project. FHWA requires that this amount be shown in the documents to identify all of the funding anticipated for a project, and Overmatch Funds are encouraged.

An ordinance is required to appropriate the grant funds as the award of this project occurred after the 2014 Budget was adopted.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:
1. Resolution

2. Intergovernmental Agreement (Exhibit A to Resolution)
3. Ordinance

RESOLUTION #R-52-2014

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION TO UPDATE EQUIPMENT AT THE TRAFFIC OPERATIONS CENTER IN THE CITY OF LOVELAND

WHEREAS, the City of Loveland desires to modify and upgrade its traffic operations center ("TOC") equipment to enhance the TOC's ability to facilitate information sharing with the public and CDOT and improve safety through two way communication of data and video on cotrip.org and through purchase of an emergency backup generator (the "Project"); and

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

WHEREAS, the estimated cost of the Project is $247,615 of which the FHWA will reimburse $205,000 representing 82.79% of such cost on the condition that the City contribute $42,615 or 17.21% of such cost; and

WHEREAS, the City and CDOT desire to enter into an intergovernmental agreement to define the division of responsibilities with regard to the Project; and

WHEREAS, as governmental entities in Colorado, the City and CDOT are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

Section 1. That the "State of Colorado Department of Transportation Agreement with City of Loveland," attached hereto as Exhibit A and incorporated herein by reference (the "Intergovernmental Agreement"), is hereby approved subject to final approval of an ordinance appropriating the funds required under the Intergovernmental Agreement (the "Ordinance").

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City after the Ordinance is approved by City Council and becomes effective.

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

ADOPTED this _____ day of August, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

(FMLAWRK) **Rev. 7/8/09**
Project: Traffic Operations 2014 (STM M830-066 (19745)) **Routing #: 15-HA4 71223**
Region: 4 (rp) **SAP ID #: 331001149**

STATE OF COLORADO
Department of Transportation
Agreement
with
CITY OF LOVELAND

TABLE OF CONTENTS

1. PARTIES

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

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

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

3. RECITALS

A. Authority, Appropriation, and Approval

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

i. Federal Authority

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

ii. State Authority

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

B. Consideration

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

C. Purpose

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

D. References

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

4. DEFINITIONS

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

A. Agreement or Contract

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

B. Agreement Funds

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

C. Budget

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

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

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

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

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

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

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

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

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

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

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

5. TERM AND EARLY TERMINATION

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

6. SCOPE OF WORK

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

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

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

D. State and Local Agency Commitments
i. Design

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

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

ii. Local Agency Work

a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in Exhibit H. If the Local Agency enters into a contract with a Consultant for the Work:
    (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
    (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
    (3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
    (4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in Exhibit H to administer the Consultant contract.
    (5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with Exhibit H and 23 C.F.R. 172.5(b)and (d).
    (6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
        (a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

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

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

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

iii. Construction

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

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

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

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

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

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).

(b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.

(c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.

(3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.

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

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

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

(c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.

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

E. State's Commitments

a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**.

F. ROW and Acquisition/Relocation

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

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

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

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

(1) Right of way acquisition (3111) for federal participation and non-participation;

(2) Relocation activities, if applicable (3109);

(3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

G. Utilities

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

a) Railroads

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

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

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

d) Establish future maintenance responsibilities for the proposed installation.

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

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

H. Environmental Obligations

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

I. Maintenance Obligations

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

7. OPTION LETTER MODIFICATION

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

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

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds remaining the same. The State may simultaneously increase and/or decrease the total encumbrance amount by replacing the original funding exhibit **(Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

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

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

C. Option to do both Options A and B.

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

8. PAYMENTS

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

A. Maximum Amount

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

B. Payment

i. Advance, Interim and Final Payments

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

ii. Interest

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

iii. Available Funds-Contingency-Termination

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

iv. Erroneous Payments

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

C. Use of Funds

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

D. Matching Funds

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

E. Reimbursement of Local Agency Costs

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

i. Reasonable and Necessary

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

ii. Net Cost

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

9. ACCOUNTING

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

A. Local Agency Performing the Work

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

B. Local Agency-Checks or Draws

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

C. State-Administrative Services

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

D. Local Agency-Invoices

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

E. Invoicing Within 60 Days

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

F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds shall be payable from the State Highway Supplementary Fund (400) until

CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail the reimbursable costs incurred, the dates incurred and the amounts thereof, and shall not be submitted more often than monthly.

10. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

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

B. Litigation Reporting

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

C. Noncompliance

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

D. Documents

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

11. LOCAL AGENCY RECORDS

A. Maintenance

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

B. Inspection

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

C. Monitoring

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to:

internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

D. Final Audit Report

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

12. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. Confidentiality

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

B. Notification

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

C. Use, Security, and Retention

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

D. Disclosure-Liability

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

13. CONFLICT OF INTEREST

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

14. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

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

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

C. Licenses, Permits, Etc.

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

15. INSURANCE

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

A. The Local Agency

i. Public Entities

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

ii. Non-Public Entities

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

B. Contractors

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

i. Worker's Compensation

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

ii. General Liability

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

iii. Automobile Liability

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

iv. Additional Insured

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

v. Primacy of Coverage

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

vi. Cancellation

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

vii. Subrogation Waiver

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

C. Certificates

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

16. DEFAULT-BREACH

A. Defined

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

B Notice and Cure Period

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

17. REMEDIES

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

A. Termination for Cause and/or Breach

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

B. Obligations and Rights

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

C. 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.

D. Damages and Withholding

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

E. 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.

F. 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. Withhold Payment

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

iii. Deny Payment

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

iv. Removal

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

v. Intellectual Property

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

18. NOTICES and REPRESENTATIVES

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

A. If to State:

CDOT Region: 4
Jake Schuch
Project Manager
1420 Second Street

B. If to the Local Agency:

CITY OF LOVELAND
Justin Stone
Project Manager

Greeley, CO 80631
(970)350-2205

105 West 5th Street
Loveland, CO 80537
(970) 962-2647

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

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

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the Local Agency under this Agreement is $100,000 or greater, either on the Effective Date or at any time 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.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

24. DISPUTES

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

25. GENERAL PROVISIONS

A. Assignment

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

B. Binding Effect

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

C. Captions

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

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification - General

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

G. Jurisdiction and Venue

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

H. Limitations of Liability

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

I. Modification

i. By the Parties

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

ii. By Operation of Law

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

J. Order of Precedence

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

i. Colorado Special Provisions,
ii. The provisions of the main body of this Agreement,
iii. **Exhibit A** (Scope of Work),
iv. **Exhibit B** (Local Agency Resolution),
v. **Exhibit C** (Funding Provisions),
vi. **Exhibit D** (Option Letter),
vii. **Exhibit E** (Local Agency Contract Administration Checklist),
viii. Other exhibits in descending order of their attachment.

K. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions

apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them

N. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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26. COLORADO SPECIAL PROVISIONS

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

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

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

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

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

3. GOVERNMENTAL IMMUNITY.

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

4. INDEPENDENT CONTRACTOR.

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

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

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

7. BINDING ARBITRATION PROHIBITED.

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

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

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

including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

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

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

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

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

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

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

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

SPs Effective 1/1/09

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27. SIGNATURE PAGE

Agreement Routing Number: **14-HA4-XC-00210**

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** Print: _____ Title: _____ _____ *Signature Date: _____	**STATE OF COLORADO** **John W. Hickenlooper, GOVERNOR** Colorado Department of Transportation **Donald E. Hunt, Executive Director** _____ By: **Joshua Laipply**, PE, **Chief Engineer** Date: _____
2nd Local Agency Signature if needed Print: _____ Title: _____ _____ *Signature Date: _____	**LEGAL REVIEW** **John W. Suthers, Attorney General** By:_____ Signature - Assistant Attorney General Date: _____

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____
Colorado Department of Transportation

Date:_____

28. EXHIBIT A – SCOPE OF WORK

The work to be completed in the Loveland Traffic Operations Center project includes the purchase of equipment such as a backup generator, computers, software, cctv switches and an additional operator station to upgrade the Loveland TOC. This equipment will enhance the TOC to facilitate information sharing with the public and CDOT and improve safety through two way communications of data and video on cotrip.org, which allows people to view live traffic and weather conditions. In addition, the purchase of a backup generator will ensure the TOC remains operational during inclement weather and in emergency situations.

This project will meet all applicable federal rules and regulations.

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29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY ORDINANCE or RESOLUTION

30. EXHIBIT C – FUNDING PROVISIONS

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be $247,615.00, which is to be funded as follows:

1	**BUDGETED FUNDS**		
	a. Federal Funds (82.79% of Participating Costs)		$205,000.00
	b. Local Agency Matching Funds (17.21% of Participating Costs)		$42,615.00
	TOTAL BUDGETED FUNDS		$247,615.00
2	**ESTIMATED CDOT-INCURRED COSTS**		
	a. Federal Share (0% of Participating Costs)		$0.00
	b. Local Agency		
	Local Agency Share of Participating Costs	$0.00	
	Non-Participating Costs (Including Non-Participating Indirects)	$0.00	
	Estimated to be Billed to Local Agency		$0.00
	TOTAL ESTIMATED CDOT-INCURRED COSTS		$0.00
3	**ESTIMATED PAYMENT TO LOCAL AGENCY**		
	a. Federal Funds Budgeted (1a)		$205,000.00
	b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)		$0.00
	TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		$205,000.00
	FOR CDOT ENCUMBRANCE PURPOSES		
	Total Encumbrance Amount		$0.00
	Less ROW Acquisition 3111 and/or ROW Relocation 3109		$0.00
	Net to be encumbered as follows:		$0.00

NOTE: $0.00 is currently available. Funds will become available after federal authorization and execution of an Option Letter (Exhibit D) or amendment.

WBS Element 19745.10.50	Misc.	3404	$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20.205) to 17.21% Local Agency funds, it being understood that such ratio applies only to the $247,615.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds $247,615.00, and additional federal funds are made available for the Work, the Local Agency shall pay 17.21% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than $247,615.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be $205,000.00 (For CDOT accounting purposes, the federal funds of $205,000.00 and the Local Agency matching funds of $42,615.00 will be encumbered for a total encumbrance of $247,615.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ***NOTE: $0.00 is currently available; the Funding will become available after federal authorization and execution of an Option Letter (Exhibit D)or Amendment.*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

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

i. Expenditure less than $500,000

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

ii. Expenditure exceeding $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 $500,000-Multiple Funding Sources

If the Local Agency expends more than $500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below
AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing # Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

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

B. Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

C. Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (*Insert the following language for use with the Option A*):
In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for **Exhibit C** shall be labled as follows: **C-2**, **C-3**, **C-4**, etc*.).

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

made using an formal amendment)..

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

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

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

APPROVALS:

State of Colorado:
John W. Hickenlooper, Governor

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

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

Form Updated: December 19, 2012

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

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

SECTION 3 DBE Program.

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

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

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98 Required by 49 CFR Part 26

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

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

   a. Qualifications,

   b. Approach to the Work,

   c. Ability to furnish professional services.

   d. Anticipated design concepts, and

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

Evaluation factors for final selection are the consultant's:

a. Abilities of their personnel,

b. Past performance,

c. Willingness to meet the time and budget requirement,

d. Location,

e. Current and projected work load,

f. Volume of previously awarded contracts, and

g. Involvement of minority consultants.

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

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

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

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

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-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.

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.

EXHIBIT J – FEDERAL REQUIREMENTS

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

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

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246

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

C. Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

D. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by the Local Agencys and the Local Agencys when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

F. Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of $100,000).

G. Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

H. OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

I. Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

J. Nondiscrimination

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

K. ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

M. Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

N. Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. 23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

P. 23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

Q. 23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including

procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

T. Incorporation of Provisions §22

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

37. 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 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.

FIRST READING August 19, 2014

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET TO UPDATE EQUIPMENT AT THE TRAFFIC OPERATIONS CENTER (TOC) IN THE CITY OF LOVELAND

WHEREAS, the City has received 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 in the amount of $205,000 from a federal grant in Transportation Fund 211 are available for appropriation. Revenues in the total amount of $205,000 are hereby appropriated for an update to the equipment at the Traffic Operations Center. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Transportation Fund 211

Revenues		
211-23-232-1701-32000	Federal Grant	205,000
Total Revenue		**205,000**
Appropriations		
211-23-232-1701-49399	Other Capital	205,000
Total Appropriations		**205,000**

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

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

ADOPTED this ___ day of September, 2014.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: **5**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Dave Klockeman, Public Works Department
PRESENTER: Dave Klockeman, Acting Public Works Director / City Engineer

TITLE:

1. A Resolution Approving an Intergovernmental Agreement between the City of Loveland, Colorado, and the State of Colorado, Acting by and Through the Colorado Department of Transportation (CDOT), to Update the Existing Roadway Weather Information System in the City of Loveland
2. An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget to Update the Existing Roadway Weather Information System in the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:

1. Adopt the resolution.
2. 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:

These are administrative actions. The City has received a CDOT grant, not to exceed $304,000 of the $380,000 total project cost, through the Responsible Acceleration of Maintenance and Partnerships (RAMP) program to fund the expansion and upgrade of the roadway weather information system throughout the City of Loveland. This item includes consideration of a resolution approving an intergovernmental agreement between the City of Loveland and CDOT for the project and consideration of the first reading ordinance to appropriate the funds included in the intergovernmental agreement.

BUDGET IMPACT:

☒ Positive
☐ Negative

☐ Neutral or negligible

The project is funded from federal funds, not to exceed $304,000, and City of Loveland local match funds, $76,000, for a total project cost of $380,000. The City funds are included within the approved 2014 Budget for Public Works Transportation Capital Improvement Projects.

BACKGROUND:

The work generally consists of an update to existing Roadway Weather Information System (RWIS) in Loveland. This includes installing new sensors at existing field locations and installing three (3) completely new locations. The primary work will be on US 34, US 287 or SH 402, except at the City's existing Taft Ave/1st Street location. Work includes installing new roadway pavement sensors for the detection of the formation of ice at the existing locations at US 287/19th Street SE, US 34/Redwood, Taft/1st Street and installing a new sites that include the ice sensors plus standard roadway and atmospheric sensors at US 287/71st Street, US 34/I-25, and I-25/SH 402. This project is currently in preliminary planning stage with design to be completed by mid-2015. Construction is planned for the summer/fall of 2015 and is anticipated to take 3 to 4 months.

Funding Summary:		
State Funds		$304,000
Local Agency Match Funds*	$ 76,000	
Local Over-Matching Funds**	$ 0	
Subtotal Local Funds	$ 76,000	$ 76,000
Total Project Funds:		$380,000

* Local Agency Match Funds are defined as funding required to be provided by a local entity as part of the State grant process. For RAMP projects, the minimum local match required is 20%.

** Local Over-Matching Funds are defined as funding provided by a local entity above the required amount of Local Agency Match Funds in order to complete a project. CDOT requires that this amount be shown in the documents to identify all of the funding anticipated for a project, and Overmatch Funds are encouraged.

An ordinance is required to appropriate the grant funds as the award of this project occurred after the 2014 budget was adopted.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. Intergovernmental Agreement (Exhibit A to Resolution)

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3. Ordinance

RESOLUTION #R-53-2014

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, TO UPDATE THE EXISTING ROADWAY WEATHER INFORMATION SYSTEM IN THE CITY OF LOVELAND

WHEREAS, the City of Loveland desires to update its existing roadway weather information system that includes replacement of sensors at certain locations and placement of sensors in new locations (the "Project"); and

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

WHEREAS, the estimated cost of the Project is $380,000 of which the FHWA will reimburse $304,000 representing 80% of such cost on the condition that the City contribute $76,000 or 20% of such cost; and

WHEREAS, the City and CDOT desire to enter into an intergovernmental agreement to define the division of responsibilities with regard to the Project; and

WHEREAS, as governmental entities in Colorado, the City and CDOT are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

Section 1. That the "State of Colorado Department of Transportation Agreement with City of Loveland," attached hereto as Exhibit A and incorporated herein by reference (the "Intergovernmental Agreement"), is hereby approved subject to final approval of an ordinance appropriating the funds required under the Intergovernmental Agreement (the "Ordinance").

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City after the Ordinance is approved by City Council and becomes effective.

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

ADOPTED this _____ day of August, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

(FMLAWRK) Rev. 7/8/09
Project: Roadway Weather Information System Expansion/Upgrade Routing #: 14 HA4 70795
STU M830-068 (19887)
Region: 4 (rp) SAP ID #: 331001174

STATE OF COLORADO
Department of Transportation
Agreement
with
City of Loveland

TABLE OF CONTENTS

1. PARTIES

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

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

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

3. RECITALS

A. Authority, Appropriation, and Approval

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

i. Federal Authority

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

ii. State Authority

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

B. Consideration

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

C. Purpose

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

D. References

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

4. DEFINITIONS

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

A. Agreement or Contract

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

B. Agreement Funds

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

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

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

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

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

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

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

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

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

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

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

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

5. TERM AND EARLY TERMINATION

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

6. SCOPE OF WORK

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

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

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

D. State and Local Agency Commitments

i. Design

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

a) Perform or provide the Plans to the extent required by the nature of the Work.

b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.

c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.

d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.

e) Stamp the Plans produced by a Colorado Registered Professional Engineer.

f) Provide final assembly of Plans and all other necessary documents.

g) Be responsible for the Plans' accuracy and completeness.

h) Make no further changes in the Plans following the award of the construction contract to contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

ii. Local Agency Work

a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".

b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.

c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in Exhibit H. If the Local Agency enters into a contract with a Consultant for the Work:

(1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.

(2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.

(3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

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

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

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

(a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this

reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

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

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

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

iii. Construction

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

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

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

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

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

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).

(b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.

(c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.

(3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.

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

(a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided

for in 23 C.R.F. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

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

(c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.

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

E. State's Commitments

a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**.

F. ROW and Acquisition/Relocation

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

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

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

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

(1) Right of way acquisition (3111) for federal participation and non-participation;

(2) Relocation activities, if applicable (3109);

(3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

G. Utilities

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

a) Railroads

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

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

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

d) Establish future maintenance responsibilities for the proposed installation.

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

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

H. Environmental Obligations

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

I. Maintenance Obligations

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

7. OPTION LETTER MODIFICATION

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

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

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds remaining the same. The State may simultaneously increase and/or decrease the total encumbrance amount by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

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

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

C. Option to do both Options A and B.

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

8. PAYMENTS

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

A. Maximum Amount

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

B. Payment

i. Advance, Interim and Final Payments

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

ii. Interest

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

iii. Available Funds-Contingency-Termination

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

iv. Erroneous Payments

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

C. Use of Funds

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

D. Matching Funds

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

liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

E. Reimbursement of Local Agency Costs

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

i. **Reasonable and Necessary**

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

ii. **Net Cost**

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

9. ACCOUNTING

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

A. Local Agency Performing the Work

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

B. Local Agency-Checks or Draws

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

C. State-Administrative Services

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

D. Local Agency-Invoices

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

E. Invoicing Within 60 Days

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

F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit

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

10. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

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

B. Litigation Reporting

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

C. Noncompliance

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

D. Documents

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

11. LOCAL AGENCY RECORDS

A. Maintenance

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

B. Inspection

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

C. Monitoring

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

D. Final Audit Report

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

12. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. Confidentiality

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

B. Notification

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

C. Use, Security, and Retention

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

D. Disclosure-Liability

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

13. CONFLICT OF INTEREST

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

14. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

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

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

C. Licenses, Permits, Etc.

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

15. INSURANCE

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

A. The Local Agency

i. Public Entities

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

ii. Non-Public Entities

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

B. Contractors

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

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

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

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

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

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

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

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

C. Certificates

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

16. DEFAULT-BREACH

A. Defined

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

B Notice and Cure Period

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

17. REMEDIES

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

A. Termination for Cause and/or Breach

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

B. Obligations and Rights

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

C. 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.

D. Damages and Withholding

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

E. 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.

F. 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. Withhold Payment

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

iii. Deny Payment

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

iv. Removal

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

v. Intellectual Property

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

18. NOTICES and REPRESENTATIVES

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

A. If to State:

CDOT Region: 4
Long Nguyen
Project Manager
1420 2nd Street

B. If to the Local Agency:

City of Loveland
Bill Hange
Project Manager
500 East Third Street

Greeley, CO 80631
(970) 350-2126

Loveland, CO 80537
(970) 962-2528

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

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

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the Local Agency under this Agreement is $100,000 or greater, either on the Effective Date or at any time 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.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

24. DISPUTES

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

25. GENERAL PROVISIONS

A. Assignment

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

B. Binding Effect

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

C. Captions

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

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification - General

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

G. Jurisdiction and Venue

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

H. Limitations of Liability

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

I. Modification

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

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

J. Order of Precedence

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

i. Colorado Special Provisions,
ii. The provisions of the main body of this Agreement,
iii. **Exhibit A** (Scope of Work),
iv. **Exhibit B** (Local Agency Resolution),
v. **Exhibit C** (Funding Provisions),
vi. **Exhibit D** (Option Letter),
vii. **Exhibit E** (Local Agency Contract Administration Checklist),
viii. Other exhibits in descending order of their attachment.

K. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions

apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them

N. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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26. COLORADO SPECIAL PROVISIONS

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

1. **CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**
   This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY. CRS §24-30-202(5.5).**
   Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

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

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

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

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

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

8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**
   State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement,

including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

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

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

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

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

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

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

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

SPs Effective 1/1/09

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27. SIGNATURE PAGE

Agreement Routing Number: **14 HA4 70795**

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**	**STATE OF COLORADO** **John W. Hickenlooper, GOVERNOR** Colorado Department of Transportation **Donald E. Hunt, Executive Director**
Print: _____ Title: _____ _____ *Signature Date: _____	_____ By: Scott McDaniel, PE, **Acting Chief Engineer** Date: _____
2nd Local Agency Signature if needed Print: _____ Title: _____ _____ *Signature Date: _____	**LEGAL REVIEW** **John W. Suthers, Attorney General** By: _____ Signature - Assistant Attorney General Date: _____

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

28. EXHIBIT A – SCOPE OF WORK

Update existing Roadway Weather Information System (RWIS) in Loveland. This includes installing new sensors at field locations (Remote Processing Units (RPU's)) and installing 3 completely new RPU locations. All work will be on US 34 and US 287 or State Highway 402 except at the City's Taft Ave/1st Street RPU. Taft Avenue is a major, regionally significant arterial street that carries regional traffic from Fort Collins to Berthoud through Loveland. It is an alternate route to US 287 and connects the US 287 Berthoud By-Pass to Taft-Hill Road in Fort Collins. Work includes installing new roadway pavement sensors for the detection of the formation of ice at existing RPU locations at: US 287/19th Street SE,US 34/Redwood, Taft/1st Street and installing new site that include the ice sensors plus standard roadway and atmospheric sensors at US 287/71st Street, US 34/I-25, Colorado I-25/State Highway 402.

This project will be designed by the city of Loveland. A FIR/FOR is planned for the winter of 2014 and the project will be advertised for bid in approximately February of 2015. Construction will be awarded by the city and begin in the spring of 2015.

A detailed project schedule will be provided by the City of Fort Collins three weeks after the execution of the project contract.

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY ORDINANCE or RESOLUTION

30. EXHIBIT C – FUNDING PROVISIONS

Cost of Work Estimate

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

1	**BUDGETED FUNDS**		
	a. Federal Funds (80% of Participating Costs)		$304,000.00
	b. Local Agency Matching Funds (20% of Participating Costs)		$76,000.00
	TOTAL BUDGETED FUNDS		$380,000.00
2	**ESTIMATED CDOT-INCURRED COSTS**		
	a. Federal Share (0% of Participating Costs)		$0.00
	b. Local Agency		
	Local Agency Share of Participating Costs	$0.00	
	Non-Participating Costs (Including Non-Participating Indirects)	$0.00	
	Estimated to be Billed to Local Agency		$0.00
	TOTAL ESTIMATED CDOT-INCURRED COSTS		$0.00
3	**ESTIMATED PAYMENT TO LOCAL AGENCY**		
	a. Federal Funds Budgeted (1a)		$304,000.00
	b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)		$0.00
	TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		$304,000.00
	FOR CDOT ENCUMBRANCE PURPOSES		
	Total Encumbrance Amount		$380,000.00
	Less ROW Acquisition 3111 and/or ROW Relocation 3109		$0.00
	Net to be encumbered as follows:		$380,000.00

NOTE: The funding is currently not available; the funding of will become available after federal authorization and execution of an Option Letter (Exhibit D).

WBS Element 19887.20.10	Const	3301	$0.00
WBS Element 19887.10.50	Misc	3404	$0.00

Matching Funds

The matching ratio for the federal participating funds for this Work is 80% federal-aid funds (CFDA #20.205) to 20% Local Agency funds, it being understood that such ratio applies only to the $380,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds $380,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than $380,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be $304,000.00 (For CDOT accounting purposes, the federal funds of $304,000.00 and the Local Agency matching funds of $76,000.00 will be encumbered for a total encumbrance of $380,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ***NOTE: The funding is currently not available; the funding of will become available after federal authorization and execution of an Option Letter (Exhibit D).*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

Single Audit Act Amendment

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

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

ii. **Expenditure exceeding $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 $500,000-Multiple Funding Sources**
   If the Local Agency expends more than $500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. **Independent CPA**
   Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)
NOTE: This option is limited to the specific contract scenarios listed below
AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing # Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

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

Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (*Insert the following language for use with the Option A*):
In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for **Exhibit C** shall be labled as follows: **C-2**, **C-3**, **C-4**, etc.*).

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

made using an formal amendment)..

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

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

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

APPROVALS:

State of Colorado:
John W. Hickenlooper, Governor

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

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

Form Updated: December 19, 2012

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code	Region
STU M830-068	SR45001.011	19887	4

Project Location	Date
Various locations in Loveland	2/4/2014

Project Description
Expansion and updating RWIS system at various locations in the City of Loveland

Local Agency	Local Agency Project Manager
City of Loveland	Justin Stone
CDOT Resident Engineer James Flohr	CDOT Project Manager Jake Schuch

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		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463		X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	NA	
5.4	Conduct Design Scoping Review Meeting	X	X
5.5	Conduct Public Involvement	NA	
5.6	Conduct Field Inspection Review (FIR)	X	X
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)		X
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	NA	
5.9	Obtain Utility and Railroad Agreements	X	X
5.10	Conduct Final Office Review (FOR)	X	X
5.11	Justify Force Account Work by the Local Agency	NA	
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
5.13	Document Design Exceptions - CDOT Form 464	NA	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	
5.15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Long Nguyen 2/4/2014 CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than $1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	NA	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	X
	Pre-survey • Construction staking • Monumentation	 X X	
	Partnering (Optional)	NA	
	Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual*)	X	
	Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual*)	NA	
	HMA Pre-Paving (Agenda is in *CDOT Construction Manual*)	NA	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Justin Stone 970-962-2647 Local Agency Professional Engineer or CDOT Resident Engineer Phone number	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	NA	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. Justin Stone 970-962-2647 Local Agency Representative Phone number	X	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	X	
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. James Flohr 970-622-1268 CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X X	X X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures ☐ CDOT Procedures ☒ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	 X X	 X
9.8	Approve mix designs • Concrete • Hot mix asphalt	 X X	 X X
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	

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

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

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

No Federal appropriated funds have been paid or will be paid, by or on behalf 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.

1. 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.

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

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

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

SECTION 3 DBE Program.

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

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

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98 Required by 49 CFR Part 26

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

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

   a. Qualifications,

   b. Approach to the Work,

   c. Ability to furnish professional services.

   d. Anticipated design concepts, and

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

Evaluation factors for final selection are the consultant's:

a. Abilities of their personnel,

b. Past performance,

c. Willingness to meet the time and budget requirement,

d. Location,

e. Current and projected work load,

f. Volume of previously awarded contracts, and

g. Involvement of minority consultants.

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

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

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

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

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-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.

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:

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

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

Executive Order 11246

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

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by the Local Agencys and the Local Agencys when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of $100,000).

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).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

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.

Nondiscrimination

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

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.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

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.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

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.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. **Compliance with Regulations**

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. **Nondiscrimination**

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including

procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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 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.

FIRST READING August 19, 2014

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET TO UPDATE THE EXISTING ROADWAY WEATHER INFORMATION SYSTEM IN THE CITY OF LOVELAND

WHEREAS, the City has received 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 in the amount of $304,000 from a federal grant in Transportation Fund 211 are available for appropriation. Revenues in the total amount of $304,000 are hereby appropriated for an update to the roadway weather information system. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Transportation Fund 211

Revenues		
211-23-232-1701-32100-TS1401	State Grant	304,000
Total Revenue		**304,000**
Appropriations		
211-23-232-1701-49360-TS1401	Construction	304,000
Total Appropriations		**304,000**

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

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

ADOPTED this ___ day of September, 2014.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: **6**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Dave Klockeman, Public Works Department
PRESENTER: Dave Klockeman, Acting Public Works Director / City Engineer

TITLE:

1. A Resolution Approving an Intergovernmental Agreement between the City of Loveland, Colorado, and the State of Colorado, Acting by and Through the Colorado Department of Transportation (CDOT), for an Anti-Icing System at the Highway I-25 and Crossroads Boulevard Interchange
2. An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Installation of the I-25 / Crossroads Anti-Icing System in the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:

1. Adopt the resolution.
2. 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 City has received a CDOT grant, not to exceed $200,000 of the $250,000 total project cost, through the Responsible Acceleration of Maintenance and Partnerships (RAMP) program for the expansion and upgrade of the roadway weather information system throughout the City. This item includes consideration of a Resolution approving an intergovernmental agreement between the City and CDOT for the project and consideration of the first reading of an ordinance to appropriate the funds included in the intergovernmental agreement.

BUDGET IMPACT:

☒ Positive
☐ Negative

☐ Neutral or negligible

The project is funded from federal funds, not to exceed $200,000, and City of Loveland local match funds, $50,000, for a total project cost of $250,000. The City funds are included within the approved 2014 budget for Public Works Transportation Capital Improvement Projects.

BACKGROUND:

This project will include installation of an anti-icing spray system for the off ramps and roundabouts at I-25 / Crossroads Blvd interchange. This system automatically applies chemicals to treat the adjacent roadway to prevent formation of ice, including the latest in control systems for detection of the initial stages of ice formation and automatic application of chemical ice prevention material. The majority of the system's conduit was installed when the interchange was modified to include modem roundabout intersections in 2010, including equipping the retaining walls under the overpass for I-25 with conduit for future spray nozzle locations. A small amount of additional conduit will need to be extended, but the impacts to the travelling public should be minimal. The project is scheduled to go to bid in the Summer 2016 with construction in Fall 2016.

Funding Summary:		
State Funds		$200,000
Local Agency Match Funds*	$ 50,000	
Local Over-Matching Funds**	$ 0	
Subtotal Local Funds	$ 50,000	$ 50,000
Total Project Funds:		$250,000

* Local Agency Match Funds are defined as funding required to be provided by a local entity as part of the State grant process. For RAMP projects, the minimum local match required is 20%.

** Local Over-Matching Funds are defined as funding provided by a local entity above the required amount of Local Agency Match Funds in order to complete a project. CDOT requires that this amount be shown in the documents to identify all of the funding anticipated for a project, and Overmatch Funds are encouraged.

An ordinance is required to appropriate the grant funds as the award of this project occurred after the 2014 Budget was adopted.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution

2. Intergovernmental Agreement (Exhibit A to Resolution)
3. Ordinance

RESOLUTION #R-54-2014

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR AN ANTI-ICING SYSTEM AT THE HIGHWAY I-25 AND CROSSROADS BOULEVARD INTERCHANGE

WHEREAS, the City of Loveland desires to install an anti-icing spray system for the ramps and roundabouts at the interchange of Interstate Highway I-25 and Crossroads Boulevard to improve the safety of motorists (the "Project"); and

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

WHEREAS, the estimated cost of the Project is $250,000 of which the FHWA will reimburse $200,000 representing 80.00% of such cost on the condition that the City contribute $50,000 or 20.00% of such cost; and

WHEREAS, the City and CDOT desire to enter into an intergovernmental agreement to define the division of responsibilities with regard to the Project; and

WHEREAS, as governmental entities in Colorado, the City and CDOT are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

Section 1. That the "State of Colorado Department of Transportation Agreement with City of Loveland," attached hereto as Exhibit A and incorporated herein by reference (the "Intergovernmental Agreement"), is hereby approved subject to final approval of an ordinance appropriating the funds required under the Intergovernmental Agreement (the "Ordinance").

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City after the Ordinance is approved by City Council and becomes effective.

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

ADOPTED this _____ day of August, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

(FMLAWRK)
Project: I-25/Crossroads Anti-Icing System
(STU M830-0687 (19886))
Region: 4 (rp)

Rev. 7/8/09
Routing #: 15 HA4 70823

SAP ID #: 331001173

STATE OF COLORADO
Department of Transportation
Agreement
with
City of Loveland

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1. PARTIES

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

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

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

3. RECITALS

A. Authority, Appropriation, and Approval

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

i. **Federal Authority**

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

ii. **State Authority**

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

B. Consideration

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

C. Purpose

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

D. References

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

4. DEFINITIONS

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

A. Agreement or Contract

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

B. Agreement Funds

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

C. Budget

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

D. Consultant and Contractor

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

E Evaluation

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

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

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

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

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

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

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

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

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

5. TERM AND EARLY TERMINATION

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

6. SCOPE OF WORK

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

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

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

D. State and Local Agency Commitments

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

a) Perform or provide the Plans to the extent required by the nature of the Work.
b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.

c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
e) Stamp the Plans produced by a Colorado Registered Professional Engineer.
f) Provide final assembly of Plans and all other necessary documents.
g) Be responsible for the Plans' accuracy and completeness.
h) Make no further changes in the Plans following the award of the construction contract to contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

ii. **Local Agency Work**

a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in Exhibit H. If the Local Agency enters into a contract with a Consultant for the Work:
   (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
   (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
   (3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
   (4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in Exhibit H to administer the Consultant contract.
   (5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with Exhibit H and 23 C.F.R. 172.5(b)and (d).
   (6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
      (a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.
      (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
      (c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
      (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. **Construction**

If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration

shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

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

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

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

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

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).

(b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.

(c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.

(3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.

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

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

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

(c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.

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

E. State's Commitments

a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**.

F. ROW and Acquisition/Relocation

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

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

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

d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at http://www.dot.state.co.us/ROW_Manual/) and reimbursement for the levels will be under the following categories:
   (1) Right of way acquisition (3111) for federal participation and non-participation;
   (2) Relocation activities, if applicable (3109);
   (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

G. Utilities

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

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

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

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

d) Establish future maintenance responsibilities for the proposed installation.

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

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

H. Environmental Obligations

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

I. Maintenance Obligations

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

7. OPTION LETTER MODIFICATION

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

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

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total

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

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

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

C. Option to do both Options A and B.

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

8. PAYMENTS

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

A. Maximum Amount

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

B. Payment

i. Advance, Interim and Final Payments

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

ii. Interest

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

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability

for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

iv. **Erroneous Payments**

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

C. Use of Funds

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

D. Matching Funds

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

E. Reimbursement of Local Agency Costs

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

i. **Reasonable and Necessary**

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

ii. **Net Cost**

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

9. ACCOUNTING

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

A. Local Agency Performing the Work

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

B. Local Agency-Checks or Draws

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

C. State-Administrative Services

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

D. Local Agency-Invoices

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

E. Invoicing Within 60 Days

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

F. Reimbursement of State Costs

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

10. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

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

B. Litigation Reporting

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

C. Noncompliance

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

D. Documents

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

11. LOCAL AGENCY RECORDS

A. Maintenance

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

that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

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

C. Monitoring

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

D. Final Audit Report

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

12. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. Confidentiality

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

B. Notification

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

C. Use, Security, and Retention

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

D. Disclosure-Liability

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

13. CONFLICT OF INTEREST

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

14. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

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

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

C. Licenses, Permits, Etc.

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

15. INSURANCE

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

A. The Local Agency

i. **Public Entities**

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

ii. **Non-Public Entities**

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

B. Contractors

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

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

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

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

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

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

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

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

C. Certificates

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

16. DEFAULT-BREACH

A. Defined

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

B Notice and Cure Period

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

17. REMEDIES

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

A. Termination for Cause and/or Breach

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

B. Obligations and Rights

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

C. 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.

D. Damages and Withholding

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

E. 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.

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

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

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

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

18. NOTICES and REPRESENTATIVES

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

A. If to State:

CDOT Region: 4
Long Nguyen
Project Manager
1420 2nd Street
Greeley, CO 80631
(970) 350-2126

B. If to the Local Agency:

City of Loveland
Jeff Bailey
Public Works Department
500 East Third
Loveland, CO 80537
970-962-2703

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local

Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the Local Agency under this Agreement is $100,000 or greater, either on the Effective Date or at any time 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.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

24. DISPUTES

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

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

25. GENERAL PROVISIONS

A. Assignment

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

B. Binding Effect

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

C. Captions

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

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification - General

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

G. Jurisdiction and Venue

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

H. Limitations of Liability

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

I. Modification

i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State

Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

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

J. Order of Precedence

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

i. Colorado Special Provisions,
ii. The provisions of the main body of this Agreement,
iii. **Exhibit A** (Scope of Work),
iv. **Exhibit B** (Local Agency Resolution),
v. **Exhibit C** (Funding Provisions),
vi. **Exhibit D** (Option Letter),
vii. **Exhibit E** (Local Agency Contract Administration Checklist),
viii. Other exhibits in descending order of their attachment.

K. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them

N. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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26. COLORADO SPECIAL PROVISIONS

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

1. **CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**
   This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS §24-30-202(5.5).**
   Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.**
   No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.**
   The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for The Local Agency or any of its agents or employees. Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.**
   The Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.**
   Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.**
   The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**
   State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.**
   The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Local Agency has no interest and shall not

acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

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

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

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

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

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

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

SPs Effective 1/1/09

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

27. SIGNATURE PAGE

Agreement Routing Number: **15 HA4 70823**

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**	**STATE OF COLORADO** **John W. Hickenlooper, GOVERNOR** Colorado Department of Transportation **Donald E. Hunt, Executive Director**
Print: _____ Title: _____ _____ *Signature Date: _____	_____ By: Scott McDaniel, PE, **Chief Engineer** Date: _____
2nd Local Agency Signature if needed Print: _____ Title: _____ _____ *Signature Date: _____	**LEGAL REVIEW** **John W. Suthers, Attorney General** By: _____ Signature - Assistant Attorney General Date: _____

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

28. EXHIBIT A – SCOPE OF WORK

COLORADO DEPARTMENT OF TRANSPORTATION **DESIGN DATA** Page 1 to 3	Orig.Date: 10/28/2013 Rev.Date: Revision #: 0 Region #: 04	Project Code # (SA#): 19886	STIP#: SR46600
		Project #: STU M830-067	
		PE Project Code:	
Status: ☒ Preliminary ☐ Final ☐ Revised		Project Description: I-25 & Crossroad Blvd Anti#Icing System	
Submitted By PM: TUTTLET	Approved by Program Engineer:	County: 069	
Date:		Municipality: Loveland	
Revised by:		System Code: O-Other Federal-Aid Highway	
Date:		Oversight By: Delegated/Locally Administered	
		Planned Length: 0.500	

Geographic Location: I-25 / CROSSROADS INTERCHANGE

Type of Terrain: Plains

Description of Proposed Construction/Improvement(Attach map showing site location)
INSTALL ANTI-ICING SYSTEM

1 Project Characteristics (Proposed)

☐ Lighting	☐ Handicap Ramps	Median (Type): ☐ Depressed ☐ Painted ☐ Raised ☐ None			
☐ Curb and Gutter	☐ Curb Only	☐ Traffic Control Signals		☐ Striping	
☐ Sidwalk Width=	☐ Bikeway Width=	☐ Left-Turn Slots	☐ Continuous	Width=	
☐ Parking Lane Width=	☐ Detours	☐ Right-Turn Slots	☐ Continuous	Width=	
☐ Landscaping requirements (description):		Signing	☐ Construction	☐ Permanent	
		☐ Other (description):			

2 Right of Way

	Yes/No	Est. #
ROW &/or Perm. Easement Required	No	
Relocation Required	No	
Temporary Easement Required:	No	
Changes in Access:	No	
Changes to Connecting Roads:	No	

3 Utilities (list names of known utility companies)

4 Railroad Crossings # of Crossings:

Recommendations :

5 Environmental	Type:	Approved On:	Project Code # Cleared Under:	Project # Cleared Under:
	None	/ /		

Comments:

6 Coordination

☐ Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office — Irrigation Ditch Name:

☐ New Traffic Ordinance Required ☐ Modify Schedule of Existing Ordinance — Muncipality: Loveland

Other:

7 Construction Method	Advertised By:	NoAd Reason:	Entity / Agency Contact Name:	Phone #:
	None	Design		

8 Safety Considerations — Project Under:

☐ Variance in Minimum Design Standards Required
☐ Justification Attached ☐ Request to be Submitted
☐ Bridge(see item 12) ☐ See Remarks

☐ Safety project not all standards addressed

☐ Stage Construction (explain in remarks)

3R projects
Safety Evaluation Complete (date):

Guardrail meets current standards: No

Comments:

Page 2 of 3	Project Code #(SA#): 19886	Project #: STU M830-067	Revise date:	

Use Columns A, B, C, D and/or E to identify facility described below

		A =	B =	C =	D =	E =
9	**Traffic**					
Current Year	ADT					
	DHV					
	DHV % Trucks					
Future Year	ADT					
	DHV					
Facility Location		☐ Industrial ☐ Commercial ☐ Residential ☐ Other	☐ Industrial ☐ Commercial ☐ Residential ☐ Other	☐ Industrial ☐ Commercial ☐ Residential ☐ Other	☐ Industrial ☐ Commercial ☐ Residential ☐ Other	☐ Industrial ☐ Commercial ☐ Residential ☐ Other
10	**Roadway Class**					
	Route					
	Refpt	0.000				
	Endrefpt	0.000				
	Functional Classification	R				
	Facility type	D				
	Rural Code	2				

11	**Design Standards**	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate
	Design Variance Required (substandard items are identified with an * in 1st column & clarify as design variance with CDOT Form #464)																				
	Width of Travel Lanes																				
	Shoulder width lt/outside																				
	Shoulder width rt/outside																				
	Design Speed																				
	Cross Slope																				
	Max.superelevation rate																				
	Min. Radius																				
	Min. Horizontal SSD																				
	Min. Vertical SSD																				
	Max Grade																				
	Design Decision Letter Required (substandard items are indentified with an * in 1st column & clarify with decision letter)																				
	Typical Section Type																				
	# of Travel Lanes																				
	Side Slope Dist. ("z")																				
	Median Width																				
	Posted Speed																				

Page 3 of 3	Project Code #(SA#): 19886	Project #: STU M830-067	Revise Date:	

12 Major Structures S= to stay, R= to be removed, P= proposed new structure

Structure ID#	▼	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built

Proposed Treament of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):

13 Remarks

Project Scope:

This project will include installation of an anti-icing spray system for the off ramps and roundabouts at I-25 /Crossroads Blvd interchange. This system automatically applies chemicals to treat the adjacent roadway to prevent formation of ice, and includes tanks for liquid storage anti-icing chemicals, pumps, distribution lines, spray nozzles, roadway condition sensors and video cameras for system oversight. The system also will include the latest in control systems for detection of the initial stages of ice formation and automatic application of chemical ice preventative.

The final project will include design, bidding, construction and installation of all equipment necessary for the system operation. The majority of the system's conduit was installed when the interchange was modified to include modern roundabout intersections in 2010, including equipping the retailing walls under the overpass for I-25 with conduit for future spray nozzle locations. A small amount of conduit will need to be extended along the ramps as well as within the central islands of the roundabouts. However, crossing the roadways via boring or open cutting of roadways to install conduit should not be necessary to complete the work, therefore reducing the impacts of the travelling public. This work within this project will adhere to all applicable local, state, and federal rules and regulations.

The project is scheduled to have an FIR/FOR in June 2016, and will be advertised in July 2016. Construction is scheduled to begin in October 2016.

A detailed schedule will be established by the city of Loveland three weeks after the execution of the project contract between the City of Loveland and CDOT.

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY ORDINANCE or RESOLUTION

30. EXHIBIT C – FUNDING PROVISIONS

A. Cost of Work Estimate

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

1	**BUDGETED FUNDS**		
	a. Federal Funds (80% of Participating Costs)		$200,000.00
	b. Local Agency Matching Funds (20% of Participating Costs)		$50,000.00
	TOTAL BUDGETED FUNDS		$250,000.00
2	**ESTIMATED CDOT-INCURRED COSTS**		
	a. Federal Share (0% of Participating Costs)		$0.00
	b. Local Agency		
	Local Agency Share of Participating Costs	$0.00	
	Non-Participating Costs (Including Non-Participating Indirects)	$0.00	
	Estimated to be Billed to Local Agency		$0.00
	TOTAL ESTIMATED CDOT-INCURRED COSTS		$0.00
3	**ESTIMATED PAYMENT TO LOCAL AGENCY**		
	a. Federal Funds Budgeted (1a)		$200,000.00
	b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)		$0.00
	TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		$200,000.00

FOR CDOT ENCUMBRANCE PURPOSES

Total Encumbrance Amount	$250,000.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109	$0.00
Net to be encumbered as follows:	$250,000.00

NOTE: The funds are currently not available; the funding will become available after federal authorization and execution of an Option Letter(s) (Exhibit D).

WBS Element 19886.10.30	Design	3020	$0.00
WBS Element 19886.20.10	Const	3301	$0.00
WBS Element 19886.21.50	Misc	3404	$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80% federal-aid funds (CFDA #20.205) to 20% Local Agency funds, it being understood that such ratio applies only to the $250,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds $250,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than $250,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be $200,000.00 (For CDOT accounting purposes, the federal funds of $200,000.00 and the Local Agency matching funds of $50,000.00 will be encumbered for a total encumbrance of $250,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ***NOTE: The funds are currently not available; the funding will become available after federal authorization and execution of an Option Letter(s) (Exhibit D).*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

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

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

ii. **Expenditure exceeding $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 $500,000-Multiple Funding Sources**
   If the Local Agency expends more than $500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. **Independent CPA**
   Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below
AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing # Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

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

B. Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

C. Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (*Insert the following language for use with the Option A*):
In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for **Exhibit C** shall be labled as follows: **C-2**, **C-3**, **C-4**, etc.*).

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

made using an formal amendment)..

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

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

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

APPROVALS:

State of Colorado:
John W. Hickenlooper, Governor

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

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

Form Updated: December 19, 2012

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code	Region
STU M830-067	SR45001.017	19886	4

Project Location	Date
I-25 & Crossroads Blvd	2/4/2014

Project Description
Installation of anti-icing spray system for the off ramps and roundabouts at the I-25 & Crossroads Blvd interchange

Local Agency	Local Agency Project Manager
City of Loveland	Jeff Bailey
CDOT Resident Engineer James Flohr	CDOT Project Manager Jake Schuch

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		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463		X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	
5.4	Conduct Design Scoping Review Meeting	X	X
5.5	Conduct Public Involvement	NA	
5.6	Conduct Field Inspection Review (FIR)	X	X
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)		X
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	NA	
5.9	Obtain Utility and Railroad Agreements	X	X
5.10	Conduct Final Office Review (FOR)	X	X
5.11	Justify Force Account Work by the Local Agency	NA	
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
5.13	Document Design Exceptions - CDOT Form 464	NA	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	
5.15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Long Nguyen 2/4/2014 CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than $1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	NA	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	X
	Pre-survey • Construction staking • Monumentation	 X X	
	Partnering (Optional)	NA	
	Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual*)	X	
	Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual*)	NA	
	HMA Pre-Paving (Agenda is in *CDOT Construction Manual*)	NA	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Jeff Bailey 970-962-2551 Local Agency Professional Engineer or CDOT Resident Engineer Phone number	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	NA	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. Jeff Bailey 970-962-2551 Local Agency Representative Phone number	X	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	X	
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. James Flohr 970-622-1268 CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	 X X X	 X X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures ☐ CDOT Procedures ☒ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	 X X	 X
9.8	Approve mix designs • Concrete • Hot mix asphalt	 X X	 X X
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	

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

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

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

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

SECTION 3 DBE Program.

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

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

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98 Required by 49 CFR Part 26

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

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

   a. Qualifications,

   b. Approach to the Work,

   c. Ability to furnish professional services.

   d. Anticipated design concepts, and

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

Evaluation factors for final selection are the consultant's:

a. Abilities of their personnel,

b. Past performance,

c. Willingness to meet the time and budget requirement,

d. Location,

e. Current and projected work load,

f. Volume of previously awarded contracts, and

g. Involvement of minority consultants.

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

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

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

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

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-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.

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.

EXHIBIT J – FEDERAL REQUIREMENTS

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

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

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246

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

C. Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

D. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by the Local Agencys and the Local Agencys when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

F. Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of $100,000).

G. Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

H. OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

I. Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

J. Nondiscrimination

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

K. ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

M. Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

N. Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. 23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

P. 23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

Q. 23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including

procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

T. Incorporation of Provisions §22

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

37. 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 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.

FIRST READING August 19, 2014

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET FOR THE INSTALLATION OF THE I-25/CROSSROADS ANTI-ICING SYSTEM IN THE CITY OF LOVELAND

WHEREAS, the City has received 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 in the amount of $200,000 from a federal grant in Transportation Fund 211 are available for appropriation. Revenues in the total amount of $200,000 are hereby appropriated for the installation of an anti-icing system at I-25 and Crossroads Boulevard. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Transportation Fund 211

Revenues		
211-23-232-1701-32100	State Grant	200,000
Total Revenue		**200,000**
Appropriations		
211-23-232-1701-49360	Construction	200,000
Total Appropriations		**200,000**

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

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

ADOPTED this ___ day of September, 2014.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

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: 7
MEETING DATE: 8/19/2014
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Brian Burson, Current Planning Division

TITLE:
An Ordinance on First Reading Vacating an Emergency Access Easement Across Lot 1, Block 1, Kness Addition, City of Loveland, County of Larimer, State of Colorado

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and adopt the ordinance on first reading, as presented.

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 item is a legislative action to adopt an ordinance vacating a public emergency access easement on Lot 1, Block 1, Kness Addition to the City of Loveland. The applicant and owner of the property is Resurrection Fellowship Church.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
The property is located at the southeast corner of East Crossroads Boulevard and North Centerra Parkway. The easement assures clear access for emergency vehicles from both adjacent public streets and internal circulation around the building complex. The easement was originally dedicated in conjunction with a significant building expansion for the private school that is also operated on this campus by the church. A new building expansion is now proposed by the church that would extend the main building somewhat northward, resulting in obstruction

of a portion of the existing easement. A new emergency access easement will be dedicated which will provide the same access from adjacent streets, but with a revised alignment matching the revised circulation lane that will pass in front of the new building footprint. Assurance for dedication of this new easement is provided in the proposed ordinance and the church will submit the executed new easement before the Council considers second reading of the ordinance.

Vacation of this type of easement does not require Planning Commission consideration or recommendation.

REVIEWED BY CITY MANAGER:

William D Cahill

LIST OF ATTACHMENTS:

1. Ordinance
2. Staff Memorandum, dated August 19, 2014.

FIRST READING August 19, 2014

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE VACATING AN EMERGENCY ACCESS EASEMENT ACROSS LOT 1, BLOCK 1, KNESS ADDITION, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

WHEREAS, the City Council, at a regularly scheduled meeting, considered the vacation of the emergency access easements described below (the "Easement") and located across **Lot 1, Block 1, Kness Addition, City of Loveland, County of Larimer, State of Colorado** (the "Property"); and

WHEREAS, the City Council finds and determines that no land adjoining the Easement to be vacated is left without an established public or private easement connecting said land with another established public or private easement; and

WHEREAS, the City Council further finds and determines that the Easement to be vacated is no longer necessary for the public use and convenience; and

WHEREAS, the City Council further finds and determines that the application filed with the City's Current Planning Division was signed by the owners of more than fifty percent of the property abutting the Easement to be vacated.

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

Section 1. That the City Council hereby adopts and makes the findings set forth above.

Section 2. That based on the City Council's findings set forth above, upon the recording of a new emergency access easement across the Property in a form acceptable to the City Manager, in consultation with the City Attorney, the following Easement shall be vacated:

All portions of the property known as Lot 1, Block 1, Kness Addition to the City of Loveland, as depicted in their specific locations and configurations on Exhibit A, attached hereto and incorporated herein, and located in the NW ¼ of Section 2, Township 5 North, Range 68 West of the 6th P.M. of the City of Loveland, County of Larimer, State of Colorado; said property also currently known as 6502, 6508, and 6512 East Crossroads Blvd, Loveland, Colorado.

A depiction of the above-described Easement vacation is attached hereto as Exhibit A and incorporated herein by reference.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

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

ADOPTED this ___ day of September, 2014.

_____
Cecil A. Gutierrez, Mayor

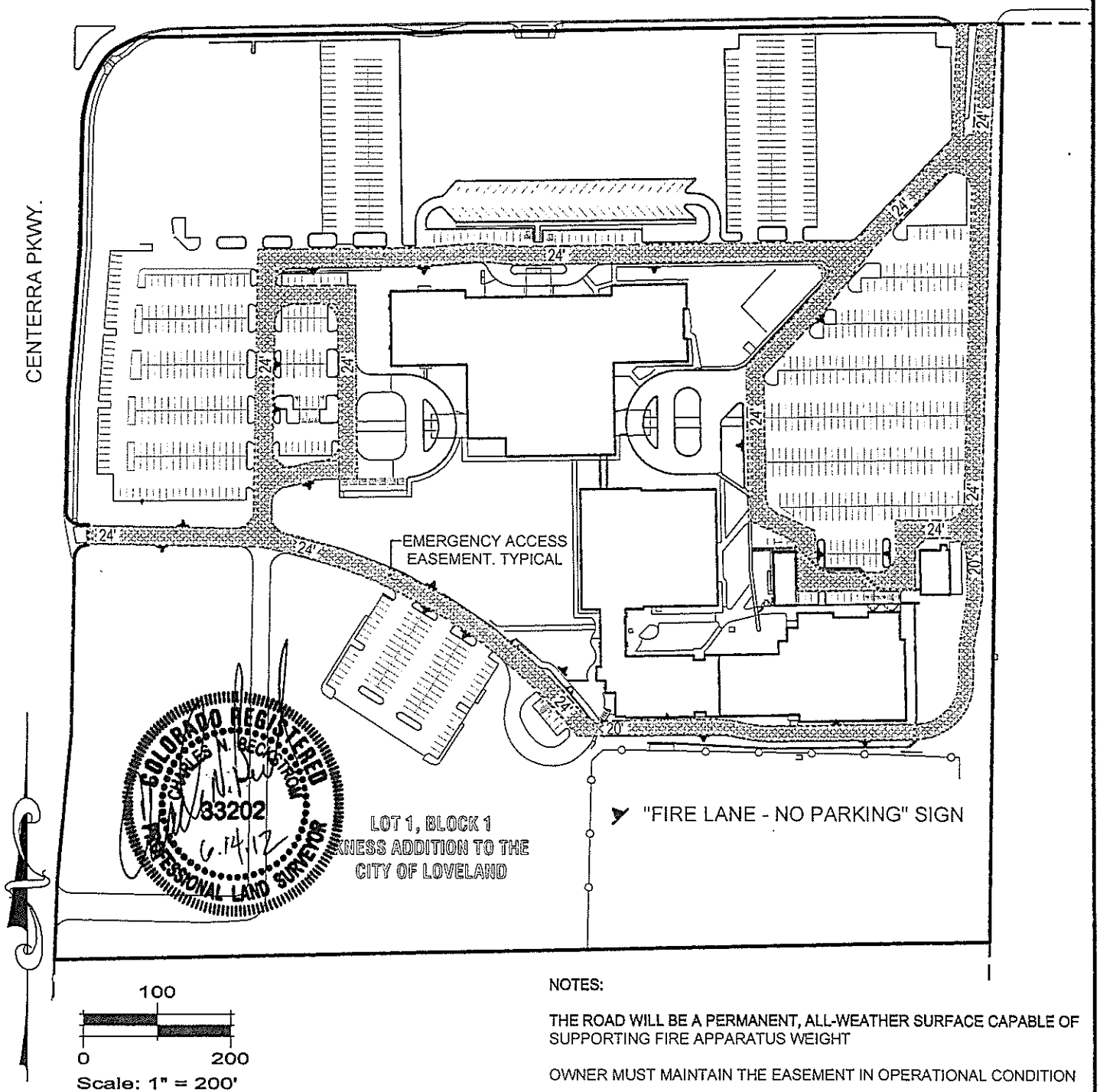
ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Shawn L. Otten
Assistant City Attorney

EXHIBIT A



NOTES:

THE ROAD WILL BE A PERMANENT, ALL-WEATHER SURFACE CAPABLE OF SUPPORTING FIRE APPARATUS WEIGHT

OWNER MUST MAINTAIN THE EASEMENT IN OPERATIONAL CONDITION

CITY OF LOVELAND

NOTE: THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

DRAWN BY:	SCALE:	R.O.W. FILE#
JDP	1"=200'	
CHECKED BY:	DATE:	
DRA	06/05/2012	

EMERGENCY ACCESS EASEMENT

6502, 6508, & 6512 E. CROSSROADS BOULEVARD

A PART OF LOT 1, BLOCK 1, KNESS ADDITION TO THE CITY OF LOVELAND SITUATED IN THE NW 1/4 OF SECTION 2, T.5N., R.68W., OF THE 6TH P.M. CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

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

M E M O R A N D U M

TO: City Council

FROM: Brian Burson, City Planner II, Current Planning Division

DATE: August 19, 2014

SUBJECT: Vacation of a public emergency access easement on Lot 1, Block 1, Kness Addition to the City of Loveland

---

I. EXHIBITS

1. Vicinity map
2. Applicant's justification letter for the vacation
3. Existing emergency access easement exhibit
4. New emergency access easement exhibit
5. Emergency access easement realignment detail

II. KEY ISSUES

Staff believes that all key issues regarding the vacation have been resolved through the staff review process. Vacation of an emergency access easement does not require Planning Commission consideration. The item has been placed on the City Council's consent agenda.

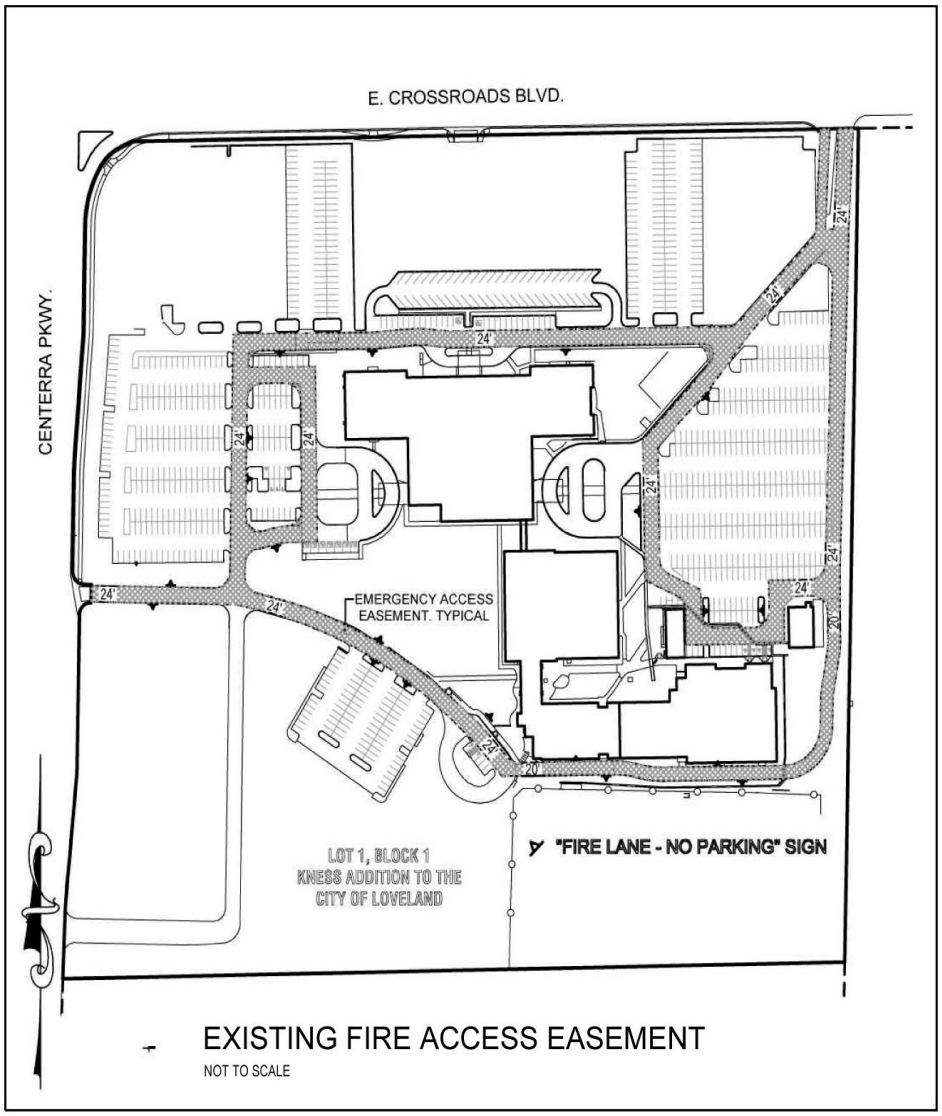
III. SUMMARY

Resurrection Fellowship Church is planning a minor expansion to their main building, located at the southeast corner of East Crossroads Boulevard and North Centerra Parkway. (See **Attachment #1.**) The proposed expansion will extend a portion of the north wall further northward, requiring a slight redesign of some parking and re-alignment of the drive lane that passes in front of the building. Approval by the City of the Site Development Plan for the expansion is imminent. Since this drive lane is also part of an existing emergency access easement around the building, the emergency access easement must also be re-aligned.

When annexed in 1994, the property was already developed and used by Resurrection Fellowship Church. Over the years, the church has grown, periodically prompting the need for building expansions and additions. Each time an expansion or addition of building area occurs, the need for appropriate access and circulation, including emergency access and circulation, is evaluated by the City. This assures that unobstructed emergency access and circulation are in place on the site. The access points and circulation routes for such have been granted to the City in the form of public emergency access easements. This assures access for all types of emergency service vehicles, not just fire access.

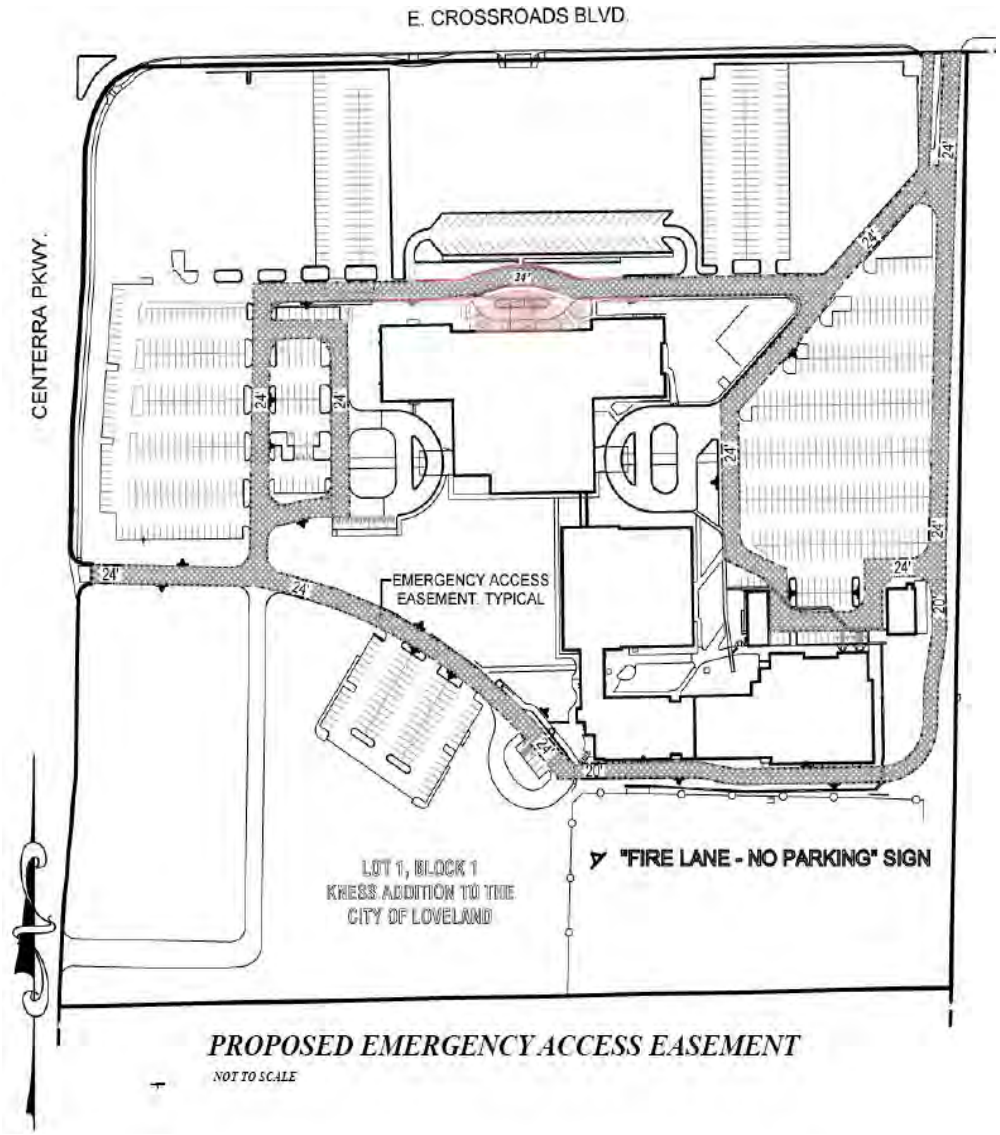
Most easements are based on a surveyed metes and bounds legal description. However, in this case, it is based on a general description and further defined by a depiction of the internal drive lanes on the site.

Existing easement:



Modifying this easement cannot be achieved by the normal process of revising a portion of the metes and bounds description. Re-alignment can only be achieved by vacating the entire existing easement and re-dedicating a new easement with the new alignment past the expanded building.

New Easement:



To assure that a valid emergency access easement remains in place at all times on the site, recording the vacation ordinance will be carefully timed with recording the new replacement easement. Staff will assure that this timing is followed with the recording process.

IV. FINDINGS and ANALYSIS

The following two findings must be met in order for the City Council to vacate the easement. These findings are taken from section 16.36.010.B of the Loveland City Code, and also incorporated into the ordinance prepared for City Council action.

1. *That no land adjoining any right-of-way to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.*

Current Planning: The easement to be vacated is not dedicated as, or used for, general public or private access to public streets. This finding is not applicable to this application.

2. *That the easement to be vacated is no longer necessary for the public use and convenience.*

Current Planning: The easement to be vacated is dedicated solely for emergency access. It is not dedicated, or used for, purposes of providing utility services to the property. Therefore, analysis only by emergency services which might use the easement is appropriate. Immediately following recordation of the vacation ordinance, a revised and realigned emergency access easement will be dedicated, assuring ongoing and un-interrupted emergency access into the property.

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

1. The development of the site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company.

2. The vacation of the portion of the existing Emergency Access Easement for the proposed addition and reconstruction of the interior access drive will not negatively impact fire protection for the subject development or surrounding properties. A new portion of Emergency Access Easement will be dedicated with the new alignment of the private drive.

V. CONDITIONS

The only staff recommended conditions focus on the timing and process for vacation and replacement of the easement, as described in this staff memorandum. These conditions have been incorporated into the vacation ordinance. Adoption of the ordinance will automatically adopt the recommended conditions.

RESURRECTION CHURCH
VICINITY MAP

EXHIBIT 1

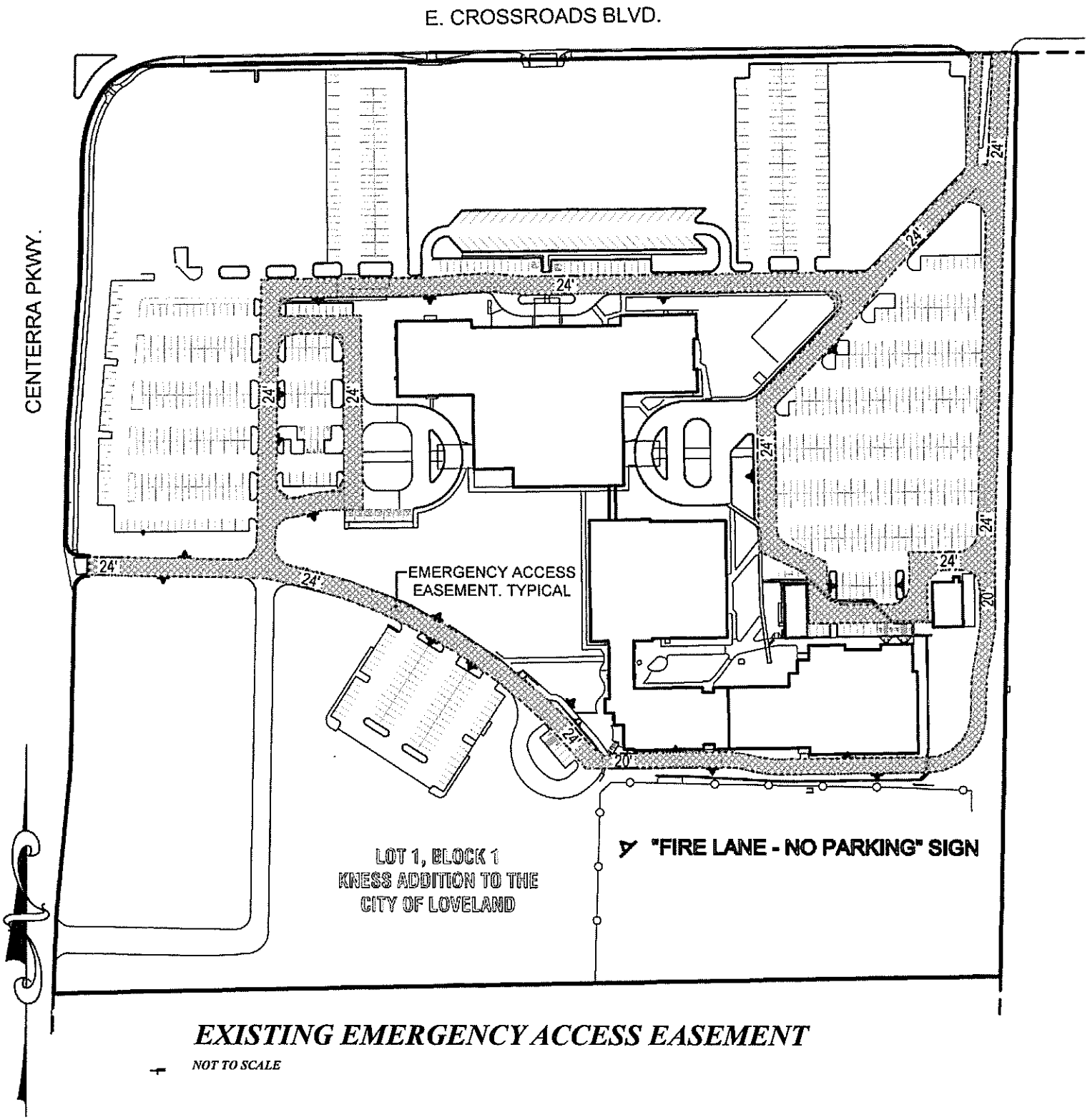
Planscapes
Planning/LandscapeArchitect

PROJECT NARRATIVE

This request for vacation of a portion of the emergency access easement for the Resurrection Fellowship Church is part of the reconstruction of an interior access drive**.** The reconstruction and realignment of the access drive is necessary with the new addition to the existing building. A new emergency access easement will be dedicated with the new alignment of the private drive as shown in the exhibit.

980 Norway Maple Drive
Loveland Colorado 80538
Phone (970)988-5301

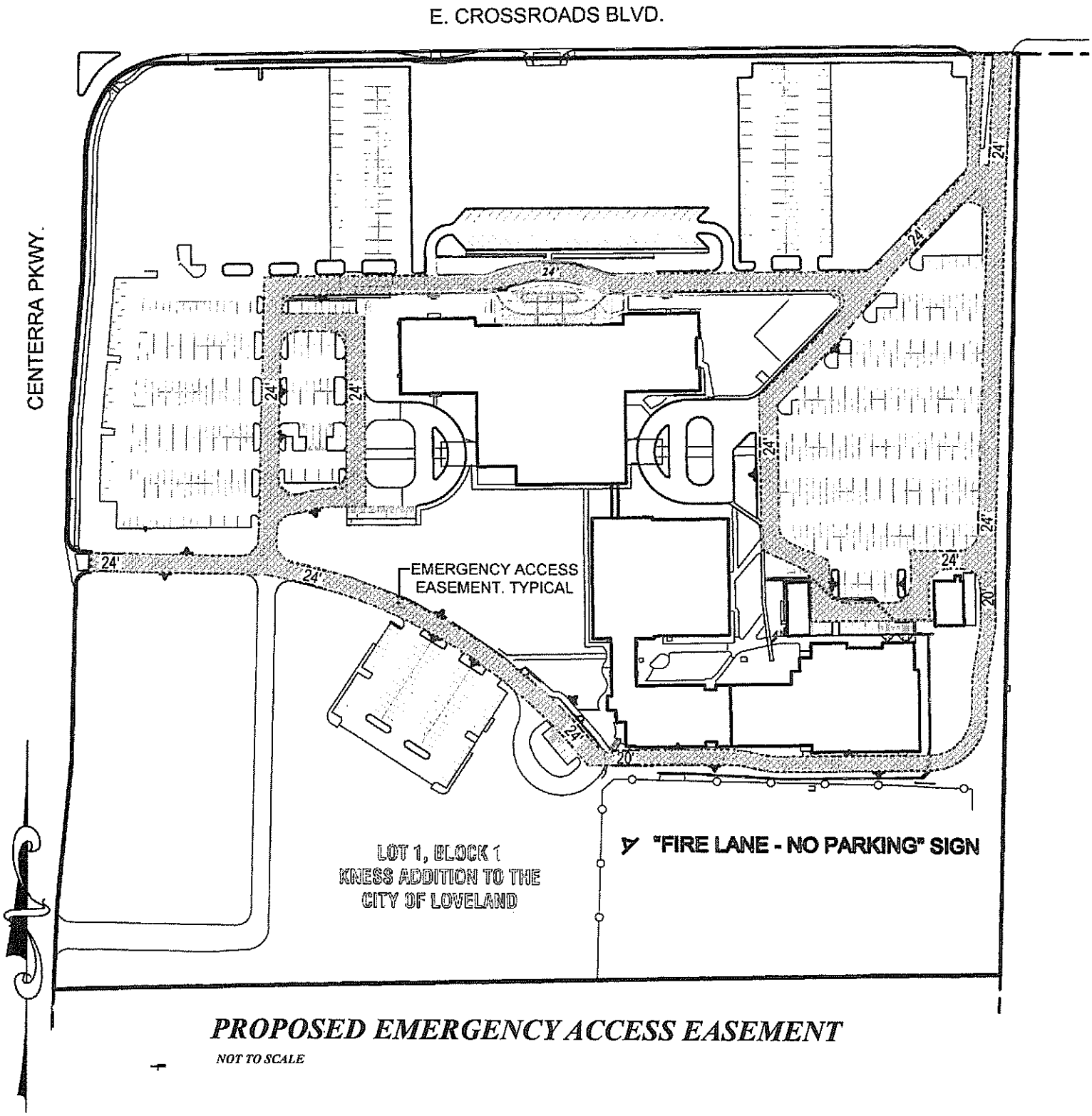
EXHIBIT 2



EXISTING EMERGENCY ACCESS EASEMENT

NOT TO SCALE

EXHIBIT 3



PROPOSED EMERGENCY ACCESS EASEMENT

NOT TO SCALE

EXHIBIT 4

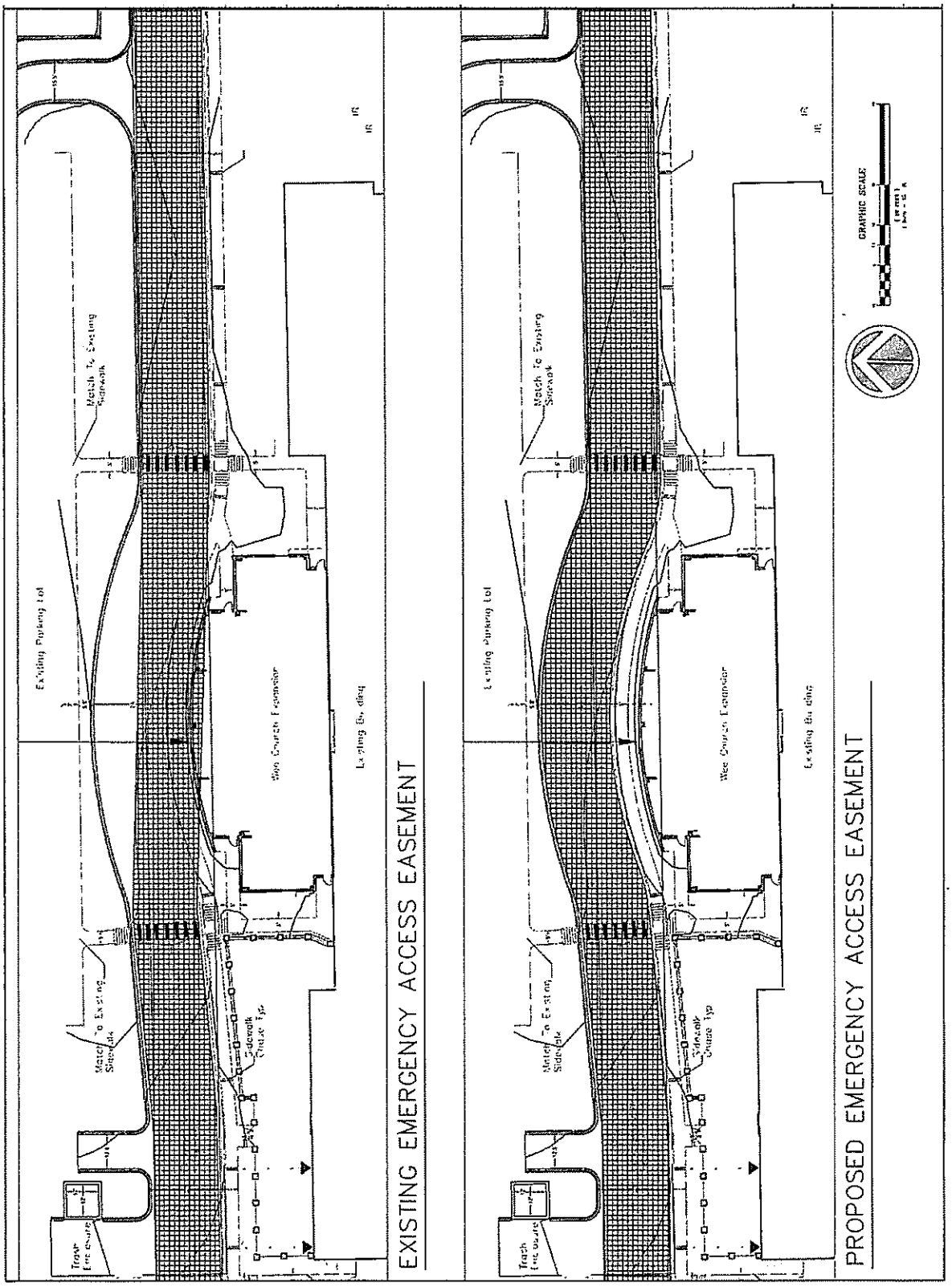

EXISTING EMERGENCY ACCESS EASEMENT
PROPOSED EMERGENCY ACCESS EASEMENT
GRAPHIC SCALE

EXHIBIT 5

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: **8**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Kerri Burchett, Current Planning

TITLE:
An Ordinance Approving a First Amendment to the Conceptual Master Plan for the Waterfall Fourth Subdivision and the Waterfall Fifth Subdivision, City of Loveland, County of Larimer, State of Colorado, Also Known as Boyd Lake Village

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 item is a quasi-judicial action to consider amending the Boyd Lake Village Conceptual Master Plan (the "Master Plan"). The applicant is McWhinney Inc. Currently, the Master Plan designates specific primary and non-primary land uses for each lot so that at build out the project satisfies the zoning requirement that 60% of the land area is developed into primary jobs. There are seven vacant lots remaining in the 32-acre development located on the north side of East Eisenhower Boulevard, south of Boyd Lake. The removal of the specific designations will provide the applicant greater flexibility in locating primary and non-primary jobs on the remaining vacant lots within the development. Development standards contained in the Master Plan will ensure that the mix of primary and non-primary jobs remain in compliance with the zone district requirements. The amendment would not change the designations of existing uses or alter the design standards approved for the development.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:

There are no key issues identified by staff with the amendment request. The item was heard by the Planning Commission on July 28, 2014 as an item on the consent agenda. There were no members of the public who spoke at the hearing and the item remained on the consent agenda. The Planning Commission unanimously recommended approval of the amendment. As no discussion of the item occurred at the hearing, the Planning Commission minutes have not been included as an attachment.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Ordinance
2. Staff Memorandum
3. Staff and Applicant PowerPoint Presentations
4. Planning Commission Staff Report with Attachments

FIRST READING August 19, 2014

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING A FIRST AMENDMENT TO THE CONCEPTUAL MASTER PLAN FOR THE WATERFALL FOURTH SUBDIVISION AND THE WATERFALL FIFTH SUBDIVISION, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, ALSO KNOWN AS BOYD LAKE VILLAGE

WHEREAS, the Waterfall Fourth Subdivision and the Waterfall Fifth Subdivision, City of Loveland, County of Larimer, State of Colorado, also known as Boyd Lake Village ("Boyd Lake Village") are zoned E – Employment Center District and are subject to the requirements of Chapter 18.30 of the Loveland Municipal Code (the "Code"); and

WHEREAS, in accordance with Section 18.30.050.B. of the Code, Boyd Lake Village is subject to a conceptual master plan prepared by BHA Design, Inc. and dated March 13, 2007, as revised July 2, 2007 ("Conceptual Master Plan"); and

WHEREAS, as required by Section 18.30.050.B. of the Code, the Conceptual Master Plan depicts an allocation of land uses in a manner that demonstrates compliance with Section 18.30.040.A., which requires that not more than forty percent (40%) of the land area within a development plan for property zoned E – Employment Center District shall be dedicated to "non-primary workplace uses"; and

WHEREAS, MLB 34, LLC (the "Owner"), as owner of all of the undeveloped real property within Boyd Lake Village (the "Property"), desires to amend the Conceptual Master Plan to remove the designations of "non-primary workplace uses" and "primary workplace uses" to specific lots in order to allow greater flexibility in locating primary and non-primary workplace uses within Boyd Lake Village as set forth in the "First Amendment Conceptual Master Plan" prepared by BHA Design, Inc. and dated May 7, 2014 (the "First Amendment to the Conceptual Master Plan"); and

WHEREAS, the First Amendment to the Conceptual Master Plan does not alter the requirement that not more than forty percent (40%) of the land area within a development plan for property zoned E – Employment Center District shall be dedicated to "non-primary workplace uses"; and

WHEREAS, on July 28, 2014, the Loveland Planning Commission held a public hearing to consider the proposed amendment and adopted a motion to make the findings listed in Section VIII of the Planning Commission Staff Report dated July 28, 2014 and, based on those findings, to recommend to Council that the First Amendment to the Conceptual Master Plan be approved.

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

Section 1. That Council has held a public hearing and received evidence and testimony and hereby makes the following findings with regard to the Owner's request to amend the Conceptual Master Plan to remove the designations of "non-primary workplace uses" and "primary workplace uses" to specific lots as set forth in the First Amendment to the Conceptual Master Plan:

Finding 1. That development of the Property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the First Amendment to the Conceptual Master Plan, would result in development that is consistent with relevant policies contained in Section 4.0 of the 2005 City of Loveland Comprehensive Master Plan, as amended.

Finding 2. That development of the Property pursuant to the First Amendment to the Conceptual Master Plan would be consistent with the purposes set forth in Section 18.04.010 of the Loveland Municipal Code, which purposes include, to: lessen congestion on the streets; secure from fire and panic; promote the health and general welfare; prevent the overcrowding of land; avoid undue concentration of population; facilitate adequate provision of transportation, water, sewage, schools, parks, and other public requirements; conserve the value of buildings; and encourage the most appropriate use of land.

Finding 3. That development of the Property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the First Amendment to the Conceptual Master Plan, would be consistent with the E – Employment Center District as set forth in Title 18 of the Loveland Municipal Code.

Finding 4. That development of the Property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the First Amendment to the Conceptual Master Plan, would result in development that is compatible with existing land uses adjacent to and in close proximity to the Property to be affected by development of it.

Finding 5. That development of the Property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the First Amendment to the Conceptual Master Plan, would result in impacts on City infrastructure and services that are consistent with current infrastructure and services master plans.

Finding 6. That development of the Property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the First Amendment to the Conceptual Master Plan, would result in development that would not be detrimental to the health, safety, or welfare of the neighborhood or general public.

Section 2. That the "First Amendment Conceptual Master Plan" prepared by BHA Design, Inc. and dated May 7, 2014, a copy of which is on file with the City's Current Planning Division, is hereby approved.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading, unless the Ordinance has been amended since first reading, in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

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

ADOPTED this _____ day of September, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

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

MEMORANDUM

TO: City Council

FROM: Kerri Burchett, Principal Planner

DATE: August 19, 2014

RE: Boyd Lake Village Conceptual Master Plan First Amendment

I. ATTACHMENTS

A. Staff PowerPoint presentation
B. Applicant PowerPoint presentation
C. Planning Commission Staff Report including the following attachments:
   1. Boyd Lake Village Conceptual Master Plan Amendment #1 (J-B First Addition, Waterfall Addition Tracts A and D)
   2. Conceptual Master Plan Narrative
   3. Employment Center District, Section 18.30 of the Municipal Code
   4. Waterfall Fifth Subdivision (for information purposes only)
   5. Waterfall Fourth Subdivision (for information purposes only)

II. EXECUTIVE SUMMARY

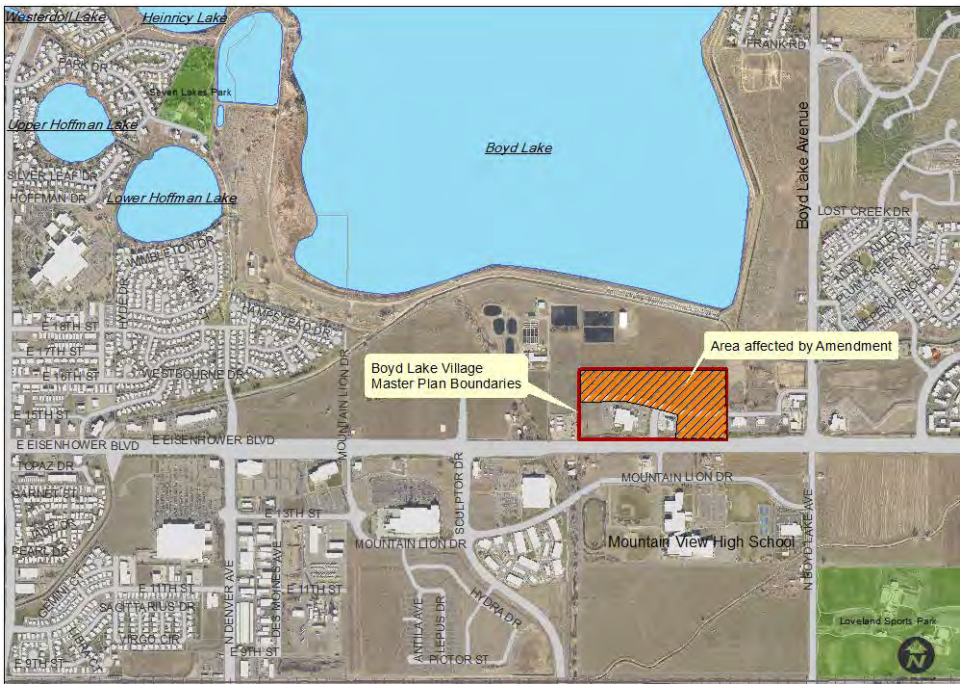
The City Council public hearing is to consider an amendment to the conceptual master plan for the Boyd Lake Village development. The applicant is requesting to remove the primary and non-primary land use designations shown on the master plan for the remaining seven vacant properties. Removing the designations would allow the applicant greater flexibility in marketing the remaining vacant lots in the development. The amendment does not modify the land use designations for the two properties that are already developed. The mix of primary and non-primary workplace uses developed in the master plan, along with the design standards, also would not change with this amendment. A minimum of 60% of the land area in the master plan would be developed into primary workplace uses as required in the E-Employment Center zone district. Primary workplace uses include uses such as offices, research or light industrial.

The amendment proposes that with each site development plan, the applicant would update the conceptual master plan to designate the property as a primary or non-primary use and indicate the remaining land area that could be devoted to future primary and non-primary uses. This would ensure that the land use

EXHIBIT 1

categories are tracked accurately in the future and assure fulfillment of the goal to develop primary workplace uses in the development.

Project Location



II. PLANNING COMMISSION HEARING

The amendment was heard by the Planning Commission on July 28, 2014 as an item on the consent agenda. There were no members of the public who spoke and the item remained on the consent agenda. The Planning Commission unanimously recommended approval of the amendment. As no discussion of the item occurred at the hearing, the Planning Commission minutes have not been included as an attachment to this memorandum.

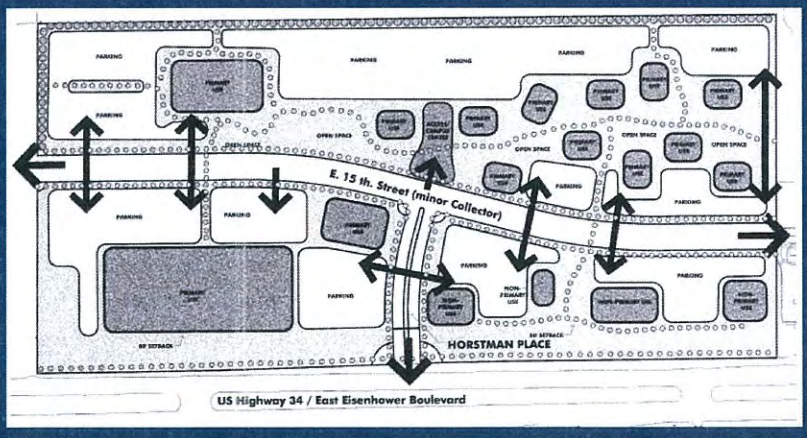
III. RECOMMENDED CONDITIONS

There are no staff recommended conditions for the requested amendment.

Boyd Lake Village
Conceptual Master Plan Amendment

- North side of E. Eisenhower, west of Boyd Lake Avenue
- 32 acres
- Employment Center zoning
- 2 lots developed

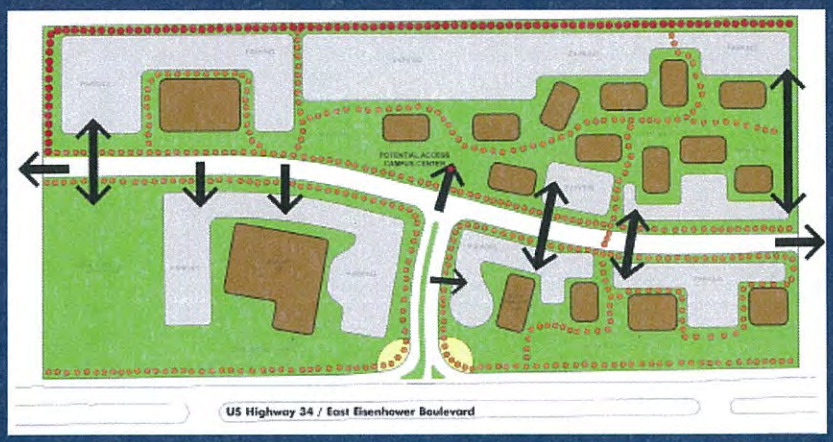
Approved Master Plan



- Identified locations for primary and non-primary land uses.
- Non-primary uses located along Hwy. 34, east of Horstman Place
- Exceeded 60% primary use requirement in Employment zone
- Provided design standards for the development

ATTACHMENT A

Proposed Amendment to Master Plan



- Removes locations of primary and non-primary land uses for vacant land.
- Greater flexibility to market property.
- Adds provisions that require development of 60% primary uses.
- Each site development plan will update the master plan land use designation.
- Does not change the design standards for the development

welcome:

BOYD LAKE VILLAGE
CITY COUNCIL MEETING

AUGUST 19, 2014

regional map

ATTACHMENT B

description

The site is zoned E-Employment which is designed to create a mixed use district intended to provide a variety of workplaces. The zoning is required to have a balance of uses and to provide a maximum of 40% non-primary uses and a minimum of 60% primary uses of the total site area.

Non-primary workplace uses, as listed in the City's Municipal Code, include hotels, retail, convenience and service uses, restaurants, child care or other uses intended to support primary workplace uses.

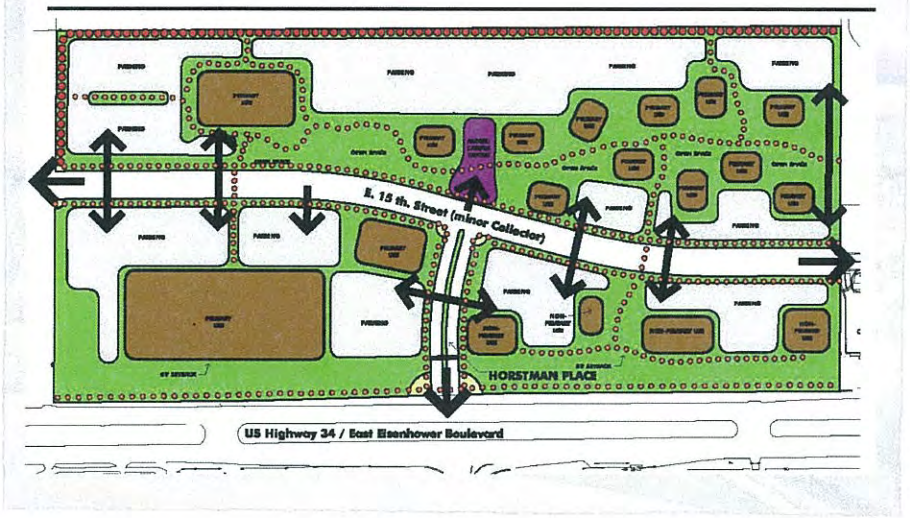
Primary workplace uses, as listed in the City's Municipal Code, include office, research or light industrial.

description

We are requesting to amend the Boyd Lake Village Conceptual Master Plan to remove the specific locations where primary and non-primary workplace uses can be developed on the vacant properties.

Currently in the Master Plan, non-primary workplace uses are located on land adjacent to E. Eisenhower Boulevard (Hwy. 34) east of Horstman Place and south of 15th Street. Primary workplace uses are located west of Horstman Place and north of E. 15th Street.

current concept plan

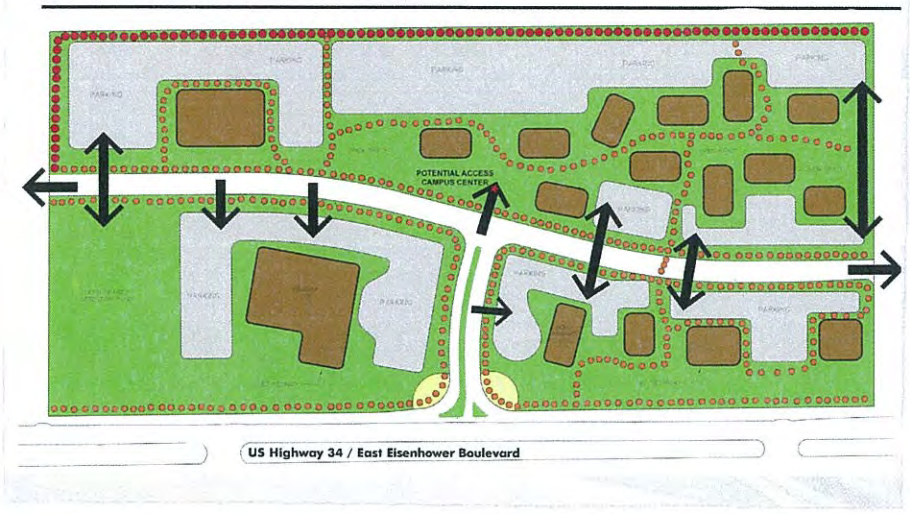


description

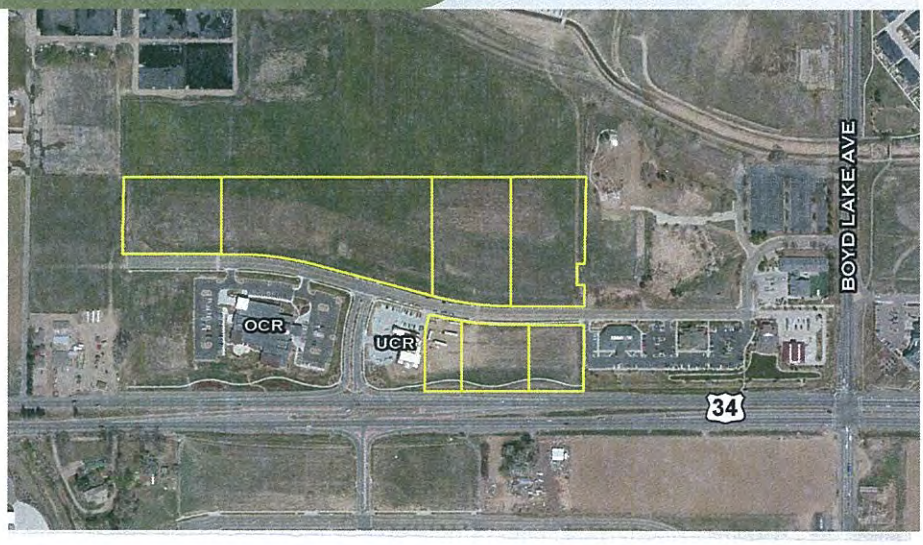
In order to achieve more flexibility in marketing the property, we are requesting to remove the specific designations for where the primary and non-primary workplace uses can locate on the remaining vacant properties. Instead of the specific locations, conditions would be placed on the property that would require a minimum of 60% of the total land area in the Master Plan be developed into primary workplaces.

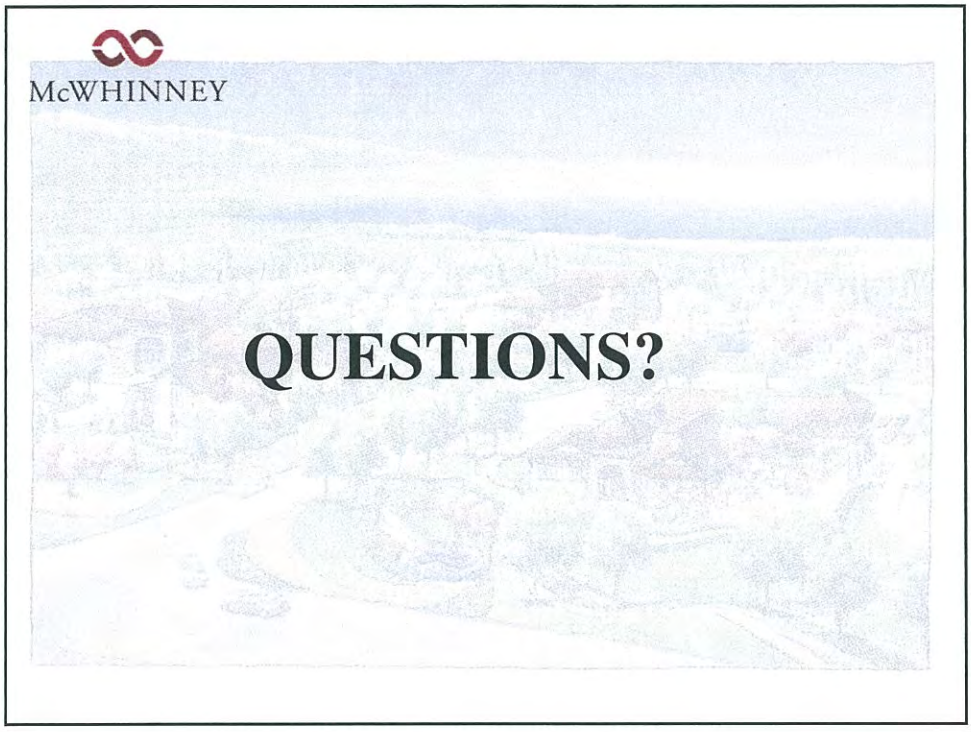
No change is proposed for the existing developed properties within the master plan.

proposed concept plan



site map




McWHINNEY
QUESTIONS?

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 28, 2014

Agenda #:	**Consent Agenda - 1**
Title:	Boyd Lake Village Conceptual Master Plan First Amendment
Applicant:	McWhinney Enterprises
Request:	Conceptual Master Plan Amendment
Location:	North side of East Eisenhower Boulevard, west of Boyd Lake Avenue
Existing Zoning:	E – Employment Center
Proposed Zoning:	No change
Staff Planner:	Kerri Burchett

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 VIII. of the Planning Commission staff report dated July 28, 2014; and, based on those findings, recommend to the City Council that the Boyd Lake Village Conceptual Master Plan First Amendment be approved."

Summary of Analysis:

The applicant's request is to modify the Boyd Lake Village Conceptual Master Plan to remove the specific primary and non-primary land use designations on the remaining vacant property. The removal of the designations will provide the applicant greater flexibility in marketing the development. Development standards provided in the master plan will ensure that the mix of primary and non-primary workplace uses will remain in compliance with the zone district requirements. The amendment would not change the designations of existing uses or alter the design standards approved for the development.

Staff supports the proposed amendment. There were no concerns with the amendment voiced at the neighborhood meeting.

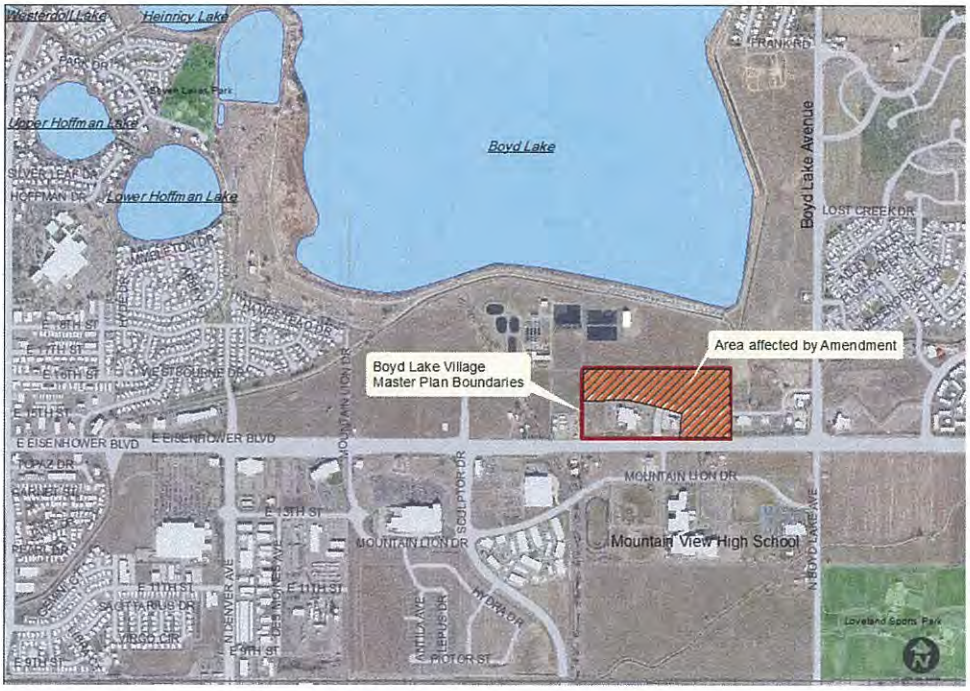
I. SUMMARY:

This is a public hearing to consider an amendment to the conceptual master plan for the Boyd Lake Village development. The applicant is requesting to remove the primary and non-primary land use designations shown on the master plan for the remaining seven vacant properties. Removing the designations would allow the applicant greater flexibility in marketing the properties. The amendment does not modify the land use designations for the two properties that are already developed. The mix of primary and non-primary workplace uses developed in the master plan, along with the design standards, also would not change with this amendment. A minimum of 60% of the land area in the master plan would be developed into primary workplace uses as required in the E-Employment Center zone district. Primary workplace uses include uses such as offices, research or light industrial.

The amendment proposes that with each site development plan, an applicant would update the conceptual master plan to designate the property as a primary or non-primary use and indicate the remaining land area that could be devoted to future primary and non-primary uses. This would ensure that the land use categories are tracked accurately in the future and assure fulfillment of the goal to develop primary workplace uses in the development.

Planning Commission's role is quasi-judicial, which means consideration of the application is to be made on the basis of adopted policies, codes and standards and the specific information submitted by the applicant and/or presented at the hearing. Planning Commission must evaluate whether the application meets the appropriate findings and forward their recommendation to City Council for a subsequent public hearing and final decision. The City Council public hearing is scheduled for August 19, 2014. The appropriate criteria/findings, along with staff analyses, are provided in Section VIII. of this staff report.

II. VICINITY MAP:



III. KEY ISSUES:

There are no key issues identified by staff with the proposal.

IV. ATTACHMENTS:

1. Boyd Lake Village Conceptual Master Plan Amendment #1 (J-B First Addition, Waterfall Addition Tracts A and D)
2. Conceptual Master Plan Narrative
3. Employment Center District, Section 18.30 of the Municipal Code
4. Waterfall Fifth Subdivision (for information purposes only)
5. Waterfall Fourth Subdivision (for information purposes only)

V. SITE DATA:

ACREAGE OF SITE (GROSS ACRES)	32.22 ACRES
COMP PLAN DESIGNATION	E –EMPLOYMENT
EXISTING ZONING	E-EMPLOYMENT CENTER
EXISTING USE	MEDICAL OFFICES AND VACANT
PROPOSED USE	PRIMARY AND NON-PRIMARY WORKPLACE USES
EXIST ADJ ZONING & USE - NORTH	DR DEVELOPING RESOURCE - CITY OF GREELEY FILTER PLANT
EXIST ADJ ZONING & USE - SOUTH	US HWY. 34 & B BUSINESS – RESTAURANTS, CAR WASH UNDER CONSTRUCTION AND 1 SINGLE FAMILY HOUSE
EXIST ADJ ZONING & USE - WEST	COUNTY C COMMERCIAL – COMMERCIAL RETAIL
EXIST ADJ ZONING & USE - EAST	CITY B BUSINESS AND I INDUSTRIAL – COMMERCIAL OFFICES & VACANT
UTILITY SERVICE PROVIDER - SEWER	CITY OF LOVELAND
UTILITY SERVICE PROVIDER - ELECTRIC	CITY OF LOVELAND
UTILITY SERVICE PROVIDER - WATER	CITY OF LOVELAND

VI. BACKGROUND:

The Waterfall Addition was annexed into the city in January of 1993. The J-B Addition was annexed into the City of Loveland in February of 2005 and zoned, along with portions of Tracts A and D, Waterfall Addition, to the Meadowbrook Falls Planned Unit Development. The property was rezoned to Employment Center and the conceptual master plan was approved for the Boyd Lake Village development in September of 2007. Since that time, two medical office buildings have been developed in the master plan along E. Eisenhower Boulevard.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION:

A. Notification: An affidavit was received from Cole Evans with McWhinney Enterprises certifying that notice of this hearing was mailed to all owners of property within 1,200 feet of the site, and that notices were posted in prominent locations on the perimeter of the project site at least 15 days prior to the date of the Planning Commission hearing. A notice was also published in the Reporter Herald on July 12, 2014. All notices stated that a public hearing would be held by the Planning Commission on July 28, 2014 at 6:30 pm.

B. Neighborhood Response: A noticed neighborhood meeting was held at 5:30 p.m. on June 26, 2014 in the City Council Meeting Room. Three persons attended the meeting along with city staff and the applicant. Upon hearing a description of the application, there were no concerns expressed by the neighborhood at the meeting. The neighborhood response was positive regarding the amendment.

VIII. FINDINGS AND ANALYSIS

In this section of the report, applicable findings are recommended in italic print, followed by staff analysis as to whether the findings can be met by the submitted application. The consideration and action of the Planning Commission should focus on these findings as being the appropriate basis for their action.

Finding 1. *Development of the property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would result in development that is consistent with relevant policies contained in Section 4.0 of the 2005 Loveland Comprehensive Plan, as amended.*

Current Planning: Staff believes this finding can be made, based on the following facts:

- The amendment would provide flexibility in the location of primary and non-primary uses but does not alter the percentage of these uses in the development. A minimum of 60% of the land area would be developed into primary workplace uses and would comply with the Comprehensive Master Plan and the Employment Center zone.
- The approved development standards in the Amended Conceptual Master Plan are not proposed to change. The standards promote a high quality development, consistent with the philosophies in the Comprehensive Plan.

Finding 2. *Development of the property pursuant to the plan would be consistent with the purposes set forth in Section 18.04.010 of the Loveland Municipal Code.*

Current Planning: Staff believes this finding can be made, based on the following fact:

- The land uses and design standards permitted in the development would not change with the amendment. The amendment seeks to allow greater flexibility in marketing the property to both primary and non-primary uses. Development of the property would be consistent with the purposes of the Municipal Code and the design standards would provide a unified, high quality development.

Finding 3. *Development of the property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would be consistent with the E- Employment Center zone district, as set forth in Title 18 of the Municipal Code.*

Current Planning: Staff believes this finding can be made, based on the following fact:

- The proportion of primary and non-primary workplace uses will be consistent with the provisions of the E- Employment Center zone district. At least 60% of the land area will be devoted to primary workplace uses. Uses permitted by right will be developed in accordance with the requirements in the Employment Center zone and the design standards contained in the Conceptual Master Plan.

Finding 4. *Development of the subject property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would result in development that is compatible with existing land uses adjacent to and in close enough proximity to the subject property to be effected by development of it.*

Current Planning: Staff believes this finding can be made, based on the following fact:

- At the time of approval, the original Conceptual Master Plan was determined to be compatible with existing and surrounding land uses. No changes are proposed to the uses permitted in the development. There were no concerns or questions regarding compatibility voiced at the neighborhood meeting.

Finding 5. *Development of the subject property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would result in impacts on City infrastructure and services that are consistent with current infrastructure and services master plans.*

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

- Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and service master plans.
- Analyses of traffic impacts and the description of associated required street improvements for ACF compliance are examined in detail when a specific development application is submitted. All specific development applications within this area will need to demonstrate conformance with ACF requirements with the site development plans.

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

- This development is situated within the city's current service area for both water and wastewater. The proposed amendment request is consistent with the Department's Water and Wastewater master plan by being consistent with the 2005 Comprehensive Plan.
- Regarding water, the site is at the eastern end of the gravity pressure zone. There is a 12" water main in 15th Street west of Horstman Place and then an 8" water main thereafter.
- Regarding wastewater, the site drains to the wastewater treatment plan via the East Side Lift Station. There is a 10" wastewater main in 15th Street. Water and wastewater stubs

have been provided into the undeveloped lots and future development of the lots will require extension of these stubs.

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

- There is an underground 200 amp three phase power in conduit located along the south side of East 15th Street, with conduits stubbed north across the street from the various vaults located along 15th Street. Power will be extended onto the site at the developer's cost per the city's Municipal Code.
- The proposed development will not negatively affect the city power utility.

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

- Proposed stormwater facilities will adequately detain and release stormwater runoff in a manner that will eliminate off-site impacts.
- When designed and constructed, the development will not negatively affect City storm drainage utilities.

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

- The development will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company.
- The proposed development will not negatively impact fire protection for the subject development or surrounding properties.

Parks and Rec: Staff believes that this finding can be met, due to the following fact:

- As outlined and described in the 2001 Parks and Recreation Master Plan, a recreational trail spur will need to be aligned and constructed through this development in a general east and west direction, as shown on the conceptual master plan. The purpose of the trail spur is to connect the main City loop at Denver Avenue to the west side of Boyd Lake Ave. The timing of the construction of the trail and the dedication of the easement to accommodate the trail will be reviewed and approved in conjunction with the site development plans.

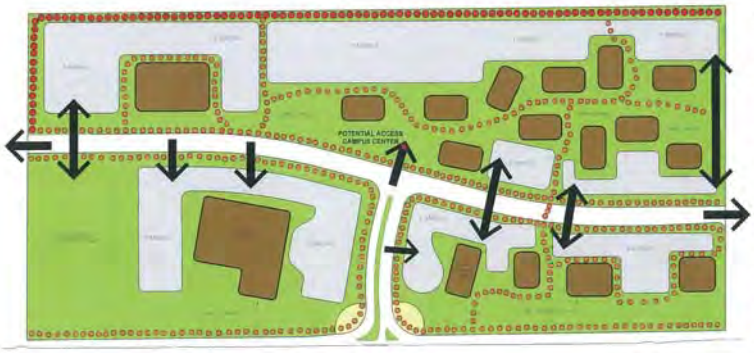
Finding 6. *Development of the subject property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would result in development that would not be detrimental to the health, safety, or welfare of the neighborhood or general public.*

Current Planning: Staff believes this finding can be made, based on the following:

At the time of approval of the original conceptual master plan, the city determined that development of the proposed uses would not be detrimental to the health, safety or welfare of the neighborhood or general public. The amendment requests to remove the specific locations for primary and non-primary workplace uses to provide flexibility in marketing the properties and should not be detrimental to the health, safety and welfare of the neighborhood or general public.

IX. RECOMMENDED CONDITIONS:

There are no staff recommended conditions for these applications.



NORTH

Note:
Building locations shown on this plan are conceptual. More detailed plans will be developed for each lot at time of site development plan.

LEGEND

- PARKING
- BUILDING
- OPEN SPACE / DETENTION
- ENTRY FEATURE
- PEDESTRIAN ACCESS
- VEHICULAR ACCESS
- CITY RECREATIONAL TRAIL

LAND USE TABLE - EMPLOYMENT ZONING

BOYD LAKE VILLAGE - 32.22 ACRES (26.2 ac excluding ROW)
MINIMUM 60% PRIMARY USE - 15.73 ACRES
MAX. 40% NON-PRIMARY USE - 10.52 ACRES
EXISTING NON-PRIMARY USE (DESIGNATION) - 1.43 ACRES
REMAINING MAX. NON-PRIMARY USE - 9.09 ACRES

ENTRY CONCEPT

CAMPUS CENTER CONCEPT

OPEN SPACE CONCEPT

DESIGN STANDARDS

MASTER PLAN PROCESS

SIGNATURES

a. Approved this ____ day of _____, 2014, by the Current Planning Manager of the City of Loveland, Colorado

Current Planning Manager

b. Approved this ____ day of _____, 2014, by the City Engineer of the City of Loveland, Colorado

City Engineer

c. Approved this ____ day of _____, 2014, by the City Attorney of the City of Loveland, Colorado

City Attorney

d. Approved this ____ day of _____, 2014, by the City Planning Commission of the City of Loveland, Colorado

Chairperson

e. Approved this ____ day of _____, 2014, by the City Council of the City of Loveland, Colorado

Mayor Attest

OWNERS CERTIFICATAION

KNOW ALL MEN BY THESE PRESENTS THAT:

Being all the lawful recorded owners of the property shown on this rezone, except any existing public streets, roads, or highways, do hereby certify that I consent to the recordation of any information pertaining thereto.

HBL 34, LLC,
a Colorado limited liability company

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

By: _____
Jay Hardy, Vice President
Community Development

FIRST AMENDMENT
CONCEPTUAL MASTER PLAN
J-B FIRST ADDITION, WATERFALL ADDITION TRACTS A, D
REZONE #303
LOVELAND, COLORADO

SHEE
MARCH
REV: M

PC ATTACHMENT 1

ELEVATION - 6,000 S.F. BUILDING ELEVATION CONCEPT - NOT TO SCALE

PERSPECTIVE - 6,000 S.F. BUILDING ELEVATION CONCEPT - NOT TO SCALE

PERSPECTIVE - 50,000 S.F. BUILDING CONCEPT - NOT TO SCALE

ELEVATION - 10,000 S.F. BUILDING ELEVATION CONCEPT - NOT TO SCALE

ELEVATION - 10,000 S.F. BUILDING ELEVATION CONCEPT - NOT TO SCALE

BUILDING MATERIALS

ELEVATION - 75,000 S.F. BUILDING ELEVATION CONCEPT - NOT TO SCALE

ELEVATION - 75,000 S.F. BUILDING ELEVATION CONCEPT - NOT TO SCALE

ELEVATION - RETAIL BUILDING ELEVATION CONCEPT - NOT TO SCALE

FIRST AMENDMENT

ARCHITECTURAL CHARACTER SKETCHES

J-B FIRST ADDITION, WATERFALL ADDITION TRACTS A, D

REZONE #303

LOVELAND, COLORADO

SHEET 2 OF 2
MARCH 13, 2007
REV. MAY 7, 2014

DESIGN STANDARDS

Unifying architectural elements

MATERIALS:

A. **Wood:** Exposed columns, tilted columns, and beams of rough sawn glu-lam timbers with exposed metal plates and fasteners shall be used with each building, but shall be minimally utilized at or near entries. (Stained, semi-transparent brown - consistent on all buildings).

B. **Stone:** Full wall planes of buff sandstone or synthetic stone - thin cut or dry stack veneer with faces canted outward from top to bottom (see building character sketches); and/or partial wall planes of sandstone veneer utilized as columns.

Minimum usage 20% of building façade (buff sandstone color including grays and rust - consistent on all buildings).

C. **Concrete, Metal, or Stucco:** Architectural precast, cast-in-place concrete walls incorporating elastomeric paint; concrete panel sided walls; architectural grade metal (alucobond or similar); or stucco walls shall be used as full walls. Surfaces must be articulated with reveals designed to create pattern and form.

Minimum usage 20% of building façade. (Painted, light adobe/light tan- consistent on all buildings).

D. **Brick veneer:** Minimum usage 20% of building façade (reddish/brown color - consistent on all buildings). Brick may include bands of stone for articulation.

E. **Roofing:** Flat roofs behind parapet walls, slim line cantilevered flat roofs faced with metal (mainly utilized at entries), slightly sloped shed roofs with large overhangs, or slightly arched barrel roofs with large overhangs shall be used. All shed roofs and barrel roofs shall utilize the same warm gray standing seam metal roof. Every building shall incorporate at least (3) of these forms.

F. **Glazing:** Glass shall be bronze tinted, high performance, low-e, glass with no more than 30% reflectivity. Glass for retail store fronts may be clear.

G. **Window Frames:** Window frames shall be anodized bronze or brushed aluminum.

H. **Steel:** Exposed plates, connectors for timbers, guard rails, facing of cantilevered flat roof pieces, window shading devices, and any other exposed metals shall be either bronze or aluminum color to match windows or warm gray to match standing seam metal roofing.

ARCHITECTURAL FORMS :

Building Massing: Building design shall include multiple masses differentiated by the use combinations of approved materials. Extend stone walls outward from the buildings in an awkward cant from top to bottom.

Solar Shades: Minimum 60% of all exterior windows, excluding windows shaded by roof overhangs, shall incorporate metal trellising over metal brackets as window shade devices. These also become an architectural element tying the buildings together within the campus.

Mechanical Screens: Mechanical equipment shall be screened with parapets or screen walls with complimentary metal or concrete siding panels. Color to match the building elements.

Signs: Building mounted signs shall be placed in predetermined locations designed to work with the building façade.

Building Facades: The use of materials in the percentages previously specified shall be equally interpreted on all four sides of each building.

Unified Open Space

Internal pedestrian and bicycle networks shall be designed to invite walking and bicycle use throughout the campus, and to connect with surrounding areas and open space. Walkways shall be a minimum of five feet in width. Individual parcels and sites shall be integrated with the overall design to form a comprehensive network within the campus. Pedestrian facilities shall be included from building parcels to the central pedestrian area and from each building to adjacent building parcels. Continuous pedestrian walkways shall link public street sidewalks and the private sidewalks with individual sites.

Where it is necessary for the primary pedestrian access to cross drive aisles, parking lots, or internal circulation the pedestrian crossing shall emphasize and place priority on pedestrian access and safety by utilitilizing a change in paving and materials. The material and layout of the pedestrian access shall be continuous as it crosses the driveway, with a break in continuity of the driveway paving and not the pedestrian access way. The pedestrian crossings shall be well marked using low maintenance pavement treatments such as scored concrete with an appropriate size score pattern of human scale, colored concrete, pavers, brick or other similar materials.

Where pedestrians and bicyclists share walkways a minimum width of eight (8) feet shall be required. Additional width may be required to accommodate higher volumes of bicycle and pedestrian traffic.

An minimum of 25 percent open space will be provided within this development. Detention basins and common open space will be incorporated throughout the site. These areas will provide pedestrian paths that serve as landscape connection through the site. Visual accent and buffer from adjacent roadways will also be provided within these landscape areas.

Major entry points have been identified on the site plan. These entries will include exemplary landscape treatment and will incorporate architectural features and signage elements designed to reflect the same character of the buildings. Sculpture(s) and/or water feature(s) may also be incorporated in these areas. See conceptual sketch this sheet for an example of a typical entry.

The campus center will be the prime focal area of the campus. This area will include landscape and architectural features consistent with the major entry points. At least one sculpture, architectural feature, or water feature will be incorporated in this area to provide visual interest. Vehicular access will still be a part of the campus center, but a hierarchy will be placed on pedestrian traffic. Where buildings face the street larger sidewalks with different paving materials will be used to create an urban street character. Plazas and/or gathering spaces will be incorporated in this area.

Unified streetscapes will be developed along 15th Street and Horsman Place. Horsman Place will be constructed with a ten foot median to include ornamental flowering trees, shrubs, perennial plants, and ornamental grasses. A parkway and detached sidewalks will also be included along this street. 15th Street will be designed with detached sidewalks and parkways to include deciduous canopy trees along each side of the street at 40 feet on center with drought tolerant turf planted in the parkways.

Additional open space/hardscape areas will be provided along streets within the development, around buildings, and within and around parking lots for screening.

The landscaping used within the development will be installed according to xeric principles. Low water use plants will be required.

Other unifying features

Outdoor plaza areas will exist at various building sites within the development. These plazas may be attached to individual buildings or separated within the open space for shared use with multiple buildings. A minimum of one plaza space shall be provided for every four buildings. These spaces will be designed in the same character as the public spaces and will be connected to the pedestrian pathway system.

The recreational trail is shown on the plan along the west and north boundary of the site. The purpose of this location is to allow for public pedestrian traffic to get through the development without conflicting with internal pedestrian traffic. The recreational trail will be within a 30 foot easement which will provide a buffer from neighboring uses to the north and west. Pedestrian connections will be provided to the Waterfall parcel to the east via the public recreation trail, internal pedestrian trail system, and sidewalks within the public right of way.

A signage master plan will be developed to insure consistent sign design and location for various sign types within the development. A planned sign program will also be developed and approved prior to any sign construction within the development. The signs will be designed to allow for efficient way finding and will be designed in a character to compliment the building architecture.

Site furnishings (lighting, trash receptacles, benches, planter pots, bollards, bike racks, building addressing, etc.) will be developed with a unified theme to reflect the character of the development. Site furnishings will be approved with the building permit.

View shed protection

The buildings on the south portion of the site will be oriented to US highway 34 to give the development a street character along that corridor. The views along US 34 will be protected as each building will be a maximum of 3 stories in height and buildings will be setback 80 feet from US 34. The other buildings on the site will be oriented around the site's open space. These buildings will be clustered in such away as to enhance views from the buildings and the common open space.

Unified Design Agreement

An architectural review board will be in place to review each project within the development. An approval from the architectural review board will be required prior to the submission of any building permit.

Master Association

All of the landscaping within the development will be maintained by a master association.

MASTER PLAN PROCESS

Each site development plan submitted for (property within the boundaries of this master plan including all properties in Waterfall Fifth Subdivision and Lots 2, 3 and 4, Block 2 Waterfall Fourth Subdivision) shall include an updated master plan labeling the lot as providing primary or non-primary uses and an updated land use table identifying the remaining primary and non-primary use acreages available. The updated master plan shall be processed administratively with each site development plan.

Chapter 18.30

E DISTRICT – EMPLOYMENT CENTER DISTRICT

Sections:

18.30.010 Purpose.

The E - Employment Center District is a mixed-use district intended to provide locations for a variety of workplaces and commercial uses, including light industrial, research and development, offices, institutions, commercial services and housing. This district is intended to encourage the development of planned office and business parks; promote excellence in the design and construction of buildings, outdoor spaces, transportation facilities, streetscapes, lodging and other complementary uses. This district is intended to implement the E- Employment Center category set forth in the City's Comprehensive Master Plan. Uses that complement and support primary workplace uses, such as hotels, retail, restaurants, convenience shopping, child care and housing are intended to be secondary uses and not intended to be the primary or predominant uses in E districts. Such uses should be limited to guidelines set forth in this district. (Ord. 5156, § 1, 2006)

18.30.020 Uses permitted by right.

The following uses are permitted by right in an E district:

A. Art gallery, studio and workshop including live/work studio and workshop. Such facilities may include the display, sale, fabrication or production of paintings, sculptures, ceramics and other art media. Limited outdoor fabrication of art work may be permitted subject to special review as provided in Chapter 18.40.
B. Commercial child day care center licensed according to the statutes of the state;
C. Convention and Conference Center;
D. Entertainment Facilities and Theaters, indoor;
E. Financial Services;
F. Food Catering;
G. Gas station with or without convenience goods or other services subject to Section 18.52.060 and located three hundred (300) feet or more from a residential use or zone district (measurement shall be made from the nearest site or lot line of the gas station to the nearest lot line of the residential use or zone district);
H. Health Care Service Facility;
I. Hospital;
J. Indoor Recreation;
K. Lodging Establishment (hotel and motel);
L. Long Term Care Facility;
M. Medical and dental laboratories;
N. Office, general administrative;
O. Parking Garage;
P. Parking Lot;
Q. Personal and Business Service Shops;

R. Place of Worship or Assembly;
S. Print Shop;
T. Professional Office/Clinic;
U. Restaurant, standard; (Ord. 5845 § 5 (part), 2014)
V. Retail store;
W. Veterinary Clinic;
X. Light Industrial;
Y. Research Laboratory;
Z. Public and Private Schools;
AA. Workshop and Custom Small Industry (entirely enclosed within a building and provided there is no excessive odor, glare, smoke, heat, vibration, etc.), Limited outdoor fabrication of products may be permitted subject to special review as provided in Chapter 18.40;
BB. Dwelling, Attached Single-Family;
CC. Dwelling, Detached Single-Family;
DD. Dwelling, Multi-Family;
EE. Dwelling, Two-Family;
FF. Elderly housing;
GG. Dwelling, Mixed Use;
HH. Community Facility;
II. Park or Recreation Area;
JJ. Congregate care facility;
KK. Antennas, as defined in Section 18.55.020(A), co-located on an existing tower or structure as provided in Section 18.55.030 and Section 18.55.030 and meeting all other requirements of Chapter 18.55; and
LL. Accessory buildings and uses. (Ord. 5156, § 2, 2006)

18.30.030 Uses permitted by special review.

The following uses are permitted by special review in an E district subject to the provisions of Chapter 18.40:

A. Bar or tavern;
B. Car Wash;
C. Domestic Animal Day Care Facility;
D. Gas station with or without convenience goods or other services subject to Section 18.52.060 and located less than 300 feet from a residential use or zone district (measurement shall be made from the nearest site or lot line of the gas station to the nearest lot line of the residential use or zone district);
E. Nightclub;
F. Open-Air Farmers Market;
G. Plant Nursery and Greenhouses;
H. Restaurant, Drive-In or Fast Food;
I. Self-Service Storage Facility;
J. Vehicle Minor Repair, Servicing, and Maintenance;
K. Vehicle Rentals for Cars, Light Trucks and Light Equipment;
L. Vehicle Rentals for Heavy Equipment, Large Trucks and Trailers;
M. Vehicle Sales and Leasing for Cars and Light Trucks;
N. Veterinary Hospital;
O. Warehouse and distribution;
P. Firing range, indoor. (Ord. 5845 § 5 (part), 2014)
Q. Airports and Heliports;

R. Essential Public Utility Uses, Facilities, Services, & Structures;
S. Group Care Facility;
T. Personal wireless service facility as defined in Section 18.55.020(A), located on a new structure, meeting all requirements of Chapter 18.55; and
U. Public Service Facility.
V. Crematorium subject to Section 18.52.080. (Ord. 5446 § 6, 2009)
W. Off -Track Betting Facility (Ord. 5594 § 5, 2011)

18.30.040 Development standards and balance of land uses.

The following standards shall be administered as Type 2 standards in accordance with Section 18.53.020 Compliance.

A. Balance of land Uses: Not more than 40 percent of the land area within a development plan shall be dedicated to non-primary workplace uses. Non-primary workplace uses include hotels, retail, convenience and service uses, restaurants, child care, housing or other uses intended to support and compliment primary workplace uses. For the purposes of this requirement primary workplace uses shall include but shall not be limited to office, research or light industrial. A proposed development plan that does not meet this requirement may be permitted if within two miles of the proposed development plan, primary workplace uses exist or the zoning for such uses is in place, in an amount that is sufficient to comply with the intent of this section and meet the long term need for primary employment land uses anticipated by the City's Comprehensive Master Plan.
B. Campus-Type Character: E-Employment Center Districts are intended to have a "campus-type" character with strong unifying design elements meeting the following standards:
   1. Unified Building Design: Building design shall be coordinated with regard to color, materials, architectural form and detailing to achieve design harmony, continuity and horizontal and vertical relief and interest.
   2. Unified Open Space: Projects shall include a unifying internal system of pedestrian-oriented paths, open spaces and walkways that function to organize and connect buildings, and provide connections to common origins and destinations (such as transit stops, restaurants, child care facilities and convenience shopping centers). The development plan shall utilize open space and natural features that serve as buffers and transitions to adjacent area(s). Development plans shall include at least 20 percent of the gross site area devoted to common open space features, including features such as common area landscaped buffers, parks or plaza spaces, entrance treatments, natural areas, or wetlands, but excluding any open space or landscaped areas within required building setbacks or parking lots. Areas dedicated to storm water drainage may also be counted toward meeting the open space requirement, provided they are designed to be recreation space or as an attractive site feature incorporating a naturalistic shape and/or landscaping.
   3. Other Unifying Features: Major project entry points shall include well designed signage and entry features such as quality identity signage, sculpture, plazas, special landscape clusters, etc. The visibility of parking lots or structures shall be minimized by placement to the side or rear of buildings and/or with landscape screening. Shared vehicular and pedestrian access, shared parking, common open space and related amenities should be integrated into the project's design. The overall design and layout shall be compatible with the existing and developing character of the neighboring area.
   4. Viewshed Protection: Care shall be taken to minimize disruptions to adjacent neighborhood views of open spaces or natural features through the sensitive location and design of structures and associated improvements. Visual impacts can be reduced and better view protection provided through careful building placement and consideration of building

heights, building bulk, and separations between buildings.

5. Unified Design Agreement: In the case of multiple parcel ownerships, an applicant shall make reasonable attempts to enter into cooperative agreements with adjacent property owners to create a comprehensive development plan that establishes an integrated pattern of streets, outdoor spaces, building styles and land uses consistent with the standards in this section.

C. Other Standards:
   1. Significant retail and office components shall comply with standards in Section 18.29.040 – Development Standards for MAC districts.
   2. See also Chapter 18.53 Commercial and Industrial Architectural Standards and Site Development Performance Standards and Guidelines.
   3. Section 18.29.040 paragraphs D. Loading Areas, E. Utility Boxes, F. Trash Enclosures, and G. Other Standards shall apply in E-Employment Center Districts. (Ord. 5156, § 3, 2006)

18.30.050 Development approval.

A. Development Approval: Uses listed in Section 18.30.020 are permitted subject to the applicant obtaining a Type 1 Zoning Permit as required by Section 18.04.020 with approval of the site plan as required by Chapter 18.46 - Site Plan Review Requirements & Performance Standards excluding single and two-family residential uses and accessory buildings as excepted by Section 18.04.020. Special review uses listed in Section 18.30.030 may be permitted subject to the applicant obtaining a Type 2 or 3 Zoning Permit as required by Chapter 18.40 - Uses Permitted B Special Review.

B. Phased Approval: For larger development sites where site development details are not known for the entire site at the time of obtaining a Type 1, Type 2 or Type 3 Zoning Permit as prescribed above, a conceptual master plan shall be provided for the entire parcel subject to phased approval of site plans to ensure the coordinated development of the entire parcel. The conceptual master plan must include the general type, intensity and location of land uses and public facilities and the overall classification and design of the primary road and pedestrian network, including all information that the planning division may require. The conceptual master plan shall also include a narrative statement, conceptual renderings, schematic designs, architectural guidelines or other information as needed to demonstrate how the proposed development plan complies with development standards in Section 18.30.040 paragraphs B. and C. Additionally, the conceptual master plan shall depict an allocation of land uses in a manner that demonstrates compliance with Section 18.30.040.A. The conceptual master plan shall be provided with an E-Employment rezoning application and the rezoning approval shall be subject to compliance with the conceptual master plan. Subsequent site plans submitted for Type 1, Type 2 or Type 3 Zoning Permit approval shall conform to the conceptual master plan.

C. Plan Modifications: Modifications to the conceptual master plan as required to show compliance with Section 18.30.040 Development Standards, or that comply with Section 18.30.060 Schedule of Flexible Standards, may be approved administratively by the Director of Development Services. Changes to permitted uses or substantial changes to the location of land uses as depicted on the conceptual master plan shall be submitted for review and recommendation by the Planning Commission with final approval by the City Council. (Ord. 5156, § 4, 2006)

18.30.060 Schedule of flexible standards.

Chapter 18.30 MAC and E Districts Schedule of Flexible Standards								
Non-Residential				Residential				
District	Front Bldg. Setback (1)	Rear & Side Bldg. Setbacks (2)	Bldg. Height (3)	Residential Density	Front (2)	Rear (2)	Side (2)	Height
MAC-Community Activity Center	I-25: 80 ft Arterial: 35 ft Non-Arterial: 25 ft	See buffer requirements, Section 4.04 SDPSG	50 ft (4) 120 ft (5)	Up to 16du/ac (6) (7)	20 ft	15 ft	5 ft	40 ft
E-Employment Center	I-25: 80 ft Arterial: 35 ft Non-Arterial: 25 ft	See buffer requirements Section 4.04 SDPSG	50 ft (4) 120 ft (5)	Residential up to 20% of total project area, up to 16du/ac (7)	20 ft	15 ft	5 ft	40 ft

Use	Maximum height of building or structure	Maximum height of accessory building or structure
E-Employment Center District	As provided in Chapter 18.30 E District Schedule of Flexible Standards	50

Notes to MAC and E Districts Schedule of Flexible Standards:

(1) Building setbacks shall be measured from the edge of the future right-of-way. Development sites within the area covered by the U.S. 34 Corridor Plan shall conform to all road setback and design requirements of that plan. Exceptions from U.S. 34 Corridor Plan standards may be permitted for development plans following guidelines for optional flexible standards in note (2) below. (Ord. 5156, § 1, 2006, Ord. 4453 § 5 (part), 1999)

(2) **Optional Flexible Standards:** Setback required by this section and buffer standards required by Section 4.04 of the Site Development Performance Standards and Guidelines (SDPSG) may be reduced or waived for projects that orient buildings to streets to create an attractive pedestrian environment following "New Urbanism" or "Smart Code" principles (see "The Lexicon of the New Urbanism" or "Smart Code").

a. Where front setbacks are reduced, a treelawn not less than four feet in width shall be provided between the outer edge of the curb and the sidewalk. Canopy trees planted not less than 30 feet on-center (Figure 18.31-1) shall be provided in the treelawn. Landscaped bulb-outs and trees planted in tree grates in the sidewalk (Figure 18.31-2), with on-street parking, may be provided instead of a treelawn. Where garages face and are accessed from the street, at least 20 feet shall be provided between the face of the garage and the back of the sidewalk so that adequate space is provided for vehicle parking in the driveway.

b. Residential buildings with reduced setbacks shall include features such as covered porches or front stoops and walkways between buildings and the public sidewalk. Also, garages should be placed to the rear of the lot behind the primary structure, with side driveway or alley access.

c. In evaluating proposals with reduced setbacks, consideration shall be given to existing setbacks in adjacent developed areas to avoid incompatible and/or inconsistent design conditions.

(3) Subject to height restriction in Section 18.54.040, which restricts any nonresidential use or multi-family use located closer than fifty (50) feet from the property boundary of a residential use, excluding multi-family dwelling units, shall be limited to the maximum height allowed for a single family residential use.

(4) All uses other than office, research, lodging and mixed-use (see Note (5)).

(5) Maximum number of dwelling units permitted per acre. The density calculation shall include the gross land area dedicated to residential use, including roads, drainage areas and open space within and serving the residential component of the project. Residential units that are part of a building that includes non-residential uses (mixed-use) shall not be included in the residential density calculation.

(6) Office, research, lodging and mixed-use (mixed-use means residential located in the same building as non-residential uses). There shall be no limit on the amount of land area within a MAC district that may be devoted to residential use; however, for projects exceeding 50 percent residential land area, the applicant must demonstrate that sufficient land area is devoted to commercial use within the project, or within the vicinity of the project, to meet future commercial needs and demands. Such evidence may consist of a market analysis and/or an analysis of development trends and existing and proposed land uses within the vicinity of the project.

Chapter 18.32

PP DISTRICT – PUBLIC PARK DISTRICT

Sections:

18.32.010 Purpose.

The purpose of the Public Park District is to establish and preserve areas in the City for public recreation facilities, parks and open space lands described in the City of Loveland Parks and Recreation Master Plan, as adopted and amended ("Parks and Recreation Master Plan").

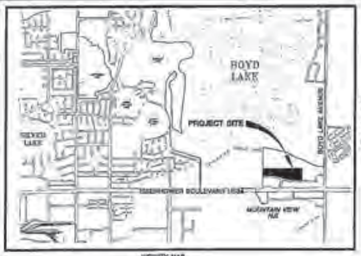
18.32.020 Definitions.

Definitions of Neighborhood Park, Community Park, School Recreation Areas, Regional Park, Special Use Areas, Recreational Trail, Recreational Facilities, Open Lands/Natural Area, Golf Courses, and Cemeteries or Memorial Gardens used in this Section shall be as defined below.

A. Neighborhood Park - Shall mean a publicly owned park as defined and described in the Parks and Recreation Master Plan. Neighborhood Parks are centrally located, accessible to surrounding neighborhoods and should be equally distributed throughout the City. A Neighborhood Park should be a minimum of eight (8) acres in size and serve approximately a 1- mile service area with a ½ mile radius surrounding the park. Typical facilities include informal softball and soccer/football fields, volleyball, basketball, playground, horseshoe, tennis, shelter/pavilion with tables, pathways and free play areas.
B. Community Park - Shall mean a publicly owned park as defined and described in the Parks and Recreation Master Plan, as adopted and amended. Community Parks serve as focal points within the community. Community Parks usually have parking, increased traffic due to active programmed sports, lighting and increased noise. Community Parks are greater than thirty (30) acres and usually serve approximately a 4-mile service area with a 1-mile radius surrounding the park. Typical facilities include those allowed in Neighborhood Parks plus all listed in the Park and Recreation Master Plan.
C. School Recreation Areas – Shall mean a publicly owned park or recreation area as defined and described in the Parks and Recreation Master Plan. These areas are located adjacent to schools or are cooperatively developed as recreation areas on school properties. These sites should be developed where practical and beneficial to serve neighborhoods, which lack a park or have access barriers. Facilities may include youth baseball/softball fields, volleyball, basketball, soccer/football, playground, and multi-use turf areas.
D. Regional Park – A Regional Park shall mean a publicly owned park which offers leisure value beyond the neighborhood or Community Park as defined and described in the Parks and Recreation Master Plan. Often there is an environmental or scenic quality, such as a river or mountain terrain within a Regional Park. Regional Parks are usually larger than two hundred (200) acres. Viestenz-Smith Mountain Park is categorized as a Regional Park.
E. Special Use Areas - Shall mean a publicly owned park or recreation area as defined and described in the Parks and Recreation Master Plan, and may include unique or special uses such

WATERFALL 5TH SUBDIVISION

BEING A SUBDIVISION OF TRACT 1 WATERFALL FOURTH SUBDIVISION,
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 NORTH, RANGE 68 WEST
OF THE SIXTH PRINCIPAL MERIDIAN; TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO



VICINITY MAP

BASIS OF BEARING STATEMENT:

SURVEYOR CERTIFICATE:

LEGAL DESCRIPTION AND DEDICATION:

OWNER: BOYD LAKE VILLAGE, LLC, A FLORIDA LIMITED LIABILITY COMPANY

LIENHOLDER: FIRST NATIONAL BANK

PRIVATE DEDICATION STATEMENT

DEVELOPMENT SERVICES CERTIFICATION

SEAL

ATTORNEY CERTIFICATION

PLAT NOTES

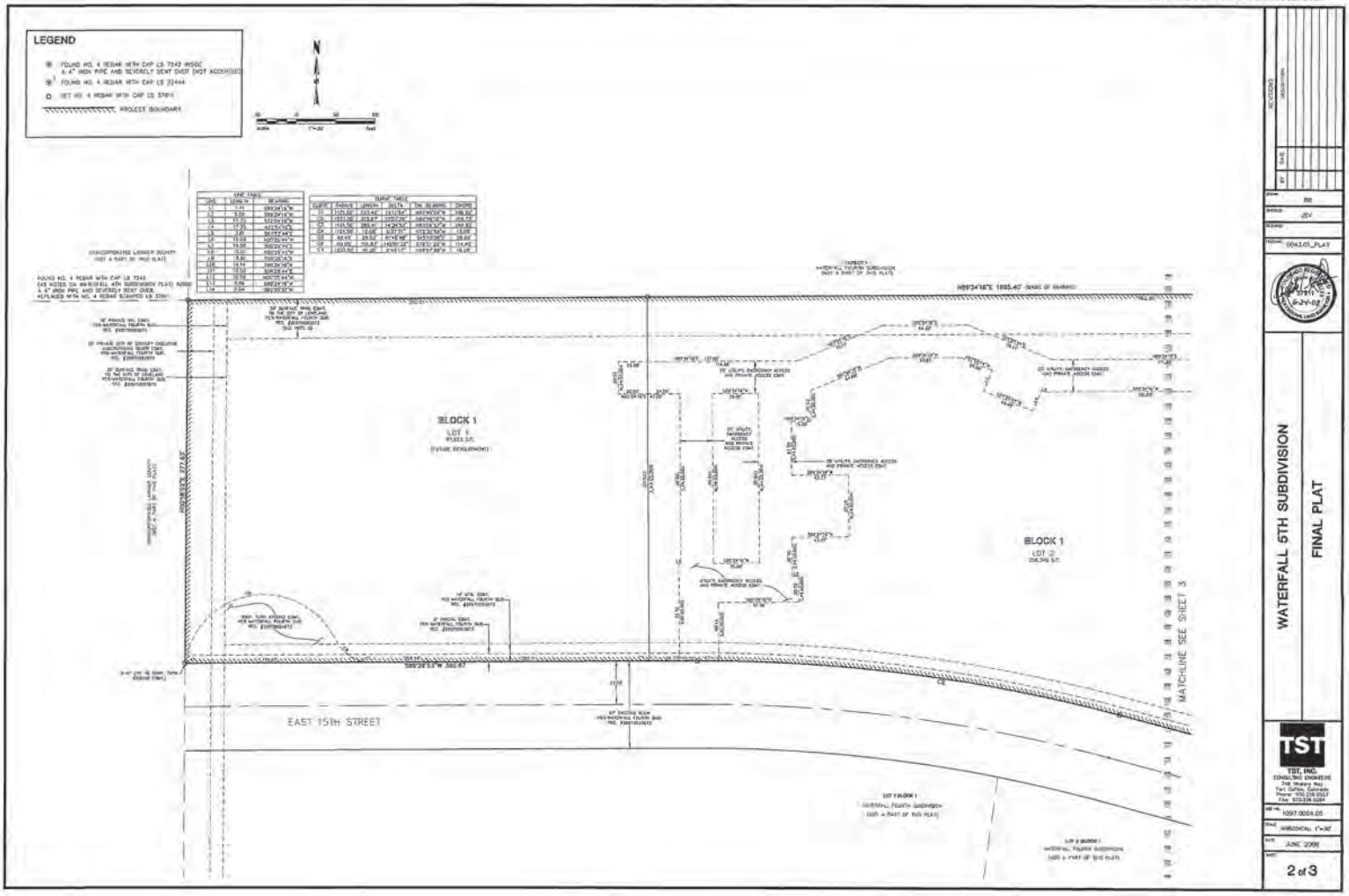
WATERFALL 5TH SUBDIVISION

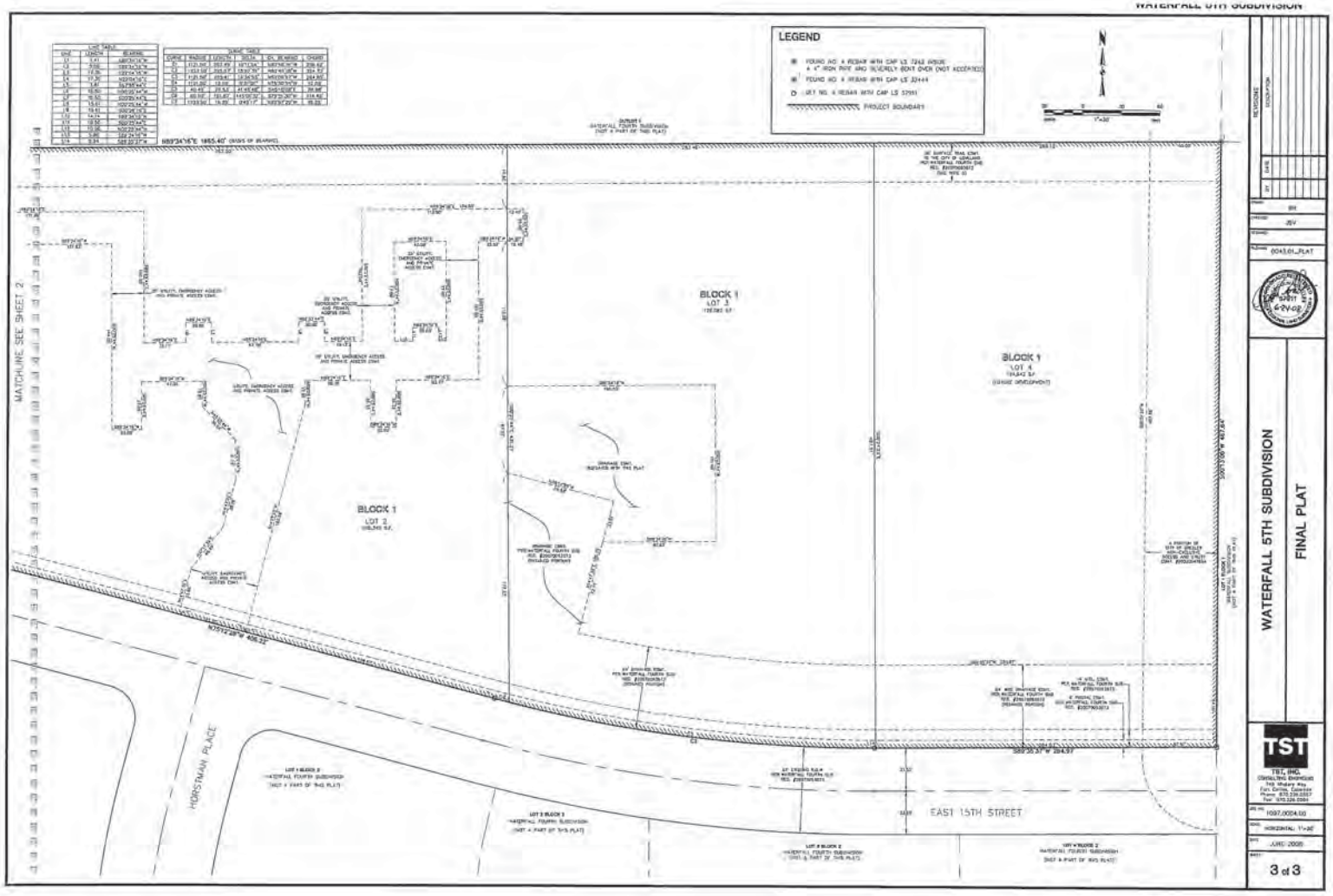
FINAL PLAT

TST

TST, INC.
CONSULTING ENGINEERS

WATERFALL 5TH SUBDIVISION




WATERFALL 5TH SUBDIVISION
LEGEND
PROJECT BOUNDARY
MATCHLINE SEE SHEET 2
BLOCK 1
LOT 3
BLOCK 1
LOT 4
BLOCK 1
LOT 2
HORSTMAN PLACE
EAST 15TH STREET
WATERFALL 5TH SUBDIVISION
FINAL PLAT
TST
TST, INC.
CONSULTING ENGINEERS
1097.0004.03
HORIZONTAL: 1"=20'
JUNE 2009
3 of 3

A PLAT OF

WATERFALL FOURTH SUBDIVISION

BEING A SUBDIVISION OF TRACTS A AND D, WATERFALL ADDITION AND J-B FIRST ADDITION TO THE CITY OF LOVELAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

DEDICATION

KNOW ALL PERSONS BY THESE PRESENTS THAT BOYD LAKE VILLAGE, LLC., THE CITY OF GREELEY, GREELEY AND LOVELAND IRRIGATION COMPANY AND FIRST NATIONAL BANK, BEING THE OWNERS AND LIENHOLDERS OF THE FOLLOWING DESCRIBED PROPERTY, EXCEPT ANY EXISTING PUBLIC STREETS/ROADS OR HIGHWAYS, WHICH PROPERTY IS LOCATED IN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO:

BEING ALL OF TRACT A AND D WATERFALL ADDITION AND A PORTION OF J-B ADDITION TO THE CITY OF LOVELAND, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, COMMENCING AT THE E ¼ CORNER OF SAID SECTION 8, THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 8 N 00°18'02" W A DISTANCE OF 94.05 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST LINE N 00°18'02" E A DISTANCE OF 1221.93 FEET TO THE SOUTH SIXTEENTH CORNER OF SAID SECTION 8;

THENCE N 00°25'50"E A DISTANCE OF 478.21 FEET TO A POINT ON THE CENTER LINE OF THE GREELEY – LOVELAND IRRIGATION DITCH #28 (DEED BOOK L, PAGE 247); THENCE ALONG SAID CENTERLINE THE FOLLOWING EIGHT (8) COURSES:

1) SOUTH 80°56'10" EAST A DISTANCE OF 305.68 FEET;
2) THENCE SOUTH 77°02'15" EAST A DISTANCE OF 568.41 FEET;
3) THENCE SOUTH 67°58'51" EAST A DISTANCE OF 111.89 FEET;
4) THENCE SOUTH 61°49'43" EAST A DISTANCE OF 185.27 FEET;
5) THENCE SOUTH 58°09'04" EAST A DISTANCE OF 88.05 FEET;
6) THENCE SOUTH 67°37'30" EAST A DISTANCE OF 140.57 FEET;
7) THENCE SOUTH 76°21'45" EAST A DISTANCE OF 172.06 FEET;
8) THENCE SOUTH 82°48'10" EAST A DISTANCE OF 9.01 FEET TO THE NORTHEASTERLY CORNER OF TRACT D WATERFALL ADDITION RECORDED AT RECEPTION NUMBER 20040068162; THENCE ALONG THE EASTERLY BOUNDARY OF SAID TRACT, THE FOLLOWING TWO (2) COURSES:

1) SOUTH 00°12'40" WEST A DISTANCE OF 422.83 FEET;
2) THENCE SOUTH 00°37'06" WEST A DISTANCE OF 778.28 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY OF HWY. 34; THENCE ALONG SAID NORTHERLY RIGHT OF WAY [OF] (FOLLOWING FOUR (4) COURSES:

1) SOUTH 89° 23'27" WEST A DISTANCE OF 353.36 FEET;
2) THENCE SOUTH 89°29'10" WEST A DISTANCE OF 260.66 FEET;
3) THENCE SOUTH 88°11'22" WEST A DISTANCE OF 549.50 FEET;
4) THENCE SOUTH 89°07'33" WEST A DISTANCE OF 403.31 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 58.915 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY OF RECORD OR EXISTING, DO HEREBY SUBDIVIDE THE SAME INTO LOTS, BLOCKS, TRACTS, OUTLOTS, RIGHTS-OF-WAY AND EASEMENTS, AS SHOWN ON THIS PLAT, AND DO HEREBY DESIGNATE AND DEDICATE: (1) ALL SUCH RIGHTS-OF-WAY AND EASEMENTS, OTHER THAN UTILITY EASEMENTS AND PRIVATE EASEMENTS, TO AND FOR PUBLIC USE, EXCEPT WHERE INDICATED OTHERWISE ON THIS PLAT; AND (2) ALL SUCH UTILITY EASEMENTS TO AND FOR PUBLIC USE FOR THE INSTALLATION AND MAINTENANCE OF UTILITY, TRAIL, IRRIGATION AND DRAINAGE FACILITIES, AND DO HEREBY DESIGNATE THE SAME AS WATERFALL FOURTH SUBDIVISION TO THE CITY OF LOVELAND, COLORADO.

NOTES:

1) BASIS OF BEARINGS: CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 8 BOND MONUMENTED AT THE EAST END BY A 3"/4" ALUMINUM CAP STAMPED LS 34995 DATED 2005 AND AT THE WEST END BY A 3"/4" ALUMINUM CAP STAMPED LS 16425 DATED 1993 ASSUMED TO BEAR, SOUTH 89°16'06" WEST.

2) THIS PROPERTY IS SUBJECT TO A CONCEPTUAL MASTER PLAN ON FILE WITH THE CITY.

3) UNLESS OTHERWISE APPROVED BY THE CITY, ALL UNSATISFIED CONDITIONS OF APPROVAL FOR THE ORIGINAL SUBDIVISION SHALL CONTINUE TO APPLY TO THIS PROPERTY.

4) EXISTING EASEMENTS SHOWN ARE FROM FIRST AMERICA HERITAGE TITLE COMPANY COMMITMENT NUMBER: 612-H0019105-080-GNA, AMENDMENT NO.4 DATED SEPTEMBER 14, 2006 AT 8:00 A.M.

5) THE FLOOD ZONE DESIGNATION FOR THIS SITE IS LISTED AS X: AREA OF MINIMAL FLOODING PER FIRM FLOOD INSURANCE RATE MAP COMMUNITY MAP NUMBER 08069C0994F, DATED DECEMBER 19, 2006.

6) STORMWATER DETENTION FACILITIES, THEIR OUTLETS, STORM SEWERS AND INLETS IN BLOCK 1, BLOCK 2, AND TRACT 1 SHALL BE OWNED AND MAINTAINED BY THE BOYD LAKE VILLAGE OWNERS ASSOCIATION.

7) THE LAST FIELD INSPECTION OF THE SITE WAS MARCH 30, 2007.

8) TRAIL EASEMENT TO BE MAINTAINED BY BOYD LAKE VILLAGE OWNERS ASSOCIATION UNTIL THE CITY OF LOVELAND CONSTRUCTS THE RECREATION TRAIL.

9.) PERMANENT UTILITY EASEMENT RECORDED AT RECEPTION NO. 20070034 PROVIDES FOR A SEWER LINE USED BY THE BOYD LAKE SHORES SPECIAL ASSESSMENT DISTRICT. THE COUNTY OF LARIMER PAID FOR THE CONSTRUCTION AND THE CITY OF LOVELAND TOOK OWNERSHIP THEREAFTER.

10.) COUNTY ROAD RIGHT OF WAY BY ORDER OF CONVEYANCE RECORDED AT RECEPTION NO. 80022443 HAS BEEN TRANSFERRED TO THE CITY OF LOVELAND THROUGH THE ANNEXATION PROCESS. THE DEVISE THAT ACCOMPLISHED THIS IS KNOW AS "J-B ADDITION".

11.) PROPERTY IS SUBJECT TO AN APPROVED ANNEXATION AGREEMENT FOR THE J-B ADDITION RECORDED AT RECEPTION NO. 2003-0032860.

12.) 10 WIDE EASEMENTS RECORDED AT RECEPTION NUMBERS 84036920, 84036921 & 84036922 TO BE VACATED BY THIS PLAT.

13.) THAT PORTION OF A CONSTRUCTION & MAINTENANCE EASEMENT AFFECTING THIS PARCEL, RECORDED AT RECEPTION NUMBER 80019634 TO BE VACATED BY THIS PLAT.

14.) THAT PORTION OF A PERMANENT EASEMENT AFFECTING THIS PARCEL RECORDED AT RECEPTION NUMBER 80022443 TO BE VACATED BY THIS PLAT.

15.) AS EACH PLATTED LOT DEVELOPS, AND AS PART OF THE BUILDING PERMIT SUBMITTAL PACKAGE, THE APPLICANT SHALL INCLUDE A LETTER SIGNED AND SEALED BY A PROFESSIONAL ENGINEER LICENSED IN THE STATE OF COLORADO AND RETAINED BY THE LANDOWNER IDENTIFYING THAT THE PROPOSED DEVELOPMENT WILL NOT CAUSE AN INCREASE IN WATER LEVEL ELEVATION IN BOYD LAKE DURING A PROBABLE MAXIMUM PRECIPITATION EVENT AS DEFINED BY THE OFFICE OF THE COLORADO STATE ENGINEER AND SHALL ALSO INCLUDE A LETTER FROM AN ENGINEER RETAINED BY THE GREELEY AND LOVELAND IRRIGATION COMPANY CONFIRMING THE FINDING BY LANDOWNER'S ENGINEER. THE PROCESS OF PREPARING SAID LETTERS IS OUTLINED IN AN AGREEMENT BETWEEN THE GREELEY AND LOVELAND IRRIGATION COMPANY AND BOYD LAKE VILLAGE, LLC RECORDED IN THE LARIMER COUNTY REAL ESTATE RECORDS AS RECEPTION NUMBER 2007050840.

LIENHOLDER:

BY: Cathy E. Cobb

TITLE: Vice President

AS AUTHORIZED AGENT FOR FIRST NATIONAL BANK

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 1st DAY OF November 2007,

BY: Cathy E. Cobb

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC: Cynthia D. Posegate

MY COMMISSION EXPIRES 9-9-09

NOTARY PUBLIC CYNTHIA D. POSEGATE STATE OF COLORADO

OWNERS:

BY: Kim A. Dando

KIM A. DANDO
AN MANAGER FOR BOYD LAKE VILLAGE, LLC

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 15th DAY OF November 2007

BY: Debbie L. Marcus

NOTARY PUBLIC

NOTARY PUBLIC STATE OF COLORADO

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES 7/22/2011

OWNERS:

BY:

FOR THE CITY OF GREELEY

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 19 DAY OF Nov. 2007.

BY: Abdulla R. Ibrahim

NOTARY PUBLIC

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES

ABDULLA R. IBRAHIM NOTARY PUBLIC STATE OF COLORADO MY COMMISSION EXPIRES 4/8/2011

OWNERS:

BY:

FOR GREELEY AND LOVELAND IRRIGATION COMPANY

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 2nd DAY OF November 2007

BY: Dennis D. Schmidt

NOTARY PUBLIC

NOTARY PUBLIC STATE OF COLORADO

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES 10-15-2008

SURVEYORS CERTIFICATE

I, DAVID L. SWANSON, BEING A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE SURVEY OF WATERFALL FOURTH SUBDIVISION WAS MADE BY ME OR UNDER MY SUPERVISION AND THAT SAID SURVEY IS ACCURATELY REPRESENTED ON THIS PLAT AND THAT THE STATEMENTS CONTAINED HEREON WERE READ BY ME AND THE SAME ARE TRUE TO THE BEST OF MY KNOWLEDGE.

DATED THIS _____ DAY OF _____, 2007.

DAVID L. SWANSON
REGISTERED LAND SURVEYOR
COLORADO REGISTRATION NO. 35070

UNLESS STAMPED AND SEALED THIS PLAT IS CONSIDERED PRELIMINARY

NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

IMPROVEMENT STATEMENT:

ALL EXPENSES INVOLVING NECESSARY IMPROVEMENTS FOR WATER SYSTEM, SANITARY SEWER SYSTEM, STORM SEWER SYSTEM, CURBS AND GUTTER, SIDEWALKS, STREET IMPROVEMENTS, STREET SIGNS, TRAFFIC CONTROL SIGNS, ALLEY GRADING AND SURFACING, GAS SERVICE, ELECTRIC SYSTEM, GRADING AND LANDSCAPING SHALL BE PAID BY BOYD LAKE VILLAGE, LLC

PRIVATE DEDICATION STATEMENT:

THE OWNER HEREBY GRANTS AND DEDICATES EASEMENTS FOR ACCESS, INGRESS AND EGRESS, OVER, UPON, THROUGH AND ACROSS ALL PRIVATE DRIVES FOR THE BENEFIT AND USE OF THE OWNERS, PATRONS, INVITEES, AND GUESTS OF THE WATERFALL 4TH SUBDIVISION FOR THEIR RECIPROCAL AND MUTUAL USE AND ENJOYMENT. THIS GRANT AND DEDICATION SHALL RUN WITH THE LAND, AND SHALL BE BINDING AND ENFORCEABLE UPON THE OWNER AND THE OWNER'S SUCCESSORS AND ASSIGNS AND IT SHALL INURE TO THE BENEFIT OF ALL CURRENT AND FUTURE OWNERS, PATRONS, INVITEES, AND GUESTS OF THE WATERFALL 4TH SUBDIVISION. THE PRIVATE ACCESS EASEMENTS HEREBY GRANTED AND DEDICATED SHALL BE MAINTAINED BY THE PROPERTY OWNER(S) OF THE WATERFALL 4TH SUBDIVISION.

BY: Kim A. Dando (OWNER) DATE: 11/20/07

AS: MANAGER FOR BOYD LAKE VILLAGE, LLC

CITY CERTIFICATE

THIS PLAT IS APPROVED BY THE DIRECTOR OF DEVELOPMENT SERVICES OF THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO, THIS 26th DAY OF November, 2007 FOR FILING WITH THE CLERK AND RECORDER OF LARIMER COUNTY AND FOR CONVEYANCE TO THE CITY OF THE PUBLIC DEDICATIONS SHOWN HEREON, WHICH ARE ACCEPTED, SUBJECT TO THE PROVISION THAT APPROVAL IN NO WAY OBLIGATES THE CITY OF LOVELAND, FOR THE FINANCING OR CONSTRUCTING OF IMPROVEMENTS ON LAND, STREETS OR EASEMENTS DEDICATED TO THE PUBLIC EXCEPT AS SPECIFICALLY AGREED TO BY THE DIRECTOR OF DEVELOPMENT SERVICES.

DIRECTOR OF DEVELOPMENT SERVICES

ATTEST: Teresa M. Wilson
CITY CLERK

SEAL

ATTORNEYS CERTIFICATE

I, ROBERT L. PERCO, AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF COLORADO, CERTIFY THAT I HAVE EXAMINED TITLE TO THE ABOVE DESCRIBED LAND DEDICATED TO THE CITY OF LOVELAND, COLORADO, AND THAT THE PARTIES EXECUTING THE DEDICATION ARE THE OWNERS THEREOF IN FEE SIMPLE, AND THE DESCRIBED LAND IS FREE AND CLEAR OF ALL LIENS, AND ENCUMBRANCES EXCEPT AS SET FORTH HEREIN.

SO SWORN THIS 27th DAY OF November, 2007

ATTORNEY AT LAW

VICINITY MAP
NOT TO SCALE

Stantec Consulting Inc.
Stantec

Layout

- SECTION CORNER MONUMENT AS NOTED
- 1/4 CORNER MONUMENT AS NOTED
- FOUND PROPERTY CORNER AS NOTED
- SET NO. 4 REBAR W/CAP LS 35070
- SECTION LINE
- EXISTING RIGHT OF WAY LINE
- EXISTING EASEMENT
- PROPOSED RIGHT OF WAY LINE
- PROPOSED LOT LINE
- PLAT BOUNDARY

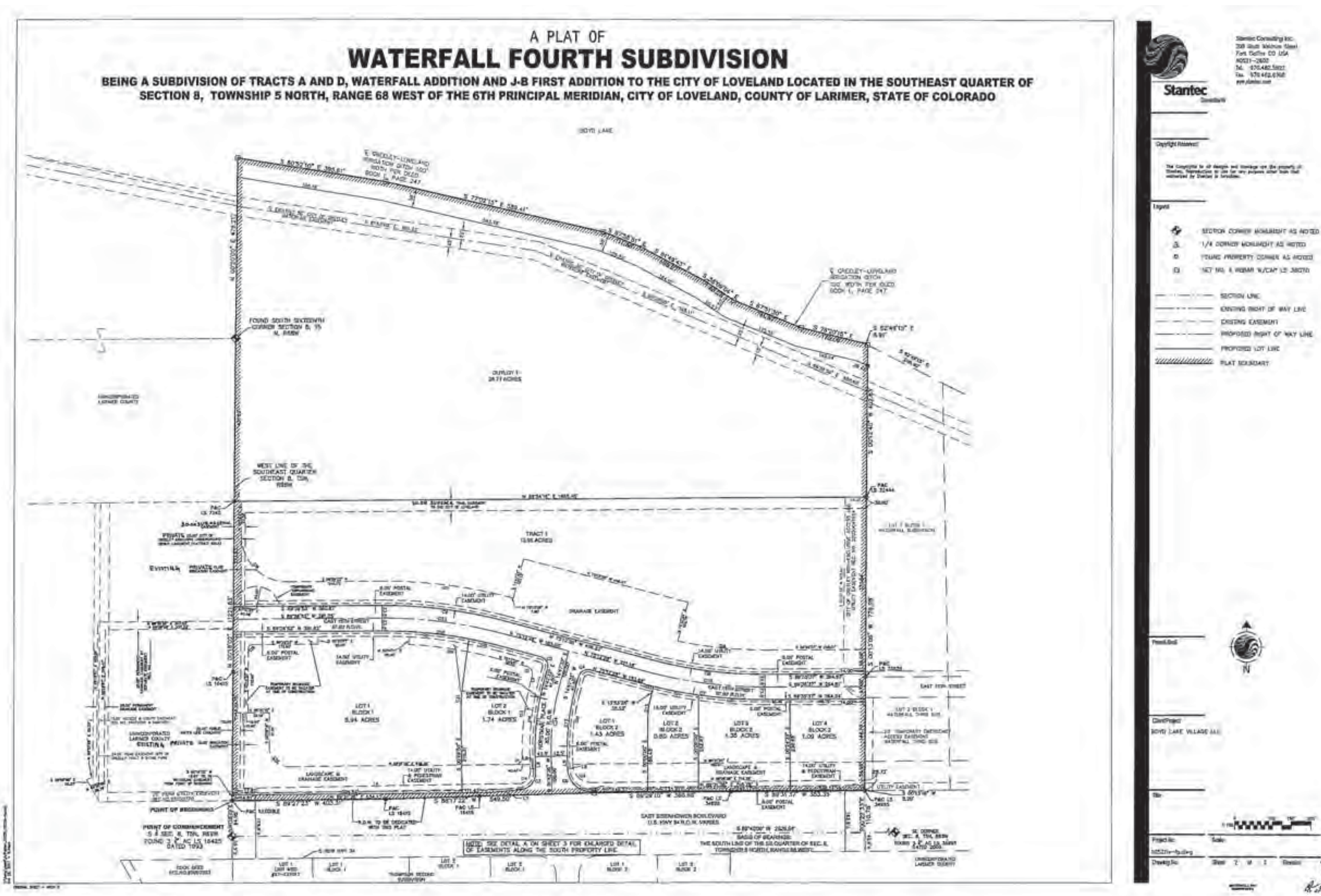
Point And

Client/Project
BOYD LAKE VILLAGE LLC

Title

N

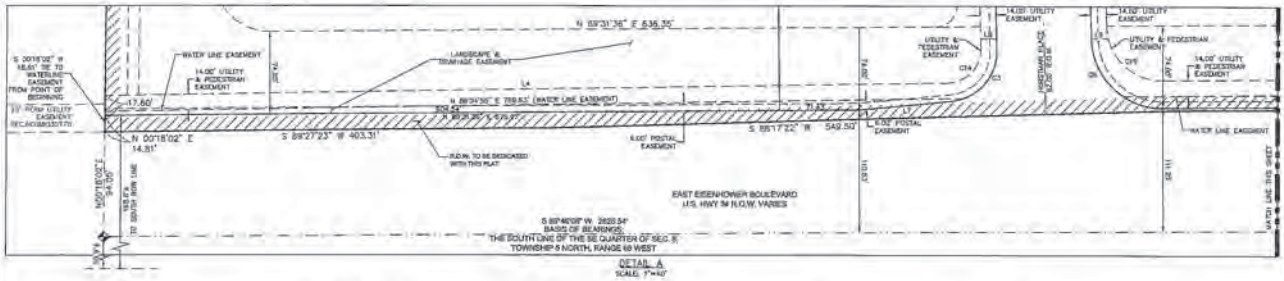
PC ATTACHMENT 5

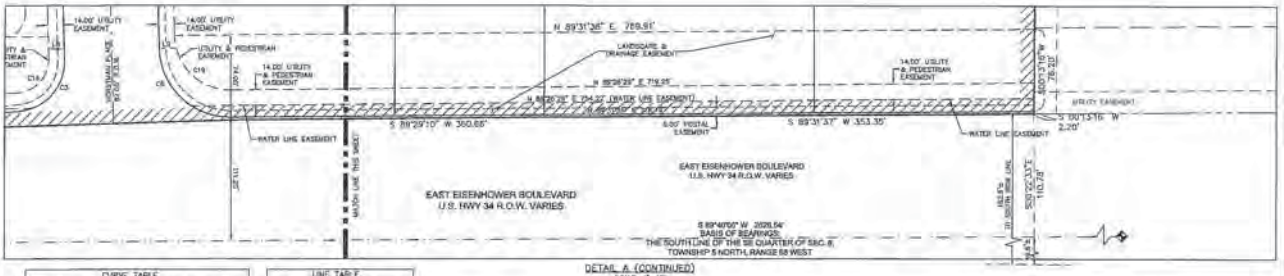

A PLAT OF
WATERFALL FOURTH SUBDIVISION
BEING A SUBDIVISION OF TRACTS A AND D, WATERFALL ADDITION AND J-B FIRST ADDITION TO THE CITY OF LOVELAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO
TRACT 1
LOT 1 BLOCK 1 5.94 ACRES
LOT 2 BLOCK 1 1.74 ACRES
LOT 1 BLOCK 2 1.43 ACRES
LOT 2 BLOCK 2 0.80 ACRES
LOT 3 BLOCK 2 1.35 ACRES
LOT 4 BLOCK 2 1.02 ACRES
DRAINAGE EASEMENT
LANDSCAPE & DRAINAGE EASEMENT
POINT OF BEGINNING
POINT OF COMMENCEMENT
EAST EISENHOWER BOULEVARD
NOTE: SEE DETAIL A ON SHEET 3 FOR ENLARGED DETAIL OF EASEMENTS ALONG THE SOUTH PROPERTY LINE.
Stantec
Legend
SECTION CORNER MONUMENT AS NOTED
1/4 CORNER MONUMENT AS NOTED
FOUND PROPERTY CORNER AS NOTED
SECTION LINE
EXISTING RIGHT OF WAY LINE
EXISTING EASEMENT
PROPOSED RIGHT OF WAY LINE
PROPOSED LOT LINE
PLAT BOUNDARY
N

A PLAT OF

WATERFALL FOURTH SUBDIVISION

BEING A SUBDIVISION OF TRACTS A AND D, WATERFALL ADDITION AND J-B FIRST ADDITION TO THE CITY OF LOVELAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO





CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	CHORD	BEARING
C1	31°04'02"	55.00'	31.80'	28.53'	N43°53'16"E
C2	90°00'00"	35.00'	76.42'	69.06'	N35°13'05"W
C3	88°13'07"	44.50'	68.95'	62.81'	N41°22'33"E
C4	90°00'00"	25.00'	39.27'	35.36'	S89°47'37"W
C5	90°00'00"	55.00'	86.27'	77.78'	N35°13'05"W
C6	88°45'45"	64.00'	99.15'	89.50'	S46°05'31"E
C7	15°11'55"	1183.50'	313.73'	312.79'	S82°46'26"E
C8	17°11'55"	1131.50'	339.45'	338.21'	S82°46'26"E
C9	15°07'36"	1213.50'	320.47'	319.57'	S82°46'26"E
C10	15°07'36"	1156.50'	305.38'	304.49'	N82°46'26"W
C11	16°50'10"	670.37'	194.80'	194.14'	S08°32'22"W
C12	16°50'10"	594.37'	172.72'	172.14'	N08°32'22"E
C13	16°26'24"	709.87'	203.72'	203.03'	S08°34'39"W
C14	90°47'35"	30.50'	48.33'	43.44'	N43°54'10"E
C15	13°53'28"	2750.00'	80.01'	80.46'	S05°58'44"W
C16	16°39'10"	690.37'	199.85'	199.18'	S08°32'22"W
C17	89°39'48"	56.50'	88.39'	77.28'	S44°28'21"E
C18	15°11'55"	1156.50'	306.36'	305.46'	S82°46'23"E
C19	88°50'59"	30.00'	77.57'	70.00'	S45°08'04"E
C20	14°39'10"	577.37'	159.30'	158.79'	S08°32'22"E
C21	15°14'28"	1188.50'	220.35'	219.80'	S84°40'04"E
C22	01°48'13"	1188.50'	37.27'	37.26'	S77°01'06"E
C23	01°54'04"	1188.50'	39.84'	39.83'	S75°39'30"E
C24	05°30'06"	1188.50'	121.05'	121.00'	S73°53'15"E
C25	09°01'43"	1188.50'	174.68'	174.53'	S84°10'36"E
C26	12°27'04"	1156.50'	104.76'	104.80'	S86°19'51"E
C27	15°00'36"	1387.50'	342.83'	341.91'	S85°46'18"E
C28	90°37'01"	120.00'	189.79'	170.83'	S45°01'37"E
C29	90°37'01"	10.00'	15.80'	14.22'	S45°58'23"W
C30	11°32'21"	1132.50'	228.73'	228.32'	N81°01'24"W
C31	08°38'11"	500.00'	75.37'	75.44'	S03°29'46"W
C32	90°36'39"	50.00'	79.07'	71.09'	S45°10'05"E
C33	1°02'36"	2200.00'	39.63'	39.63'	N82°46'18"W
C34	16°39'10"	633.87'	183.57'	182.94'	N08°32'22"E

LINE TABLE

LINE	LENGTH	BEARING
L1	NOT USED	
L2	NOT USED	
L3	13.54'	N14°47'32"E
L4	704.43'	N89°54'38"E
L5	23.45'	S01°42'36"E
L6	41.70'	N01°42'36"W
L7	62.72'	S84°01'24"W
L8	14.00'	S89°04'56"W
L9	15.22'	S89°26'29"W

Stantec Consulting Inc.
235 South Mahlon Street
Fort Collins CO USA
80521-2593
Tel 970.482.5922
Fax 970.482.5939
www.stantec.com

Stantec
Consultants

Legend

- SECTION CORNER MONUMENT AS NOTED
- 1/4 CORNER MONUMENT AS NOTED
- POINT, PROPERTY CORNER AS NOTED
- SET NO. 4 REBAR W/CAP LS 38970
- SECTION LINE
- EXISTING RIGHT OF WAY LINE
- EXISTING EASEMENT
- PROPOSED RIGHT OF WAY LINE
- PROPOSED LOT LINE
- FLAT BOUNDARY

Client/Project
BOYD LAKE VILLAGE LLC

Title

Project No. 10520-00-(Any)

Scale

Drawing No. Sheet 2 of 3 Revision

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

AGENDA ITEM: **9**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Melissa Morin, Water and Power
PRESENTER: Melissa Morin, Civil Engineer

TITLE:
A Resolution Granting a Temporary Work Space Easement to the Public Service Company of Colorado

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 to grant a temporary easement to Public Service Company of Colorado to permit the use of a city owned property for access to their facilities within an existing easement.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
Public Service Company of Colorado (PSCo) is planning on a construction and maintenance project to their facilities located on an existing easement. To access their facilities, they are seeking access through the City's water tank property located at the southwest corner of County Road 14 and County Road 17 (South Taft Ave). The proposed easement will be used only for access, and it is located outside the fenced area of the water tank.

PSCo is planning on conducting a bid walk-through on August 13, 2014 and the anticipated start of mobilization for this project is September 2, 2014 with completion in two weeks. The department finds no objection to the Temporary Work Space Easement with the conditions written.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. PSCO Temporary Work Space Easement
3. Map

RESOLUTION #R-55-2014

A RESOLUTION GRANTING A TEMPORARY WORK SPACE EASEMENT TO PUBLIC SERVICE COMPANY OF COLORADO

WHEREAS, Public Service Company of Colorado ("PSCo") has requested that the City of Loveland grant PSCo a non-exclusive temporary work space easement across real property owned by the City for purposes of accessing PSCo's adjacent utility easements; and

WHEREAS, the Water & Power Department reviewed PSCo's request and found that the proposed temporary use will not affect the City's operations at that location under the proposed terms and conditions; and

WHEREAS, the City Council desires to grant the requested temporary work space easement on the terms and conditions set forth in the "Public Service Company of Colorado Temporary Work Space Easement," attached hereto.

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

Section 1. That the "Public Service Company of Colorado Temporary Work Space Easement," attached hereto as Exhibit A and incorporated herein by reference ("Easement"), is hereby approved.

Section 2. That the City Manager and the City Clerk are hereby authorized and directed to execute the Easement on behalf of the City of Loveland.

Section 3. That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form or substance of the Easement as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

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

ADOPTED this 19th day of August, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

PUBLIC SERVICE COMPANY OF COLORADO
TEMPORARY WORK SPACE EASEMENT

For and in consideration of ten dollars ($10.00) and other good and valuable consideration in hand paid, the receipt of which is hereby acknowledged, the undersigned Grantor hereby grants and conveys to ***Public Service Company of Colorado***, a Colorado corporation, Grantee, whose address is 1123 West 3rd Avenue, Denver, Colorado, 80223-1351, a non-exclusive temporary work space easement, for the purpose of accessing existing Public Service Company easements (Reception # 20090055223 and #20090055222) (the "Existing Easements"), over and across the following described premises located in the County of Larimer, State of Colorado, to wit:

A parcel of land situated in the NE 1/4 of Section 3, Township 4 North, Range 69 West, of the 6th Principal Meridian as described and illustrated on the attached *"Temporary Work Space Area Illustration"* exhibit attached hereto and made a part hereof.

Together with full right and authority herein granted to Grantee, its successors, licensees, lessees, contractors, and assigns, and their agents and employees, to enter upon said premises, with necessary vehicles, storage tanks, personnel, and equipment, to access the Existing Easements.

This grant is subject to the following conditions:

1. Grantee acknowledges and agrees that the easement herein granted is a temporary easement and shall become effective on SEPTEMBER 2, 2014 and automatically terminate on DECEMBER 31, 2014.

2. Grantee shall repair damages to the easement premises or improvements thereon, including, but not limited to, re-seeding non-gravel areas with seed mix specified in the City of Loveland Water and Wastewater Development Standards Chapter 6, and repairing damage to or replacing destroyed roads, fences, growing crops, and personal property caused by the execution of rights under this easement.

3. Grantee shall install and maintain temporary fencing marking the boundaries of the easement to prevent access by Grantee and others to areas outside of the easement. Grantee shall be responsible for monitoring access to ensure that the easement boundaries are not breached. Any damages to persons or property resulting from a breach of the easement boundaries shall be Grantee's sole legal and financial responsibility.

4. Grantee shall at all times maintain clear access to Grantor's water tank entrance gate. Damages associated with lack of access to Grantor's water tank due to activities of Grantee or its successors, licensees, lessees, contractors, or assigns, or their agents or employees, shall be Grantee's sole legal and financial responsibility.

5. Grantee agrees to save and hold harmless Grantor from all liability for damages, loss, or expense arising from damage to property or injury or death of any person or persons resulting from use of the easement by Grantee or its successors, licensees, lessees, contractors, or assigns, or their agents or employees.

6. The provisions of this easement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

7. This document is not intended to be recorded.

8. INDEMNIFICATION: Grantee agrees to save Grantor, its successors, and assigns from, and to hold them harmless against, any and all claims for injury to or death of any person or damage to any property resulting from or arising in any way out of the use of the easement by Grantee or its successors, licensees, lessees, contractors, or assigns, or their agents or employees, or out of Grantee's performance or nonperformance of any obligation herein.

Signed this_____ day of_____, 2014.

GRANTOR: CITY OF LOVELAND, COLORADO, a municipal corporation

By: _____
William D. Cahill, City Manager

Attest:

_____
City Clerk

Approved as to Form:

_____
Assistant City Attorney

GRANTEE: PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation

By: _____
Nancy Hibbert

Title: *Contract Agent, Right of Way & Permits*
Public Service Company of Colorado, an
Xcel Energy Company

TEMPORARY WORK SPACE AREA
- ILLUSTRATION -

N LINE, NE 1/4, SEC 3

50' R.O.W. DEDICATED BY PLAT

15' UTILITY EASEMENT BY PLAT

30'

WEST COUNTY ROAD 14

TRAFFIC SIGNAL

WATER VAULT

GATE

30'

CAMPION VALVE SET

CITY OF LOVELAND
LARIMER COUNTY

NE 1/4,
SEC 3,
T4N, R69W

FENCE

TOE OF SLOPE

EDGE OF ASPHALT (TOP OF SLOPE)

SOUTH TAFT AVENUE (S COUNTY RD 17)

50' R.O.W. DEDICATED BY PLAT

15' UTILITY EASEMENT BY PLAT

20' R.O.W. DEDICATED BY PLAT

LOT 2

HERON POINTE MINOR LAND DIVISION

LOT 1

HERON POINTE MINOR LAND DIVISION

TEMPORARY WORK SPACE AREA
(32,850 S.F.±)

(210±)

EXISTING GAS LINE

25'

25'

75'

(20')

(109.2')

TOE OF SLOPE

80' R.O.W.
BOOK 1365, PAGE 505

20' R.O.W. DEDICATED BY PLAT

50' GAS EASEMENT (PER PLAT)

15' UTILITY EASEMENT BY PLAT

UNPLATTED

CITY OF LOVELAND

BOOK 2197, PAGE 1168

WATER TANK

N

0 50 100
scale feet
1"=50'

LOT 1

HERON POINTE MINOR LAND DIVISION

NOTE:
ALL BOUNDARY AND EASEMENT LINES ARE BASED ENTIRELY ON THE PLAT OF HERON POINTE MINOR LAND DIVISION.

THIS IS PRELIMINARY -

SEH
390 Union Boulevard
Suite 630
Lakewood, Colorado 80228
Phone: 303-586-5800
FAX: 303-586-5801
www.sehinc.com

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

AGENDA ITEM: **10**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Randy Mirowski, Loveland Fire Rescue Authority
PRESENTER: Randy Mirowski, Fire Chief

TITLE:
A Resolution Approving an Amendment to the Exhibits Attached to the Intergovernmental Automatic Response Agreement Between the Loveland Fire Rescue Authority and the Johnstown Fire Protection District

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 to approve the amendment to the exhibits attached to the intergovernmental automatic mutual aid agreement between Loveland Fire Rescue Authority (LFRA) and the Johnstown Fire Protection District (JFPD). This is due to a recent evaluation of the response plans by both organizations for resource location and availability. The areas of auto aid response are expanded for both the aid provided by LFRA to JFPD and the aid provided by JFPD to LFRA based on the relocation of LFRA Station 2 and the coverage area proposed within the plan for the development of an Authority between the JFPD and the Milliken Fire Protection District (MFPD). The Loveland Fire Rescue Authority Board approved this amendment July 10, 2014.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
The intergovernmental auto aid agreement was approved the by the LFRA Board July 22, 2013 and the City Council on August 6, 2013.

LFRA Rescue 2, (will be moved further west when the new Station 2 opens in October), would be the second due extrication company for a traffic accident in the eastern part of the LFRA response area. The JFPD has an engine with the appropriate rescue tools that can get to that area quicker.

When the JFPD and the MFPD were evaluating their response plan for the development of an authority, it became clear that they needed a third engine for structure fires or structures threatened by fire in their response area. They have called upon the Windsor Severance Fire Protection District to provide that coverage in the north eastern portion, the Platteville Gilcrest Fire Protection District in the south eastern portion, and LFRA in the central and western portion of their response area. LFRA will be responding to actual or threatened structure fires, only. Any other aid requested (other than the call types identified in the exhibit) would be handled through a mutual aid agreement process, allowing for a consideration of response, based on availability and system coverage.

The language of the intergovernmental auto aid agreement remains the same. The resolution for consideration would only amend the Exhibits "A" Auto Aid Response Zones (response area with a corresponding map) and "C" Auto Aid Apparatus Response by LFPD to LFRA (adding extrication on traffic accidents).

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:
1. Resolution
2. Agreement including exhibits of amendments
3. Larger map

RESOLUTION # R-56-2014

A RESOLUTION APPROVING AN AMENDMENT TO THE EXHIBITS ATTACHED TO THE INTERGOVERNMENTAL AUTOMATIC RESPONSE AGREEMENT BETWEEN THE LOVELAND FIRE RESCUE AUTHORITY AND THE JOHNSTOWN FIRE PROTECTION DISTRICT

WHEREAS, in accordance with section §29-1-203 of the Colorado Revised Statutes, governments may cooperate or contract one with another to provide any function, service or facility lawfully authorized to each of the respective units of governments; and

WHEREAS, in accordance with C.R.S. §29-1 -201, governments are permitted and encouraged to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, the Johnstown Fire Protection District (“JFPD”) and Loveland Fire Rescue Authority (“LFRA”) are independent governmental entities duly organized and existing in accordance with Colorado law are called upon to respond to emergency areas contained within their respective jurisdictions; and

WHEREAS, JFPD and LFRA (collectively, the "Participating Agencies") are called upon to respond to emergencies occurring in areas contained within their respective jurisdictions; and

WHEREAS, the Participating Agencies strive to improve the emergency services provided within their respective jurisdictions through automatic mutual aid responses; and

WHEREAS, the LFRA Board approved the intergovernmental automatic response agreement between the Participating Agencies at the July 11, 2013 board meeting; and

WHEREAS, the Participating Agencies have evaluated their response plans based on the current resource location and availability to better serve the citizens in both jurisdictions. The evaluation resulted in an amendment that expands the defined area for automatic responses to one another, said area is delineated on the Amended Exhibit A; and a revision to Exhibit C to add “Extrication on Traffic Accidents”; and

WHEREAS, notice to the Participating Agencies of fire emergencies in the designated area is made by and through the Participating Agencies' Emergency Communications Centers ("Comm. Centers"); and

WHEREAS, it is the intent and desire of the Participating Agencies to provide an emergency fire response system that meets the health, safety and welfare needs of the affected residents; and

WHEREAS, by the terms Section 1.0 of the Rules and Regulations of the Loveland Fire Rescue Authority, such agreements must be presented to and approved by the LFRA Board of Directors; and

WHEREAS, the LFRA Board of Directors approved the amendment to the exhibit on July 10, 2014, Resolution 034 finding that it is in the best interests of the Fire Authority to adopt the "Intergovernmental Automatic Response Agreement" attached hereto as **Exhibit A** and incorporated by reference (the "Agreement").

WHEREAS, by the terms Section 1.9 of Article I of that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011, such agreements must be presented to and approved by the Loveland City Council and the Loveland Rural Fire Protection district; and

WHEREAS, the City Council finds that it is in the best interests of the Fire Authority to adopt the "Intergovernmental Automatic Mutual Aid Agreement" attached hereto as **Exhibit A** and incorporated by reference (the "Agreement").

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

Section 1. That the Agreement is hereby approved.

Section 2. That the Loveland Fire Rescue Authority is hereby authorized and directed to execute the Agreement, subject to such modifications in form or substance as the Fire Chief in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution.

Section 3. That this Resolution shall go into effect as of the date and time of its adoption.

ADOPTED this _____ day of _____, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

Approved as to form:

Teresa Ablao
Assistant City Attorney

INTERGOVERNMENTAL AUTOMATIC MUTUAL AID AGREEMENT BETWEEN THE LOVELAND FIRE RESCUE AUTHORITY AND THE JOHNSTOWN FIRE PROTECTION DISTRICT

THIS AGREEMENT is made and entered into this 11th day of July 2013, by and between the Johnstown Fire Protection District ("JFPD") and the Loveland Fire Rescue Authority, ("LFRA"), concerning response to a designated area.

RECITALS

WHEREAS, in accordance with C.R.S. § 29-1-203, governments may cooperate or contract one with another to provide any function, service or facility lawfully authorized to each of the respective units of governments; and

WHEREAS, in accordance with C.R.S. § 29-1-201, governments are permitted and encouraged to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, JFPD and LFRA (collectively, the "Participating Agencies") are called upon to respond to emergencies occurring in areas contained within their respective jurisdictions; and

WHEREAS, the Participating Agencies strive to improve the emergency services provided within their respective jurisdictions through automatic mutual aid responses; and

WHEREAS, the Participating Agencies have defined an area within which they will provide automatic responses to one another, said area being delineated in Exhibit A; and

WHEREAS, notice to the Participating Agencies of fire and rescue emergencies in the designated area is made by and through the Participating Agencies' Emergency Communications Centers ("Comm, Centers"); and

WHEREAS, it is the intent and desire of the Participating Agencies to provide an emergency fire and rescue response system that meets the health, safety and welfare needs of the affected residents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Participating Agencies agree as follows:

AGREEMENT

1. Automatic Response.

a. The Participating Agencies shall provide response to each other for emergencies located in the response area described in Exhibit A, Auto Aid Response Zones, attached hereto

and incorporated herein by this reference, upon notification thereof and dispatch thereto by the Comm. Center receiving the emergency call. The response described herein shall be automatic in nature. The Comm. Centers shall make initial and contemporaneous notification of emergency dispatch to both the fire authority/department within which the emergency has occurred and the fire authority/department responding pursuant to this Agreement.

b. Cancellation of any Participating Agency's unit response shall occur only after coordinated communication between the Participating Agencies on an assigned frequency. The first arriving Participating Agency shall determine whether to cancel the response of the other Participating Agency, or, when all units from a Participating Agency are en route to an emergency call, the Participating Agency having geographic jurisdiction may cancel the response of the other Participating Agency.

2. Purpose. The purpose for such dispatch and the responsibility of the Participating Agency is limited to certain call types and the apparatus response guide shown in Exhibits B, Auto Aid Apparatus Response by JFPD to LFRA, and C, Auto Aid Apparatus Response by LFRA to JFPD, attached hereto and incorporated herein by this reference. Response by a Participating Agency to any call type not listed on the attached Exhibits B and C shall be pursuant to additional mutual aid agreements between the Participating Agencies.

3. Good Faith Discussion. In the event the responses outside a Participating Agency's jurisdiction that occur pursuant to this Agreement become a burden, the Participating Agencies agree to discuss, in good faith, amendments to this Agreement and/or other possible resolutions, but in no case shall the proposed resolution be onerous, as determined by the Participating Agencies in their sole subjective discretion, to the respective Participating Agencies.

4. Command. The first arriving JFPD or LFRA officer-in-charge shall assume command of the incident. The incident commander shall provide in-coming responders with an arrival report and shall instruct them to begin operations. Upon arrival of an officer from the Participating Agency having jurisdiction, incident command shall be passed to such officer.

5. Liability. The Participating Agencies hereto agree, notwithstanding the provisions of C.R.S. §29-5-108, that during the time that a responding Participating Agency's employees are traveling to the requesting Participating Agency's staging area or command post, any liability which accrues under the provision of the Colorado Governmental Immunity Act, C.R.S. §24-10101, et seq., (the "Act") as a result of a negligent act or omission of any of the responding Participating Agency's employees shall be imposed upon the responding Participating Agency and not the requesting Participating Agency. However, once the responding Participating Agency's employees physically arrive at the requesting Participating Agency's staging area or command post, then, in accordance with the provisions of C.R.S. §29-5-108, any liability which accrues, under the provisions of the Act as a result of a negligent act or omission of the responding Participating Agency's employees while performing duties at that time and thereafter, shall be imposed upon the requesting Participating Agency, not the responding Participating Agency. In addition, the requesting Participating Agency, to the extent permitted by law, agrees to indemnify, defend and hold harmless the responding Participating Agency against any and all judgments, costs, expenses and attorney's fees incurred by the responding Participating Agency

related to its performance under this Agreement that may result from any negligent act or omission by the requesting Participating Agency or by its employees. However, nothing herein shall be deemed a waiver of the notice requirements, defenses, immunities and limitations of liability that any of the Participating Agencies and their respective officers and employees may have under the Act and under any other law,.

6. Benefits. Pursuant to C.R.S. §§29-5-109 and 29-5-110, if any firefighter or other personnel of the responding Participating Agency is injured, disabled or dies as a result of performing services within the boundaries of the requesting Participating Agency, said individual shall remain covered by, and eligible for, the workers compensation and firefighters pension benefits which said individual would otherwise be entitled if the injury, disability or death had occurred within the boundaries of the responding Participating Agency.

7. Compensation. No Participating Agency shall be required to pay any compensation to any other Participating Agency for any services rendered hereunder, the automatic mutual aid and assistance to be afforded under this Agreement being adequate compensation to the Participating Agencies, this Agreement shall not be construed as to limit reasonable compensation, as defined in C.R.S. §29-22-104, in response to hazardous materials incidents. The requesting Participating Agency agrees that it will reasonably pursue any legal reimbursement possible, pursuant to state and federal laws and that, upon receipt of any such reimbursement (after subtracting the reasonable costs of pursuing and collecting the reimbursement), will distribute the received funds in a fair and equitable manner to the responding Participating Agencies based upon a pro rata share of their documented expenses.

8. Response Determination. Obligations of the Participating Agencies to respond pursuant to the provisions of this Agreement shall be contingent upon each Participating Agency's determination that the specified equipment and personnel are available for response and that such equipment and personnel are not needed in its own jurisdictions. The responding Participating Agency shall communicate its determination regarding the availability of equipment and personnel to the requesting Participating Agency through the Comm. Center at the time of the request.

9. Term. The terms of this agreement shall continue for a period of one year from the date hereof, and shall be automatically renewed for successive one year periods unless terminated by any Participating Agency with respect to itself.

10. Severability. If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of this Agreement shall not be affected thereby.

11. Entire Agreement. This Agreement shall not invalidate or otherwise affect any other agreement presently in effect. This Agreement represents the entire agreement of the Participating Agencies with respect to automatic mutual aid and any amendment to this agreement shall be in writing and executed by all the Participating Agencies hereto.

12. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado and venue shall lie in the County of Larimer.

13. Assignment. This Agreement shall not be assigned by any of the Participating Agencies hereto.

14. Relationship of Participating Agencies. The Participating Agencies enter into this Agreement as separate and independent governmental entities and each shall maintain such status throughout the term of this Agreement.

15. Effect of Agreement. This Agreement is not intended to, nor should it be construed to, effect or extend the legal responsibilities of any of the Participating Agencies hereto; create or modify any preexisting legal obligations, if any; or create for or extend any of the legal rights to any person. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever. Any services performed or expenditures made in connection with furnishing mutual aid under this Agreement by any of the Participating Agencies hereto shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of such Participating Agency.

16. Counterparts. This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement. The Participating Agencies agree that counterpart signatures of this Agreement shall be acceptable and that execution of this Agreement in the same form by each and every Participating Agency shall be deemed to constitute full and final execution of this Agreement.

17. Headings. Paragraph headings in this Agreement are for convenience of reference only and shall in no way define, limit or prescribe the scope or intent of any provision of this Agreement,

18. Construction of Agreement. This Agreement shall be construed according to its fair meaning as if it was prepared by all of the Participating Agencies hereto and shall be deemed to be and contain the entire Agreement between the Participating Agencies hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning this Agreement, unless set forth in writing and signed by all of the Participating Agencies hereto.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Participating Agencies hereto and the respective successors and permitted assigns.

20. Termination. Any Participating Agency may terminate this Agreement, with or without cause, upon thirty days prior written notice to all other Participating Agencies to this Agreement.

21. Notices. Any notice under this Agreement to a Participating Agency shall be effective upon receipt at the addresses set forth below.

Loveland Fire Rescue Authority: Fire Chief
410 East Fifth Street
Loveland, Colorado 80537

and

City Attorney's Office
500 East Third Street, Suite 330
Loveland, Colorado 80537

Johnstown Fire Protection District: Fire Chief
100 Telep Avenue
Johnstown, CO 80534

IN WITNESS WHEREOF, the Participating Agencies have executed this Agreement the day and year first above written.

LOVELAND FIRE RESCUE AUTHORITY:

By: Board Chair

ATTEST:

Board Secretary

Approved as to Form:

Assistant City Attorney

JOHNSTOWN FIRE PROTECTION DISTRICT:

By: Board Chair

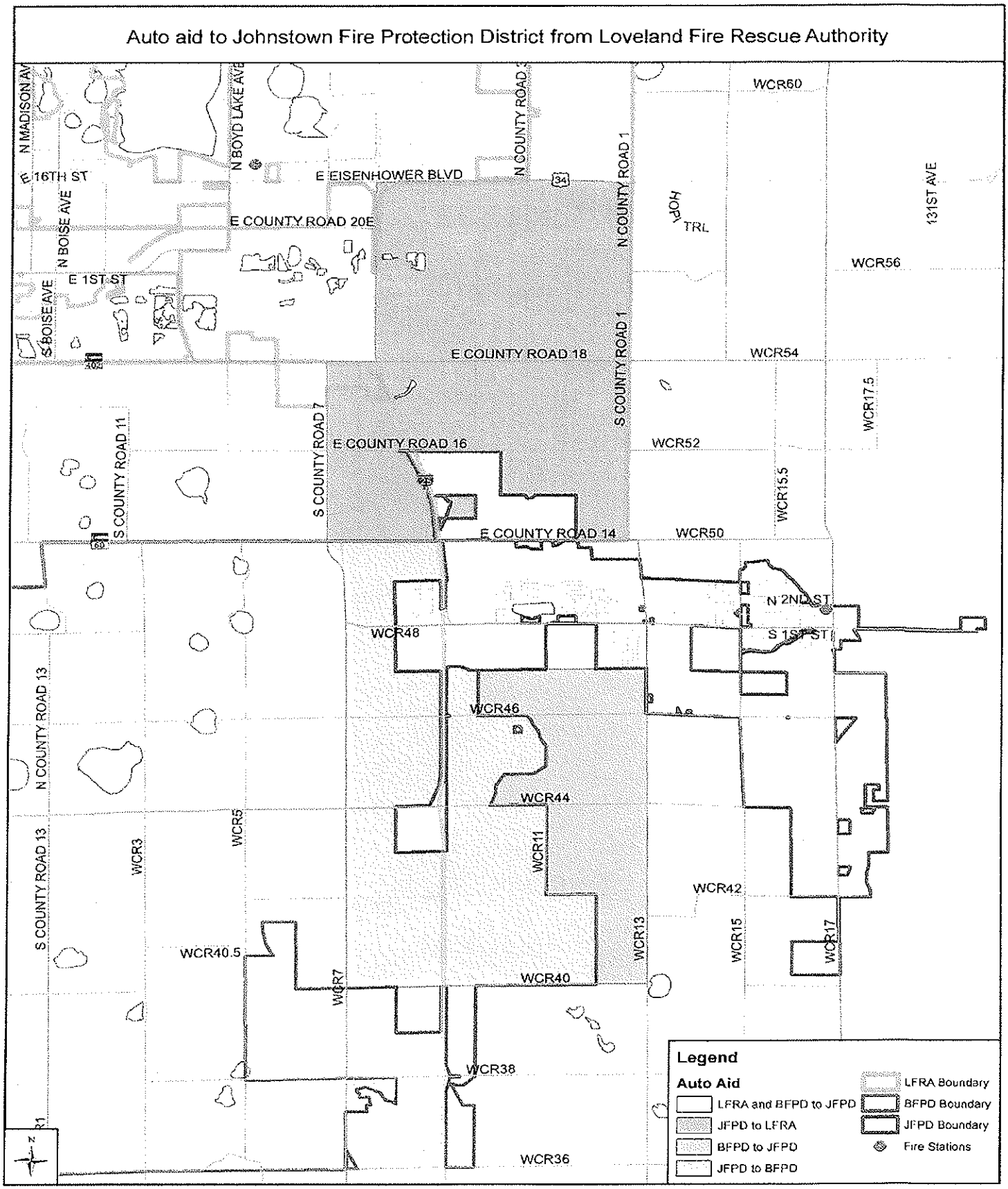
ATTEST:

Board Secretary

Approved as to Form:

Assistant City Attorney

"JFPD-LFRA Auto Aid Response Area"



EHIBIT "A" Auto Aid Response Zones

Boundaries North to Hwy 34, West to Interstate 25, until Hwy 402, (aka E Country Road 18), West to S. County Road 7, at E County Road 14 East to Interstate 25, including the Gateway Commercial Development on the West Side of I-25, South to Weld County Road 46, East to Weld County Road 13 are depicted on the map entitled **"JFPD-LFRA Auto Aid Response Area"**, a copy of which is held on file at the Administrative offices of Loveland Fire Rescue Authority and the Johnstown Fire Protection District and is available for inspection by any party at any time during normal business hours.

EXIBIT "B" Auto Aid Apparatus Response by LFRA to JFPD

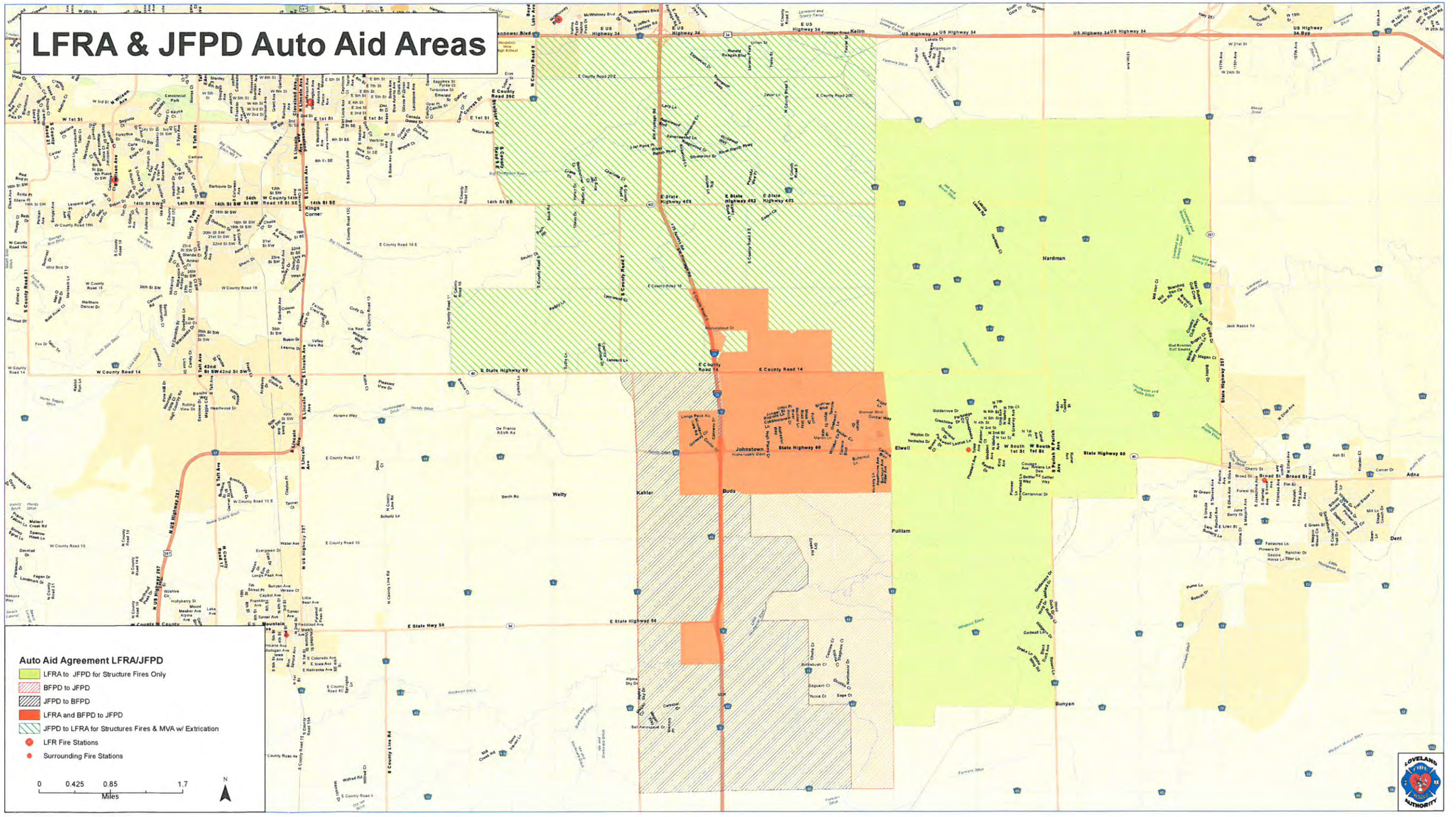
Structure Fire or Structures Threatened	1-Engine emergent response

EXIBIT "C" Auto Aid Apparatus Response by JFPD to LFRA

Structure Fire or Structures Threatened	1-Engine emergent response

Any aid requested other than the call type listed above must be done through a mutual aid agreement process.

LFRA & JFPD Auto Aid Areas



CITY OF LOVELAND
POLICE DEPARTMENT
810 East 10th Street • Loveland, Colorado 80537
(970) 667-2151 • FAX (970) 962-2917 • TDD (970) 962-2620

AGENDA ITEM: **11**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Tim Brown, Police Department
PRESENTER: Tim Brown, Police Captain

TITLE:
A Resolution Amending the 2014 Schedule of Rates, Charges and Fees for Police Records and Services Provided by the City of Loveland, Colorado by Adding a Sex Offender Registration Fee

RECOMMENDED CITY COUNCIL ACTION:
Adopt the resolution as written.

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. This resolution sets fees for State-mandated sex offender registration and provides for a waiver of fees for indigency.

BUDGET IMPACT:
☒ Positive
☐ Negative
☐ Neutral or negligible

The $75 and $25 registration fee will offset a small portion of the cost to the City to administer the State-mandated sex offender registration. It is anticipated that the fees collected under this structure would be approximately $5200 per year.

BACKGROUND:
State statute (CRS 16-22-108(7)) mandates that convicted sex offenders must register with the local law enforcement agency for the jurisdiction in which the offender resides. The statute sets forth requirements and duties of the local law enforcement agency with respect to registration,

as well as the obligations of the registrant. It is a comprehensive and labor intensive process that costs the Loveland Police Department approximately $31,000 per year to administer. Currently, LPD registers, documents, tracks and manages 182 people on the sex offender registry.

The cost to administer the state sexual offender registration program is approximately $75.66 for initial registrations and each subsequent registration is $26.60. These costs are based on the average hourly rate of an Investigative Technician, Police Officer, Communications Specialist and Records Specialist and the average time it takes to administer the requirements of registering and tracking convicted sex offenders as required by law.

The State legislature recently amended the state law regarding sex offender registration to allow law enforcement agencies to charge a fee that reflects the actual cost for administering the state registration program, not to exceed $75 dollars for each initial registration and $25 dollars for each subsequent re-registration. This resolution will set the fees at that maximum amount.

The fee will be waived if a registrant is indigent. LPD intends to utilize the State Judicial Department's criteria for determining indigency. In addition, a registrant's failure to pay the fee cannot be a basis for charging a registration violation. Instead, the state law allows the local law enforcement agency to pursue any lawful means to recover any unpaid fees such as collection and civil actions.

In order to provide sufficient time to give notice to registrants of the new fee, the Police Department intends to delay charging the new fees until January 1, 2015.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. Attachment A to Chief Justice Directive 04-05

RESOLUTION # R-57-2014

A RESOLUTION AMENDING THE 2014 SCHEDULE OF RATES, CHARGES AND FEES FOR POLICE RECORDS AND SERVICES PROVIDED BY THE CITY OF LOVELAND, COLORADO BY ADDING A SEX OFFENDER REGISTRATION FEE

WHEREAS, City Council set the rates, charges and fees for services provided by the City of Loveland (the "City") for calendar year 2014 in Resolution #R-78-2013, other than services provided by the Storm Water Enterprise and the Water and Power Department; and

WHEREAS, Resolution #R-78-2013 includes rates, charges and fees for police department services such as criminal justice records, fingerprinting, special events fees and beer keg ID Tags, but do not include a charge for sex offender registration, a service which the Police Department is required to provide pursuant to state statute, CRS 16-22- 101, et seq.; and

WHEREAS, state law requires convicted sex offenders to register, on an annual and quarterly basis depending on the type of sex offense conviction, with local law enforcement agencies in whose jurisdictions they reside; and

WHEREAS, CRS 16-22-108(7)(a) now allows local law enforcement agencies to charge a fee that reflects the actual cost to the Police Department for administering the state registration program, not to exceed $75 dollars for an initial registration and $25 dollars for each subsequent re-registration; and

WHEREAS, the cost to administer the state sexual offender registration is $75.66 for initial registrations and each subsequent registration is $26.60. These costs are based on the average hourly rate of an Investigative Technician, Police Officer, Communications Specialist and Records Specialist and the average time it takes to administer the requirements of registering and tracking convicted sex offenders as required by law; and

WHEREAS, the state law also requires that an agency accept a timely registration, even if the fee has not been paid and allows for civil collection or any other legal means to collect the fee; and

WHEREAS, City Council finds that it is in the best interest of the City to allow the Police Department waive the registration fee due to an offender's indigency, such indigency to be determined according to the Colorado Supreme Court Chief Justice Directive 04-05 as amended March 2014; and

WHEREAS, the City council finds that it is fair and appropriate to provide notice to registrants prior to assessing a new fee and therefore the implementation and collection of the registration fee should begin January 1, 2015; and

WHEREAS, the City Council finds that is in the interest of its citizens to set a reasonable charge for sex offender registration to cover the cost of providing such service.

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

Section 1. That all previous rates, charges and fees for services provided by the Police Department are hereby reaffirmed and ratified.

Section 2. That Police Department Schedule of Rates, Charges and Fees for 2014 identified in Exhibit A to Resolution #R-78-2013 is hereby amended by adding the following charge:

POLICE DEPARTMENT

Sex Offender Registration (Initial)…….$75.00*
Sex Offender Registration(subsequent re-registration …….$25.00*
***Unless such fee is waived due to indigency**

Section 3. That the 2014 Schedule of Rates, Charges and Fees for sex offender registration shall be amended as of the date of adoption of this Resolution and the collection of the sex offender registration fee will begin January 1, 2015.

ADOPTED _____ day of _____, 2014.

_____
Cecil Gutierrez, Mayor

ATTEST:

_____
City Clerk

Approved as to form:

Teresa Ablao
Assistant City Attorney

PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY FOR COURT APPOINTED COUNSEL AND GUARDIAN AD LITEM REPRESENTATION ON THE BASIS OF INDIGENCY

Indigency Determination

Persons requesting court-appointed representation to be paid by the state on the basis of indigency must complete, or have completed on their behalf, application form JDF208 ("Application for Court-Appointed Counsel or Guardian *ad litem*") signed under oath, before such an appointment may be considered by the court. Form JDF208 must be completed for the appointment of counsel at state expense in all cases except mental health cases under Title 27 in which the respondent refuses to or is unable to supply the necessary information and cases in which a minor is requesting counsel for judicial bypass proceedings pursuant to §12-37.5-107(2)(b), C.R.S.

Procedures for the Determination of Indigency

- *Completion of Form JDF208 by Applicant*
  Persons applying for state paid counsel or guardian *ad litem* representation must complete, or have completed on their behalf, the Application for Court-Appointed Counsel, form JDF208, and submit it to the court.

- *Review of Financial Information by Court Personnel*
  Court personnel shall review the applicant's information on form JDF208 to determine whether or not the applicant is indigent on the basis of three factors:
  - Income [1]
  - Liquid assets [2]
  - Expenses [3]

Criteria for Indigency

An applicant qualifies for court appointed counsel or guardian *ad litem* on the basis of indigency if his or her financial circumstances meet either set of criteria described below.

1. Income is at or below guidelines / Liquid assets equal $0 to $1,500

- If the applicant's income is at or below the income eligibility guidelines and he or she has liquid assets of $1,500 or less, as determined on form JDF208, the applicant is indigent and eligible for court appointed counsel or guardian *ad litem* representation at state expense.

---

[1] *Income is gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workers' Compensation Benefits, Unemployment Benefits, and alimony. NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the applicant's income in a fashion which would allow the applicant proprietary rights to the roommate's income.*

Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, veteran' benefits earned from a disability, child support payments or other assistance programs.

[2] *Liquid assets include cash on hand or in accounts, stocks bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant's ability to maintain home and employment.*

[3] *Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall not be included. Allowable expense categories are listed on form JDF208.*

2. Income is up to 25% above guidelines / Liquid assets equal $0 to $1,500 / Monthly expenses equal or exceed monthly income

- If the applicant's income is up to 25% above the income eligibility guidelines; the applicant has assets of $1,500 or less; and the applicant's monthly expenses equal or exceed monthly income, as determined on form JDF208, the applicant is indigent and eligible for court appointed counsel or guardian *ad litem* representation.

In cases where the criteria above are not met but extraordinary circumstances exist, the court may find the applicant indigent. In such cases, the court shall enter a written order setting forth the reasons for the finding of indigency.

INCOME ELIGIBILITY GUIDELINES (amended January 2014)				
Family Size	**Monthly Income***	**Monthly Income plus 25%**	**Yearly Income***	**Yearly Income plus 25%**
1	$1,216	$1,520	$14,588	$18,234
2	$1,639	$2,048	$19,663	$24,578
3	$2,061	$2,577	$24,738	$30,922
4	$2,484	$3,105	$29,813	$37,266
5	$2,907	$3,634	$34,888	$43,609
6	$3,330	$4,163	$39,963	$49,953
7	$3,753	$4,691	$45,038	$56,297
8	$4,176	$5,220	$50,113	$62,641
* 125% of poverty level as determined by the Department of Health and Human Services				
For family units with more than eight members, add $338 per month to "monthly income" or $4,060 per year to "yearly income" for each additional family member.				
Source: FEDERAL REGISTER (79FR3593, 01/22/2014)				

CITY OF LOVELAND
CULTURAL SERVICES DEPARTMENT/RIALTO THEATER
228 East Fourth Street • Loveland, Colorado 80537
(970) 962-2120 • FAX (970) 962-2422 • TDD (970) 962-2620

AGENDA ITEM: **12**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Susan Ison, Cultural Services Department
PRESENTER: Susan Ison, Cultural Services Director

TITLE:
A Resolution Amending the 2014 Schedule of Rates, Charges and Fees for City Services, Other than Services Provided by the Water and Power Department and the Stormwater Enterprise

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 Rialto Theater Center Business Plan presented to City Council on July 1, 2014, included a revision of rates, charges and fees for both the theater-side and the event-side. The accompanying resolution identifies the proposed rates, charges and fees for adoption by City Council, effective September 1, 2014.

BUDGET IMPACT:
☒ Positive
☐ Negative
☐ Neutral or negligible

The Resolution increases Rates and Fees for the Theater-side of the Rialto Theater Center and reduces fees for the Event-side, which should increase overall revenue.

BACKGROUND:
Loveland City Council directed Cultural Services staff to develop a plan to increase the cost of recovery for the Rialto Theater Center. The target in the 2011 Sustainability Plan is 60% cost

recovery by 2014; and 70% cost recovery by 2018. In recent months operational changes have been made that have already led to progress in meeting these goals. The next step is a revision in rates, charges and Fees as reflected in the Resolution and as presented to City Council in the Rialto Theater Center Business Plan at the July 1, 2014 meeting. This includes the increase of fees on the Theater-side to more fully cover real costs and decrease fees on the Event-side, which is much less labor intensive, and encourages an increase in use.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Resolution with Exhibit A
2. Redlined Version of Fee Changes

RESOLUTION # R-58-2014

A RESOLUTION AMENDING THE 2014 SCHEDULE OF RATES, CHARGES AND FEES FOR CITY SERVICES, OTHER THAN SERVICES PROVIDED BY THE WATER AND POWER DEPARTMENT AND THE STORMWATER ENTERPRISE

WHEREAS, on October 1, 2013, City Council adopted Resolution #R-78-2013 setting the rates, charges and fees for services provided by the City of Loveland (the "City"), other than fees imposed for services of the Water and Power Department and Storm Water Enterprise, for calendar year 2014; and

WHEREAS, on July 1, 2014, the City's Cultural Services Department presented City Council with a formal business plan for the Rialto Theater Center ("Rialto") that identified strategies for increasing the sustainability of the Rialto, including adjustments to rates, charges and fees for services offered, programming diversification and marketing; and

WHEREAS, this Resolution is intended to amend Resolution #R-78-2013 to modify the current rates, charges, and fees for services provided by the Rialto in an effort to contribute to the Rialto's business plan goal of increased sustainability.

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

Section 1. That the 2014 schedule of rates, charges and fees for City services, other than services of the Water and Power Department and the Storm Water Enterprise, adopted by Resolution #R-78-2013, is hereby amended by the repeal of the current Schedule of Rates, Charges and Fees for the Cultural Services Department and replacement with the new Schedule of Rates, Charges and Fees for the Cultural Services Department set forth in Exhibit A, attached hereto and incorporated by reference.

Section 2. This Resolution shall take effect as of September 1, 2014.

ADOPTED this ___ of August, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

CITY OF LOVELAND
SCHEDULE OF RATES, CHARGES AND FEES FOR
Effective September 1, 2014

Description	Fee

CULTURAL SERVICES DEPARTMENT

LOVELAND MUSEUM/GALLERY

Facility use fees:	
For-Profit, per hour	$50.00
Non-Profit, per hour	$30.00
Facility Attendant, per hour	$25.00
Damage Deposit	$100.00
Cancellation, less than 7 business days in advance	$35.00
All-Facility Rental, first two hours (For-Profit rate)	$500.00
All-Facility Rental, first two hours (Non-Profit rate)	$350.00
Each hour thereafter, per hour (all renters)	$75.00
Lone Tree School, per day	$65.00
Museum membership:	
Individual	$30.00
Senior/Student	$20.00
Individual plus one	$45.00
Family	$65.00
Contributor	$250.00
Patron	$500.00
Benefactor	$1,000.00
Main Gallery Exhibit Admission:	
Individual	$5.00
Group, per person	$3.00
*Admission fees may be waived during community events or based on group membership.	
Workshops, Classes, & Lectures:	
Workshop/Class/Lecture Fees/Special Programs, per event (vary by type, length, instructor cost)	$20.00-$250.00
Drop-in Workshop/Class Fees, per hour	$6.00-10.00
Reproduction of Photographs	
Digital Copy on CD	$16.00
Digital Copy on CD, without scan	$27.00
5x7, With Scan	$19.00
5x7, Without Scan	$30.00
8x10, With Scan	$22.00
8x10, Without Scan	$32.00
11x14, With Scan	$30.00
11x14, Without Scan	$41.00
16x20 With Scan	$39.00
16x20, Without Scan	$50.00
20x24, With Scan	$51.00
20x24, Without Scan	$63.00
30x40, With Scan	$63.00
30x40, Without Scan	$73.00

CITY OF LOVELAND

SCHEDULE OF RATES, CHARGES AND FEES FOR

Effective September 1, 2014

Description	Fee
Larger sizes, additional per foot	$17.00

RIALTO THEATER

Seat Fee	$2.00
The Seat Fee applies to each person attending an event at the Rialto Theater when tickets are sold through the Rialto Theater. The Seat Fee does not apply to the Non-Ticketed rental rate.	
CIRSA's Insurance (when required), per attendee	$0.30
Marley Dance Floor Rental, per installation	$60.00
Yamaha C7 Grand Piano Rental, per day	$85.00
Piano Tuning (if requested, by Rialto tuner), each	$150.00
Standard Ticketed Event Rental Rates:	
Monday through Thursday, per day	$550.00
Friday, Saturday & Sunday, per day	$550.00
Non-Profit Ticketed Event Rental Rates:	
Monday through Thursday, per day	$450.00
Friday, Saturday & Sunday, per day	$450.00
Meeting/Non-Ticketed Event Rates:	
Monday through Thursday, per day	$900.00
Friday, Saturday & Sunday, per day	$900.00
Dark Day rental rate (Standard and Non-Profit rate):	$225.00
Overtime rental rate (Standard and Non-Profit rate): A daily rental is a maximum of 8 hours of consecutive use. The overtime rental rate applies to any part of an hour beyond the contracted rental period.	$75.00 per hour
2015 Box Office Ticketing fees – Online and telephone sales	$3.00 for tickets costing up to $16.00 $4.00 for tickets costing $16.01-$49.99
2015 Box Office ticketing fees – In-person sales at the Rialto	No Charge

Non-Refundable Rental Deposit:

Required to reserve date(s), equal to the applicable base rental fee for one day (dollar amount varies). To be applied toward rental cost, or used to offset Rialto administrative costs in the event of cancellation by tenant. Portion of deposit may be used as damage/cleaning fee, if needed, as per contract.

CITY OF LOVELAND

SCHEDULE OF RATES, CHARGES AND FEES FOR

Effective September 1, 2014

Description	Fee
RIALTO THEATER CENTER	
Devereaux/Hach Room:	
Standard Rate:	
Rental up to 8 hours	$250.00
Additional hourly rate	$50.00
Nonprofit Rate:	
Rental up to 8 hours	$100.00
Additional hourly rate	$50.00
Building Tenant Rate:	
Rental up to 6 hours	$175.00
City Department use	
Rental up to 6 hours	$75.00
Deposit	$400.00
Phyllis Walbye Conference Room	
Standard rate, use up to 4 hours	$50.00
Additional hourly rate	$50.00
Non-Profit rate, use up to 4 hours	$30.00
Additional hourly rate	$30.00
City Department use up to 4 hours	$30.00
Additional hourly rate	$25.00
Deposit for Standard and Non-Profit use	$150.00
Equipment and Service Fees for Room Rentals:	
Rental Equipment:	
Flip Chart Package	$15.00
Video Projector	$50.00
Blue Ray Player	$50.00
Portable Sound System	$100.00
Staging Platform, per 4’ x 8’ section	$25.00
Pipe and Drape, per 8’ x 6’ section	$25.00
Risers, per section	$25.00
Electronic Keyboard	$30.00
Large Podium	$25.00
Portable Light Trees (Pair)	$100.00
Linens:	
Additional white tablecloths, each	$6.00
Coffee Service:	
Coffee, service of 20 or 60 cups, per cup	$1.00
Hot tea, service of 20 or 60 cups, per cup	$0.50
Food Service Cleaning Fees:	
Pre-packaged snacks brought in by renter	$25.00
Hors d’ Oeuvre or Meal service - Up to 50 guests, includes prep room use	$50.00
Hors d’ Oeuvre or Meal Service - 51 to 150 guests, includes prep room use	$75.00
Hors d’ Oeuvre or Meal Service – 151 guests and up, includes prep room use	$100.00

CITY OF LOVELAND

SCHEDULE OF RATES, CHARGES AND FEES FOR

Effective September 1, 2014

Description	Fee
Videoconference Service:	
During normal operating hours, per hour	$200.00
Outside of normal operating hours, per hour	$300.00

CITY OF LOVELAND

SCHEDULE OF RATES, CHARGES AND FEES FOR ~~2014~~

Effective September 1, 2014

Description	~~2014~~ Fee

CULTURAL SERVICES DEPARTMENT

LOVELAND MUSEUM/GALLERY

Facility use fees:	
For-Profit, per hour	$50.00
Non-Profit, per hour	$30.00
Facility Attendant, per hour	$25.00
Damage Deposit	$100.00
Cancellation, less than 7 business days in advance	$35.00
All-Facility Rental, first two hours (For-Profit rate)	$500.00
All-Facility Rental, first two hours (Non-Profit rate)	$350.00
Each hour thereafter, per hour (all renters)	$75.00
Lone Tree School, per day	$65.00
Museum membership:	
Individual	$30.00
Senior/Student	$20.00
Individual plus one	$45.00
Family	$65.00
Contributor	$250.00
Patron	$500.00
Benefactor	$1,000.00
Main Gallery Exhibit Admission:	
Individual	$5.00
Group, per person	$3.00
* Admission fees may be waived during community events or based on group membership.	
Workshops, Classes, & Lectures:	
Workshop/Class/Lecture Fees/Special Programs, per event (vary by type, length, instructor cost)	$20.00-$250.00
Drop-in Workshop/Class Fees, per hour	$6.00-10.00
Reproduction of Photographs	
Digital Copy on CD	$16.00
Digital Copy on CD, without scan	$27.00
5x7, With Scan	$19.00
5x7, Without Scan	$30.00
8x10, With Scan	$22.00
8x10, Without Scan	$32.00
11x14, With Scan	$30.00
11x14, Without Scan	$41.00
16x20 With Scan	$39.00
16x20, Without Scan	$50.00
20x24, With Scan	$51.00
20x24, Without Scan	$63.00
30x40, With Scan	$63.00
30x40, Without Scan	$73.00

CITY OF LOVELAND

SCHEDULE OF RATES, CHARGES AND FEES FOR ~~2014~~ 2015

Effective September 1, 2014

Description	~~2014~~ Fee
Larger sizes, additional per foot	$17.00
RIALTO THEATER	
Seat Fee~~, per ticket sold~~	$2.00~~$1.50~~
The Seat Fee applies to each person attending an event at the Rialto Theater when tickets are sold through the Rialto Theater. The Seat Fee does not apply to the Non-Ticketed rental rate.	
~~Box Office Phone Transaction Fee, per transaction~~	~~$4.00~~
CIRSA's Insurance (when required), per attendee	$0.30
~~Ticketing Fee – events held at Rialto, per ticket sold~~	~~$0.20~~
~~Complimentary Ticket Fee, per ticket printed (first 30 are free)~~	~~$0.20~~
~~Projection Equipment Rental, per performance~~	~~$60.00~~
Marley Dance Floor Rental, per installation	$60.00
~~Masonite Dance Floor Rental, per installation~~	~~$60.00~~
~~Side of Stage Monitor Package Rental, per day~~	~~$200.00~~
~~Internet Transaction Fee, per ticket~~	~~Varies~~
~~Technical Fee, per hour (when Rialto lights and sound system are used)~~	~~$30.00~~
~~Merchandise Sales Fee, % of gross merchandise sold~~	~~15%~~
~~Ticket Exchange Fee, per ticket~~	~~$2.00~~
~~Intelligent Lighting Rental, includes 1 hour programming, per performance~~	~~$60.00~~
~~Additional Intelligent Lighting programming, per hour~~	~~$30.00~~
~~Additional Covered 6' or 8' table, each (two provided free, with rental)~~	~~$10.00~~
Yamaha C7 Grand Piano Rental, per day	$85.00
Piano Tuning (if requested, by Rialto tuner), each	$150.00
Standard Ticketed Event Rental Rates ~~(12 noon to 12 midnight)~~:	
Monday through Thursday, per day	$550.00~~$350.00~~
Friday, Saturday & Sunday, per day	$550.00~~$400.00~~
~~Rehearsal Rates, per hour (not to exceed maximum daily rental fee)~~	~~$50.00~~
Non-Profit Ticketed Event Rental Rates ~~(12 noon to 12 midnight)~~:	
Monday through Thursday, per day	$450.00~~$300.00~~
Friday, Saturday & Sunday, per day	$450.00~~$330.00~~
~~Rehearsal Rates, per hour (not to exceed maximum daily rental rate)~~	~~$40.00~~
~~Meeting/Non-Ticketed Event Rates (up to four hours):~~	
~~Monday through Thursday, per day~~	~~$425.00~~
~~Friday, Saturday & Sunday, per day~~	~~$500.00~~
Meeting/Non-Ticketed Event Rates ~~(over four hours)~~:	
Monday through Thursday, per day	$900.00~~$700.00~~
Friday, Saturday & Sunday, per day	$900.00
Dark Day rental rate (Sstandard and Non-Profit rate):	$225.00
Overtime rental rate (Standard and Non-Profit rate): A daily rental is a maximum of 8 hours of consecutive use. The overtime rental rate applies to any part of an hour beyond the contracted rental period.	$75.00 per hour
2015 Box Office Ticketing fees – Online and telephone sales	$3.00 for tickets costing up to $16.00

CITY OF LOVELAND

SCHEDULE OF RATES, CHARGES AND FEES FOR ~~2014~~

Effective September 1, 2014

Description	~~2014~~ Fee
	$4.00 for tickets costing $16.01-$49.99
2015 Box Office ticketing fees – In-person sales at the Rialto	No Charge

~~Community Group Fee Rate:~~

~~22% of first $5,000 in gross house receipts plus 5% of remaining gross house receipts or $330 per performance day, whichever is greater. This includes rehearsal dates (limit of 5 for a one-weekend show and 7 for a two-weekend show, with additional dates available at regular rates) and blackout dates (limited to one week prior to opening). Seat fee, ticket fee and insurance fees (when required) apply. No additional technical charges apply.~~

Non-Refundable Rental Deposit**:**

Required to reserve date(s), equal to the applicable base rental fee for one day (dollar amount varies). To be applied toward rental cost, or used to offset Rialto administrative costs in the event of cancellation by tenant. Portion of deposit may be used as damage/cleaning fee, if needed, as per contract.

CITY OF LOVELAND

SCHEDULE OF RATES, CHARGES AND FEES FOR ~~2014~~

Effective September 1, 2014

Description	~~2014~~ Fee
RIALTO THEATER CENTER	
Devereaux/Hach Room:	
Standard Rate:	
Rental up to 8 hours	$250.00
Additional hourly rate	$50.00
Nonprofit Rate:	
Rental up to 8 hours	$100.00
Additional hourly rate	$50.00
~~Monday through Thursday, 8:00 A.M. to 5:00 P.M., up to four hours~~	~~$300.00~~
~~Over four hours, per hour~~	~~$75.00~~
~~Monday through Thursday, 5:00 P.M. to 11:00 P.M., up to four hours~~	~~$400.00~~
~~Over four hours, per hour~~	~~$100.00~~
~~Friday through Sunday, up to four hours~~	~~$500.00~~
~~Over four hours, per hour~~	~~$125.00~~
Building Tenant Rate:	
Rental up to 6 hours	$175.00
~~Monday through Thursday, 8:00 A.M. to 5:00 P.M., up to four hours~~	~~$340.00~~
~~Over four hours, per hour~~	~~$85.00~~
~~Monday through Thursday, 5:00 P.M. to 11:00 P.M., up to four hours~~	~~$440.00~~
~~Over four hours, per hour~~	~~$110.00~~
~~Friday through Sunday, up to four hours~~	~~$640.00~~
~~Over four hours, per hour~~	~~$160.00~~
City Department use	
Rental up to 6 hours	$75.00
Deposit	$400.00
Phyllis Walbye Conference Room	
Standard rate, use up to 4 hours	$50.00
Additional hourly rate	$50.00
Non-Profit rate, use up to 4 hours	$30.00
Additional hourly rate	$30.00
City D~~d~~epartment use up to 4 hours	$30.00
Additional hourly rate	$25.00
Deposit for Standard and Non-Profit use	$150.00
~~All Others Rate:~~	
~~Monday through Thursday, 8:00 A.M. to 5:00 P.M., up to four hours~~	~~$400.00~~
~~Over four hours, per hour~~	~~$100.00~~
~~Monday through Thursday, 5:00 P.M. to 11:00 P.M., up to four hours~~	~~$500.00~~
~~Over four hours, per hour~~	~~$125.00~~
~~Friday through Sunday, up to four hours~~	~~$700.00~~
~~Over four hours, per hour~~	~~$175.00~~
~~Bruce and Muriel Hach Room~~	

CITY OF LOVELAND

SCHEDULE OF RATES, CHARGES AND FEES FOR ~~2014~~

Effective September 1, 2014

Description	~~2014~~ Fee
~~Nonprofit Rate:~~	
~~Monday through Thursday, 8:00 A.M. to 5:00 P.M., up to four hours~~	~~$160.00~~
~~Over four hours, per hour~~	~~$40.00~~
~~Monday through Thursday, 5:00 P.M. to 11:00 P.M., up to four hours~~	~~$200.00~~
~~Over four hours, per hour~~	~~$50.00~~
~~Friday through Sunday, up to four hours~~	~~$300.00~~
~~Over four hours, per hour~~	~~$75.00~~
~~Building Tenant Rate:~~	
~~Monday through Thursday, 8:00 A.M. to 5:00 P.M., up to four hours~~	~~$180.00~~
~~Over four hours, per hour~~	~~$45.00~~
~~Monday through Thursday, 5:00 P.M. to 11:00 P.M., up to four hours~~	~~$220.00~~
~~Over four hours, per hour~~	~~$55.00~~
~~Friday through Sunday, up to four hours~~	~~$320.00~~
~~Over four hours, per hour~~	~~$80.00~~
~~All Others Rate:~~	
~~Monday through Thursday, 8:00 A.M. to 5:00 P.M., up to four hours~~	~~$200.00~~
~~Over four hours, per hour~~	~~$50.00~~
~~Monday through Thursday, 5:00 P.M. to 11:00 P.M., up to four hours~~	~~$240.00~~
~~Over four hours, per hour~~	~~$60.00~~
~~Friday through Sunday, up to four hours~~	~~$340.00~~
~~Over four hours, per hour~~	~~$85.00~~

~~RIALTO THEATER CENTER (cont'd)~~

~~Room Rental (Community Room or Reception Area) Minimum and Discounted Rates:~~

~~Minimum four hour rental required for Community Room or Reception Area. Additional hours may be purchased at the hourly rate shown above.~~

~~Organizations or individuals renting the Rialto Theater Center for a ticketed event may take a 40% discount off the rental rates above when renting additional rooms on the same date(s).~~

~~Organizations or individuals renting the Rialto Theater Center for a non-ticketed event may take a 20% discount off the rental rates above when renting additional rooms on the same date(s).~~

~~Phyllis Walbye Conference Room:~~	
~~Nonprofit Rate:~~	
~~First use, per calendar quarter, up to two hours~~	~~Free~~
~~Use fee, up to two hours~~	~~$75.00~~
~~Over two hours, per hour~~	~~$25.00~~
~~Building Tenant Rate:~~	
~~First use, per calendar month, up to two hours~~	~~Free~~
~~Use fee, up to two hours~~	~~$85.00~~
~~Over two hours, per hour~~	~~$30.00~~
~~All Others Rate:~~	
~~Use fee, up to two hours~~	~~$100.00~~
~~Over two hours, per hour~~	~~$40.00~~
Equipment and Service Fees for Room Rentals:	
Rental Equipment:	
Flip Chart Package	$15.00
Video Projector	$50.00

CITY OF LOVELAND

SCHEDULE OF RATES, CHARGES AND FEES FOR ~~2014~~

Effective September 1, 2014

Description	~~2014~~ Fee
Blue Ray Player	$50.00
Portable Sound System	$100.00
Staging Platform, per 4’ x 8’ section	$25.00
Pipe and Drape, per 8’ x 6’ section	$25.00
Risers, per section	$25.00
Electronic Keyboard	$30.00
Large Podium	$25.00
Portable Light Trees (Pair)	$100.00
Linens:	
Additional white tablecloths, each	$6.00
Coffee Service:	
Coffee, service of 20 or 60 cups, per cup	$1.00
Hot tea, service of 20 or 60 cups, per cup	$0.50
Food Service Cleaning Fees:	
Pre-packaged snacks brought in by renter	$25.00
Hors d’ Oeuvre or Meal service - Up to 50 guests, includes prep room use	$50.00
Hors d’ Oeuvre or Meal Service - 51 to 150 guests, includes prep room use	$75.00
Hors d’ Oeuvre or Meal Service – 151 guests and up, includes prep room use	$100.00
Videoconference Service:	
During normal operating hours, per hour	$200.00
Outside of normal operating hours, per hour	$300.00

CITY OF LOVELAND

SCHEDULE OF RATES, CHARGES AND FEES FOR ~~2014~~

Effective September 1, 2014

Description	~~2014~~ Fee
~~**RIALTO THEATER CENTER (cont'd)**~~	
~~Security Deposit:~~	
~~Room deposit, nonrefundable~~	~~Half of base room rental rate~~

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: **13**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Brian Burson, Current Planning Division

TITLE:
An Ordinance Approving a First Amendment to the Conceptual Master Plan and a First Amendment to the Annexation and Development Agreement for the Loveland Eisenhower First Subdivision, City of Loveland, County of Larimer, State of Colorado

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and adopt the ordinance on first reading, as presented.

OPTIONS:
1. Adopt the actions as recommended
2. Deny the actions
3. Adopt modified actions (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 to amend the annexation and development agreement and a quasi-judicial action to amend the Concept Master Plan for the Loveland Eisenhower 1st Subdivision. The amendments would allow development of 240-368 apartment units in the northeasterly portion of the site as an additional non-primary workplace use under the MAC zoning. With the proposed amendments, the original requirement set forth in the Concept Master Plan for a minimum of 23.9 acres of land area and 300,000 square feet of floor area to be developed for primary jobs would still be met. The applicant is Greg Parker representing Loveland Eisenhower Investments, Inc.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
The property is located at the northeast corner of East Eisenhower Boulevard and North Denver Avenue, lying between North Denver Avenue and the northerly extension of Sculptor Drive, consisting of approximately 58.8 acres. In 2010, the property was zoned MAC – Mixed Use Activity Center and incorporated into a consolidated development plan by approval of a Concept Master Plan. The existing Concept Master Plan allows development of various commercial, office, light industrial and retail uses to implement the policies for the E-Employment land use category. However, the Concept Master Plan does not include provisions for developing residential uses.

The developer proposes to amend the Concept Master Plan to allow 240-368 multi-family dwelling units in the northeasterly portion of the site as a non-primary workplace use. The amendments would also add appropriate development standards for the multi-family development. With the addition of the multi-family development the commitment to develop a minimum 23.9 acres of land area and 300,000 sq. ft. of floor area for primary workplace uses would remain a requirement of the Concept Master Plan.

Planning Commission conducted a public hearing to consider the proposed amendments on June 23, 2014. The Planning Commission unanimously recommends approval.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:
1. Ordinance
2. Staff Memorandum, dated August 19, 2014
3. Exhibits A-D

FIRST READING August 19, 2014

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING A FIRST AMENDMENT TO THE CONCEPTUAL MASTER PLAN AND A FIRST AMENDMENT TO THE ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE LOVELAND EISENHOWER FIRST SUBDIVISION, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

WHEREAS, on April 20, 2010, the Loveland City Council ("Council") adopted Ordinance No. 5495 approving the annexation of certain real property known as the Loveland Eisenhower Addition; and

WHEREAS, the Loveland Eisenhower Addition, the Allendale Fifth Subdivision to the City of Loveland, and a portion of Tract B of the Loveland Business Plaza First Addition were subsequently replatted as the Loveland Eisenhower First Subdivision, which plat was recorded with the Larimer County Clerk and Recorder on August 16, 2011 under Reception No. 20110049411; and

WHEREAS, the Loveland Eisenhower First Subdivision is zoned MAC – Mixed-Use Activity Center District and is subject to the requirements of Chapter 18.29 of the Loveland Municipal Code (the "Code"); and

WHEREAS, the Loveland Eisenhower First Subdivision is subject to an "Annexation and Development Agreement between Loveland Eisenhower Investments, LLC and the City of Loveland" dated April 20, 2010, which was approved by Council under Ordinance No. 5495 and recorded with the Larimer County Clerk and Recorder on May 28, 2010 under Reception No. 20100029958 (the "Annexation and Development Agreement"); and

WHEREAS, Section 2.2.14 of the Annexation and Development Agreement requires that all development occurring with the Loveland Eisenhower First Subdivision be subject to and consistent with a conceptual master plan prepared by Civitas and dated July 2009 (the "Conceptual Master Plan"); and

WHEREAS, as required by Section 18.29.050.B. of the Code, the Conceptual Master Plan specifies the general type, intensity, and location of land uses; and

WHEREAS, while multi-family uses are a use permitted by right under the MAC – Mixed-Use Activity Center District pursuant to 18.29.020 of the Code, the Conceptual Master Plan does not include multi-family residential uses within the contemplated "non-primary workplace uses"; and

WHEREAS, Loveland Eisenhower Investments, LLC (the "Owner"), as owner of all of the real property within the Loveland Eisenhower First Subdivision (the "Property"), desires to amend the Conceptual Master Plan to include multi-family residential uses within the contemplated "non-primary workplace uses" as set forth in the "Loveland Eisenhower Addition MAC Concept Master Plan Amendment # 1" prepared by MIG and dated April 2014 (the "First Amendment to the Conceptual Master Plan"); and

WHEREAS, on June 23, 2014, the Loveland Planning Commission held a public hearing to consider the proposed amendment and adopted a motion to make the findings listed in Section VIII of the Planning Commission Staff Report dated June 23, 2014 and, based on those findings, to recommend to Council that the First Amendment to the Conceptual Master Plan be approved; and

WHEREAS, amending the Conceptual Master Plan requires that the Annexation and Development Agreement also be amended to reflect adoption of the First Amendment to the Conceptual Master Plan, reference multi-family uses within the contemplated "non-primary workplace uses," and confirm that the amendment is consistent with the City's Comprehensive Master Plan.

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

Section 1. That Council has held a public hearing and received evidence and testimony and hereby makes the following findings with regard to the Owner's request to amend the Conceptual Master Plan to include multi-family residential uses within the contemplated "non-primary workplace uses" as set forth in the First Amendment to the Conceptual Master Plan:

Finding 1. That development of the Property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the First Amendment to the Conceptual Master Plan, would result in development that is consistent with relevant policies contained in Section 4.0 of the 2005 City of Loveland Comprehensive Master Plan, as amended.

Finding 2. That development of the Property pursuant to the First Amendment to the Conceptual Master Plan would be consistent with the purposes set forth in Section 18.04.010 of the Loveland Municipal Code, which purposes include, to: lessen congestion on the streets; secure from fire and panic; promote the health and general welfare; prevent the overcrowding of land; avoid undue concentration of population; facilitate adequate provision of transportation, water, sewage, schools, parks, and other public requirements; conserve the value of buildings; and encourage the most appropriate use of land.

Finding 3. That development of the Property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the First Amendment to the Conceptual Master Plan, would be consistent with the MAC – Mixed-Use Activity Center District as set forth in Title 18 of the Loveland Municipal Code, and the E –

Employment Center District as contemplated by the City's Comprehensive Master Plan designation.

Finding 4. That development of the Property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the First Amendment to the Conceptual Master Plan, would result in development that is compatible with existing land uses adjacent to and in close proximity to the Property to be affected by development of it.

Finding 5. That development of the Property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the First Amendment to the Conceptual Master Plan, would result in impacts on City infrastructure and services that are consistent with current infrastructure and services master plans.

Finding 6. That development of the Property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the First Amendment to the Conceptual Master Plan, would result in development that would not be detrimental to the health, safety, or welfare of the neighborhood or general public.

Section 2. That the "Loveland Eisenhower Addition MAC Concept Master Plan Amendment # 1," a copy of which is on file with the City's Current Planning Division, is hereby approved.

Section 3. That the "First Amendment to Annexation and Development Agreement" ("First Amendment") for the Loveland Eisenhower First Subdivision, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

Section 4. That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form of the First Amendment provided that such changes do not impair the intended purpose of the First Amendment as approved by this Ordinance. The City Manager and the City Clerk are hereby authorized and directed to execute the First Amendment on behalf of the City of Loveland.

Section 5. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading, unless the Ordinance has been amended since first reading, in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 6. That the City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with state statutes.

ADOPTED this _____ day of September, 2014.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

FIRST AMENDMENT TO ANNEXATION AND DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO ANNEXATION AND DEVELOPMENT AGREEMENT (this "Amendment") is made and entered into as of _____, 2014, by and between LOVELAND EISENHOWER INVESTMENTS, LLC, a California limited liability company (the "Owner") and the CITY OF LOVELAND, a municipal corporation, State of Colorado (the "City") (the Owner and the City are referred to herein together as the "Parties").

RECITALS

WHEREAS, the Owner and the City are parties to that certain Annexation and Development Agreement dated April 20 2010 and recorded May 28, 2010 at Reception No. 20100029958 (the "Agreement"), which governs the Property (as such term is defined in the Agreement); and

WHEREAS, the Property is zoned MAC – Mixed-Use Activity Center District; and

WHEREAS, the existing "Concept Plan" for the Project (as such term is defined in the Agreement) does not include multi-family residential uses, notwithstanding the fact that multi-family residential uses are permitted –within the MAC – Mixed –use Activity Center District; and

WHEREAS, the Owner desires to amend the existing Concept Plan to include within the contemplated "Non-Primary Workplace Uses" multi-family residential uses and confirm such amendments are consistent with the Comprehensive Plan (as such term is defined in the Agreement); and

WHEREAS, the Parties desire to amend the Agreement in accordance with the following terms and conditions.

AMENDMENT

NOW, THEREFORE, in consideration of the terms, conditions, and covenants set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree as follows:

1. Defined Terms; Recitals. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement. The Recitals are hereby incorporated into the terms of this Amendment.

2. Section 1.1. Section 1.1 of the Agreement consists of the definitions, as amended herein. The following definitions are hereby deleted in their entirety and replaced with the following:

1.1.6 Concept Plan. The concept plan for the Project prepared by ***MIG and dated as of April 2014, as approved by the City on _____, 2014***.

1.1.13 Non-Primary Workplaces Uses. Non-primary workplace uses include hotels, retail, convenience and service uses, restaurants – sit-down, drive in or fast food, child care, ***multi-family residential,*** and other uses intended to support and compliment Primary Workplace Uses.

1.1.15 Permitted Uses. The following uses shall be considered uses by right on the Property: retail, hotels, convenience and service uses, restaurants – sit-down, drive in or fast food, child care, office, research, light industrial, public and private schools, financial services, health care service facilities, hospitals, congregate care facility, long-term care facilities, ***multi-family residential***, medical and dental laboratories, print shop, research laboratory, and accessory buildings and uses. In addition, permitted uses on the Property shall include any other uses permitted by right under the MAC zone district.

1.1.24 Traffic Impact Study. The "Loveland-Eisenhower First Subdivision Traffic Impact Study" dated April 2009, ***and June 2010*** prepared by Delich Associates, ***together with the supplements thereto, entitled "Loveland-Eisenhower First Subdivision Transportation Impact Study Addendum for Alternative Site Plan 5A (File: 1399ME01)" and "Loveland-Eisenhower First Subdivision Transportation Impact Study Addendum for Alternative Site Plan 5B (File: 1399ME02)," both dated February 6, 2013, all*** as approved by the City.

3. Section 2.2.4. Section 2.2.4 of the Agreement is hereby deleted in its entirety and replaced with the following:

2.2.4 E- Employment. A minimum of forty-one (41) gross acres (which includes area to be dedicated for public right of way uses) within the Property shall be designated for uses consistent with the description of the E – Employment land use category as set forth in the Comprehensive Plan. Such uses shall include, without limitation, a mix of low to medium-rise office, light-industrial, education, retail, lodging, ***multi-family residential,*** and any other Permitted Uses. The E – Employment ***zoning district*** permits up to forty percent (40%) of the land area within the Annexation Parcel to be dedicated to Non-Primary Workplace Uses. ***Non-Primary workplace uses include housing intended to support and compliment primary workplace uses.*** The Comprehensive Plan designation of E – Employment for the Annexation Parcel requires that a minimum of twenty percent (20%) of the net developable area be reserved for open space.

4. Section 2.2.6. Section 2.2.6 of the Agreement is hereby deleted in its entirety and replaced with the following:

2.2.6 Comprehensive Plan Compliance. ***The non-residential portion of the Project will include a "campus-style" character with strong unifying design, open space features, together with view corridor protections and other development standards articulated in the E – Employment land use category. The Owner's development of the Project as one unified development permits up to thirty two and***

eight tenths (32.8) acres of the Property to include Non-Primary Workplace Uses in any location so long as the remainder of the Property is consistent with the requirements for the E – Employment land use category. The City hereby finds the densities, acreages and uses set forth on each alternative depicted on the Concept Plan shall be conclusively deemed to be in compliance with the Comprehensive Plan. The following chart sets forth a reconciliation of land uses presented in the Concept Plan to ensure Comprehensive Plan compliance for the Project.

(Chart on following page.)

		Existing Parcel	Annexation Parcel
Total Gross Site Area	58.8 Acres	17.4 Acres	41.4 Acres
Total Area Dedicated to R.O.W.	2.1 Acres	.5 Acres	1.6 Acres
New Site Development Area:	56.7 Acres	16.9 Acres	39.8 Acres

	Concept Plan Designation	Existing Parcel	Annexation Parcel	Project Total
Comprehensive Plan Designation		Corridor Commercial	Employment	
Allowable Zoning (excluding PUD)		B-Business MAC	B-Business E-Employment I-Industrial	MAC
Required Primary Workplace Uses	Office, Employment or Light Industrial		60% 23.9 Acres	23.9 Acres
Allowable Non-Primary Workplace Uses	Retail Restaurant MF Residential	100% 16.9 Acres	40% 15.9 Acres	32.8 Acres
Site Area		16.9 Acres	39.8 Acres	56.7 Acres
Open Space	Open Space	10% 1.7 Acres	20% 8.0 Acres	9.7 Acres

Notes:

1. Site areas presented represent a complilation of individual land use designations that are merged and re-distributed throughout the site in the concept Plan.
2. Open space excludes the Highway 34 corridor setback area on the Eastern Parcel pursuant to Section 18.30.040 of the Loveland Municipal Code. Highway 34 Corridor setbacks are included in open space calculations on the Western Parcel as allowed in Section 18.29 of the Loveland Municipal Code.
3. Open space excludes landscaped islands within parking lots.
4. Primary and Non-Primary Workplace Use areas will incorporate a minimum of 9.7 acres of open space throughout the Project site.

5. Exhibit B. Exhibit B of the Agreement is hereby deleted and replaced in its entirety with the attached **Exhibit B**, incorporated herein by reference.

6. Ratification. In the event of a conflict between this Amendment and the Agreement, the terms of this Amendment shall govern. Except as expressly amended by this Amendment, the Agreement is ratified in all respects.

IN WITNESS WHEREOF, the Owner and the City have executed this Amendment as of the date first written above.

OWNER:
LOVELAND EISENHOWER
INVESTMENTS, LLC,
a California limited liability company

By:_____
Richard L. Ridgway, Manager

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, personally appeared _____ who proved on the basis of satisfactory evidence to be the person whose name subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public

My commission expires: _____

CITY:
CITY OF LOVELAND,
a Colorado municipal corporation

By:_____
William D. Cahill, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

EXHIBIT B
Comprehensive Plan Compliance Checklist
{See Attached}

Loveland Eisenhower Addition

Comprehensive Plan Compliance Validation

	Previously Approved LEI Tracts	**Tract Proposed for Approval**	**Cumulative Project (Approved and Proposed)**	**Comprehensive Plan Requirements**	**Comp Plan Requirements able to be Satisfied with Remaining Acreage?**
Required Primary Workplace Uses	____ acres	____ acres	____ acres	23.9 acres	[ ] yes [ ] no
Allowable Non-Primary Workplace Uses	____ acres	____ acres	____ acres	32.8 acres	[ ] yes [ ] no
Residential Uses	____ acres	____ acres	____ acres	16 DU/Acre	[ ] yes [ ] no
Open Space	____ acres	____ acres	____ acres	9.7 acres	[ ] yes [ ] no
Traffic Study Addendum attached validates compliance with ACF exemption?					[ ] yes [ ] no
Tract proposed in compliance with Comprehensive Plan?					[ ] yes [ ] no
All uses proposed in compliance with MAC Zone?					[ ] yes [ ] no

Loveland Eisenhower Investments, LLC
a California limited liability company

By: _____
Richard L. Ridgway, Manager

City of Loveland

Development Services
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M E M O R A N D U M

TO: City Council

FROM: Brian Burson, City Planner II, Current Planning Division

DATE: August 19, 2014

SUBJECT: Loveland Eisenhower Concept Master Plan – Amendment #1

I. EXHIBITS:

A. Planning Commission Staff Report, dated June 23, 2014, including Attachments 1-10, as follows:

1. Project Narrative and Justification
2. Applicant's proposed findings
3. Applicant's Pro Forma
4. Executive Summary of Market Analysis prepared by King & Associates, Inc.
5. TIS Memo for Alternative 5 (aka 5A)
6. TIS Memo for Alternative 6 (aka 5B)
7. Assessment of Infrastructure Adequacy, prepared by Owen Consulting Group, Inc.
8. Concept Plan Amendment Land Use Study, prepared by TFG Design.
9. Loveland Eisenhower MAC Concept Master Plan – Amendment #1 (Amended portions of the text are indicated in highlight.)
10. Loveland Eisenhower 1st Subdivision (for information purposes only)

B. Approved June 23, 2014 Planning Commission minutes.

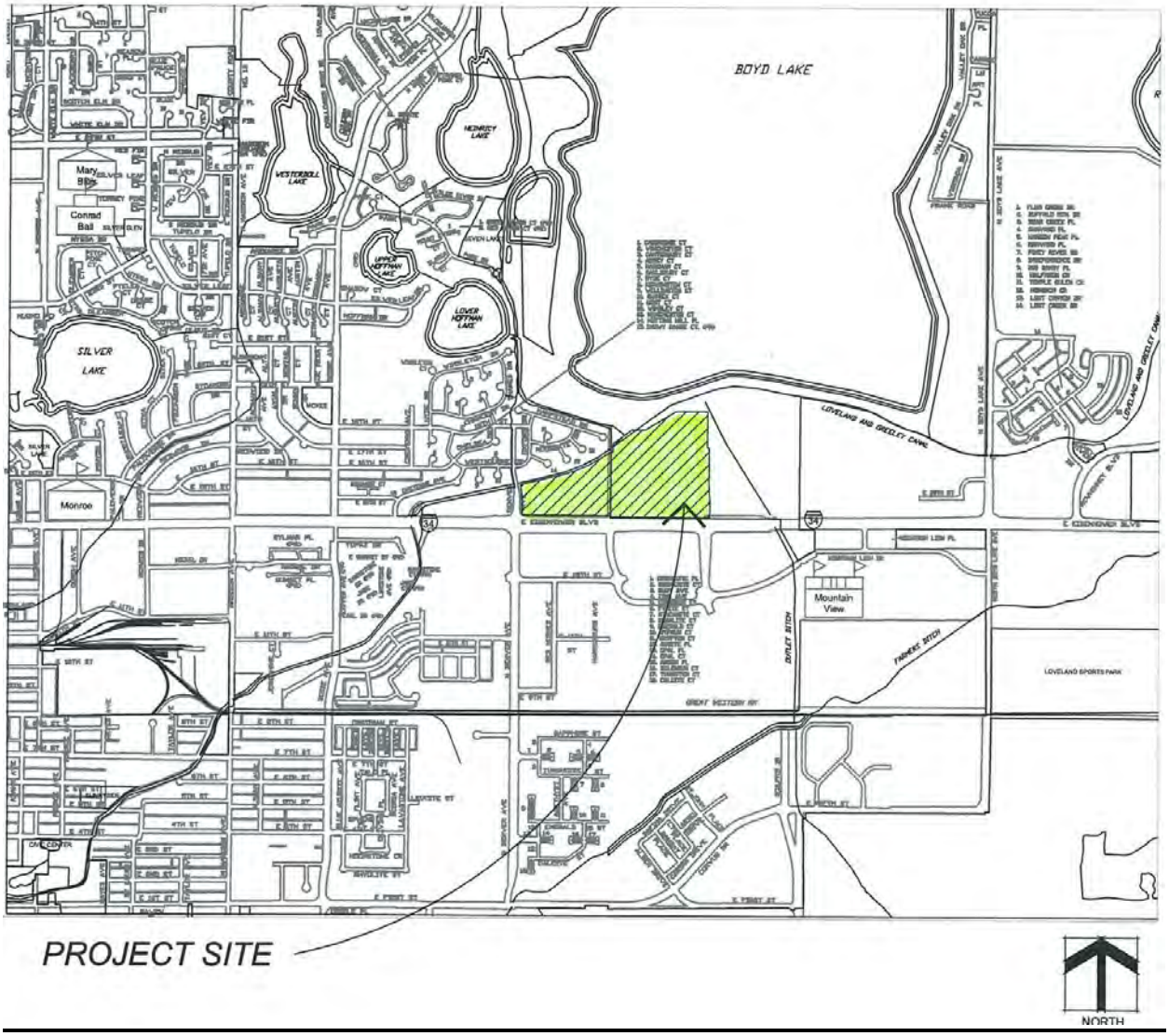
C. Staff presentation slides.

D. Applicant presentation slides.

II. EXECUTUVE SUMMARY:

This is a public hearing and legislative action to consider an ordinance related to the development of Loveland Eisenhower Addition, Allendale 5th Subdivision, and a portion of Tract B of Loveland Business Plaza 1st Addition, now known as Loveland Eisenhower 1st Subdivision. The property is located at the northeast corner of East Eisenhower Boulevard and North Denver Avenue, lying between North Denver Avenue and the northerly extension of Sculptor Drive.

Vicinity map:



The amendments propose to allow development of 240-368 apartment units in the northeasterly portions of the site as an additional "non-primary workplace use" under the MAC zoning and Concept Master Plan.

The City Comprehensive Plan recommends Employment uses for the eastern portion of the site. In order to implement the City policies for this land use category, the Concept Master Plan must designate the areas that will be developed with each of the two categories of "primary workplace uses" and "non-primary workplace uses", and provide development standards that would be implemented for all the uses allowed. The original Concept Master Plan included the required criteria and standards to implement this policy.

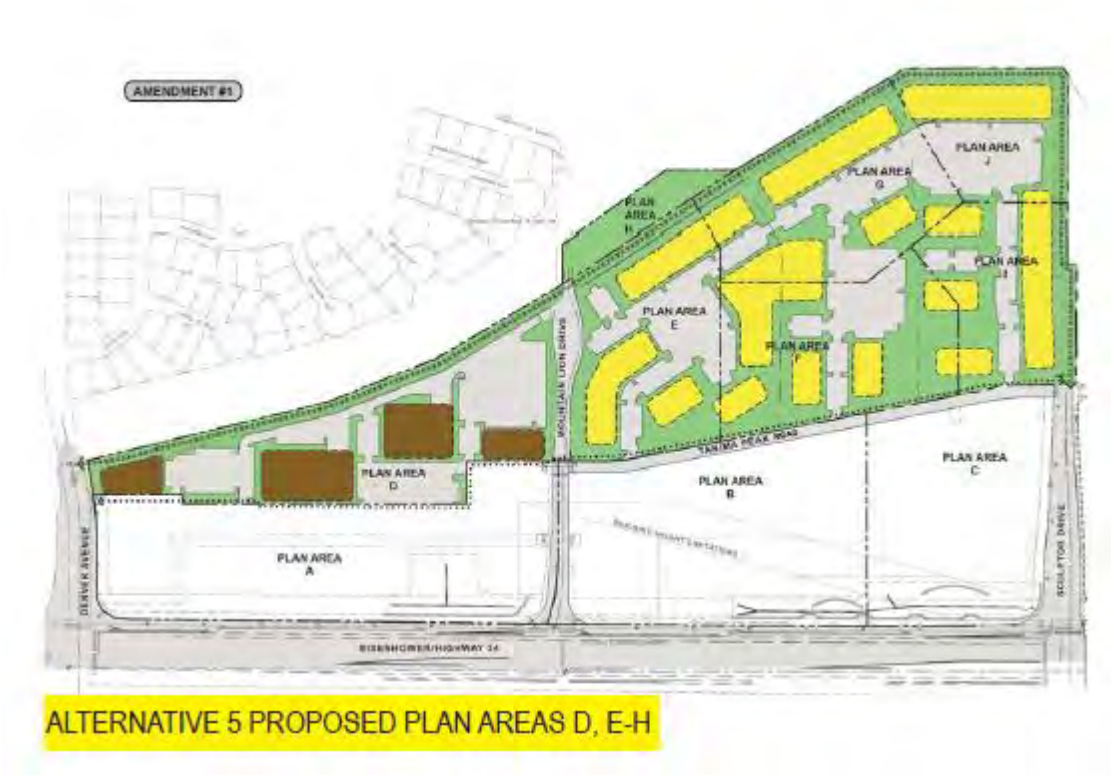
Original Base Plan Development Scenario:

In order to make the proposed changes, the Concept Master Plan must be amended to show the areas to be used for multi-family development, add appropriate multi-family development standards, and amend the annexation and development agreement to assure consistency between the amended plan and the agreement. Staff believes this has been appropriately accomplished in the amended plan and agreement. The proposed amendments continue to assure that at least 23.9 acres of land and 300,000 square feet of floor area will be provided for Primary Workplace Uses in this development. This preserves the same ratio of uses as approved in the original plan and is consistent with adopted City policies and codes. Implementation of the plan will require the developer and the City, to track this ratio consistently and accurately to assure fulfillment of this goal for actual development over time.

Development Concept for 240 apartment units:

ALTERNATIVE 6 PROPOSED PLAN AREAS B, C, E-H

Development Concept for 368 apartment units:



III. KEY ISSUES:

A. Staff believes that all key issues regarding the application have been identified and resolved through the staff review process, including the following:

1. The amount of land to be devoted to multi-family development,

2. The proportion of land to be developed for both primary workplace uses and non- primary workplace uses,

3. Assuring that the location, orientation, and internal connections of the multi-family areas are appropriate for the site,

4. Assuring that necessary utility and street improvements will be adequate and available to meet the City standards

B. Planning Commission Hearing:

Planning Commission conducted a public hearing for the application on June 23, 2014.

a. Neighborhood questions and concerns include the following:

1. Will private open space and parks be provided in the multi-family areas?

Response – Area for private open space is incorporated into the multi-family development scenarios.

2. Will traffic congestion occur at the west access from Denver?

Response –Traffic volume using the Denver access is a concern to the City and developer. The internal circulation pattern is specifically intended to limit the number of vehicles will use the Denver access.

3. Vehicles using the Denver access will use the adjacent neighborhood as a shortcut to Boise Ave.

Response - The internal circulation pattern is specifically intended to limit the number of vehicles will use the Denver access.

4. Proximity of development to the Greeley-Loveland Canal will increase the likelihood and volume of pedestrian and vehicular trespass onto that land and the Boyd Lake shore area.

Response – Access is gated. Trespass would be dealt with by normal means involving law enforcement.

b. Planning Commission questions and concerns included the following:

1. Will the multi-family HOA have a relationship with the owners association for the non-residential portions of the development?

Response –They would participate in an overall owners association for the entire development

2. Will the open space and park areas in the multi-family areas be available to the public?

Response – No, they will be private, just as any other private residential open space.

3. Does CDOT support the project?

Response – They have reviewed the development plans to date and support the project based on the improvements to Hwy 34 show on plans approved.

4. Will the pedestrian crossing for Eisenhower Blvd. be safe for students travelling back and forth to school?

Response – Pedestrian crossing improvements will meet City and CDOT requirements.

5. Will rent/lease rates include HOA fees to assure that residents will have access to the private open spaces and amenities?

Response – This will be up to the multifamily developer.

After receiving all information and testimony, the Planning Commission voted unanimously to recommend approval, by a vote of 7-0.

IV. RECOMMENDATION:

Staff recommends that City Council conduct a public hearing and approve the ordinance, on first reading, thereby approving the amendments to the annexation agreement and the Loveland Eisenhower Concept Master Plan - Amendment #1.

V. CONDITIONS

There are no recommended conditions from either staff or the Planning Commission.

City of Loveland

Development Services
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Planning Commission Staff Report

June 23, 2014

Agenda #: **Regular Agenda - 2**

Title: Loveland Eisenhower 1st Subdivision

Applicant: Loveland Eisenhower Investments, Corp.

Request: MAC Concept Master Plan – Amendment #1

Location: along the north side of East Eisenhower Boulevard, between North Denver Avenue and the northerly extension of Sculptor Drive

Existing Zoning: MAC – Mixed-Use Activity Center

Proposed Zoning: No change

Staff Planner: Brian Burson

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 VIII. of this report dated June 23, 2014; and, based on those findings, recommend that MAC Concept Master Plan – Amendment #1 be approved for Loveland Eisenhower 1st Subdivision."

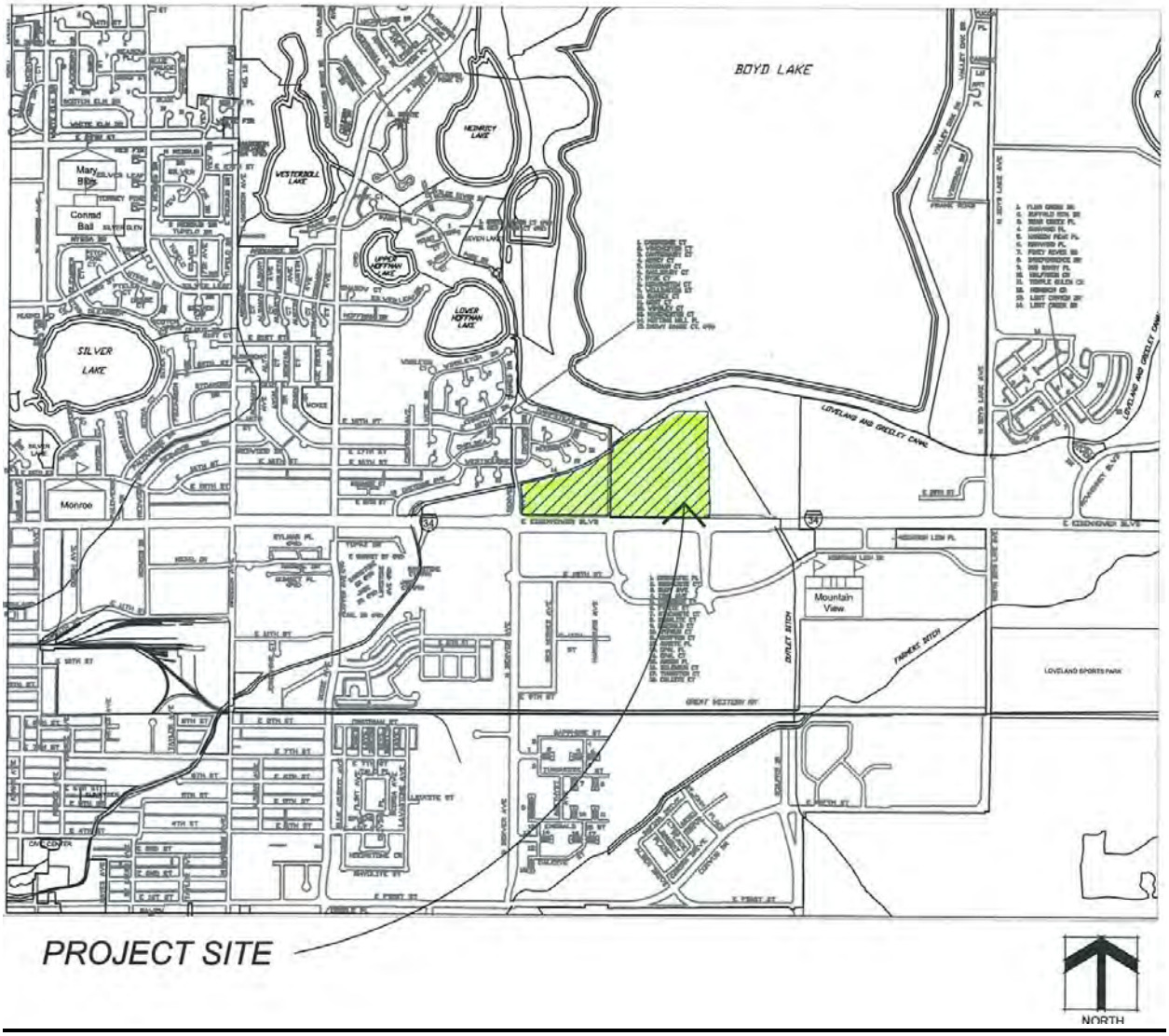
Summary of Analysis:

This is a public hearing to consider an amendment to the MAC Concept Master Plan for the Loveland Eisenhower 1st Subdivision, consisting of 58.8 acres of vacant land along the north side of East Eisenhower Boulevard between Denver Avenue and Sculptor Drive. The amendment would allow the development of 240-368 apartment units in the northeast portion of the site. While dwelling units are allowed within the MAC Zone, the originally approved Concept Master Plan, approved in 2009, did not identify residential development among the mix of uses planned for the site. The very low vacancy/availability rate for multi-family housing in Loveland, as well as market conditions and funding sources has prompted the Applicant to seek approval for this additional use in the development.

Staff supports the requested amendment because the amended plan would still provide the same minimum proportion of land area and floor area to be developed for primary workplace uses; and because the impacts to City facilities, other approved uses in the site, the neighborhood, and the general public would not increase.

EXHIBIT A

I. VICINITY MAP:



II. SUMMARY:

This is a public hearing to consider an amendment to the MAC Concept Master Plan for the Loveland Eisenhower 1st Subdivision. The amendment would allow development of 240-368 apartment units in the northeast portions of the site as an additional "non-primary workplace use" in the development. (The amended portions of the text are indicated in highlight.) The Concept Master Plan must designate the areas that will be developed with each of the two categories of "primary workplace uses" and "non-primary workplace uses", and provide development standards that would be implemented for all the uses allowed. The amended plan includes all of these provisions.

EXHIBIT A

The original Concept Master Plan for the site was approved in 2010, at the time of annexation of Loveland Eisenhower Addition (the eastern portion of the site). Under the policies of the City's Comprehensive Plan, as applied to this site, the Concept Master Plan must stipulate the areas of the site that will be devoted to primary workplace uses and non- primary workplace uses. Multi-family dwellings is a non- primary workplace use allowed in the both the MAC and E zone districts, but the original Concept Master Plan approved did not include this as a proposed use.

Since approval of the original plan, the Applicant has been unsuccessful in marketing the property. The Applicant believes this is largely due to the major upfront costs for installing the Phase 1 utility and street improvements necessary to allow any first user to develop on the site. It is believed that there is strong market interest for development of multi-family units on a portion of the site. This is seen as a potential source of funding of Phase 1 improvements which would lead to the increased likelihood for development of other uses already allowed. The very low vacancy/availability rate for multi-family housing in Loveland, as well as other market conditions and funding sources has prompted the Applicant to seek approval for this additional use in the development. These factors are documented by the Market Analysis prepared by King & Associates, Inc. (See **Attachment #4**.)

At the time of annexation of Loveland Eisenhower Addition, the City and the Applicant worked together to determine the uses, the land areas and the shared design elements that would be used for development of the site. The approved plan implemented the recommendations of the Comprehensive Plan satisfactorily for combined land use categories of CC-Corridor Commercial and E-Employment. The City subsequently approved the Loveland Eisenhower 1st Subdivision to consolidate the site into a single platted property and create tracts that match the boundaries of the sub-areas in the Concept Master Plan. The approved plan provides the minimum land area and floor area to satisfy the City's goals for Employment under the stipulated provision that 60 per cent of the site will be devoted to "primary workplace uses" while allowing 40 per cent to be used for "non-primary workplace uses". City policies and codes do not define the terms "primary workplace uses" and "non-primary workplace uses". However, "primary workplace uses" are described as uses such as office, research or light industrial. "Non-primary workplace uses" are those that "complement and support" the primary workplace uses, and include uses such as hotels, retail, convenience and service uses, restaurants, child-care, housing and other uses. The distinction might best be described by the following question: "Do most people who come there come because they work there ("primary workplace uses"), or do they come to acquire goods and services offered at the consumer level "non-primary workplace uses"?

The original Concept Master Plan shows a base land use pattern for locating the various land uses, and augments this with three alternative scenarios that could also be allowed, subject to the same overriding requirements for shared design and the 60/40 proportion of pertinent land area. The amended plan adds two additional alternatives which would allow apartments in northeasterly portions of the site. For the originally approved plan, as well as the amended plan, it is essential to note the following:

- the 60/40 ratio of land use categories was only applied to the eastern portion of the site – that part that was recommended for Employment uses.

- the western portion of the site, which was recommended for Corridor Commercial uses, was not subject to the 60/40 ratio, therefore more than 40 % of the total site is allowed to have non-primary workplace uses.

- to assure that the pertinent 60/40 ratio is met for the pertinent proportion of the development, the plan specifically states that a minimum of 23.9 acres of land with a minimum of 300,000 sq. ft. of floor area will be developed for primary workplace uses.

- all of the development scenarios are very conceptual and are not intended to actually show proposed development designs. They only depict that there is generally sufficient land area to develop the land area, floor area, parking, circulation, and open space to accommodate the totals and sub-totals allowed.

- none of the development alternatives are based on locating all of the primary workplace uses in the eastern portion of the property, based on the strict application of the Comp Plan. They are instead located throughout the site, indicated by the color code along the right hand margin of the sheets.

- some of the development scenarios do not necessary fit in the existing boundaries of platted tracts. Once development of specific uses and locations is identified, the properties may have to be re-platted to accommodate the perimeters of the developments. However, under shared parking arrangements, development perimeters may still not exactly follow lot lines.

The analysis provided above has prompted staff to fully support the proposed amendment. This will place a long-term burden on the underlying master developer, as well as the City, to track this data consistently and accurately to assure fulfillment of this goal.

Planning Commission's role is quasi-judicial, which means their consideration and recommendation is to be made on the basis of adopted policies, codes and standards as they apply to this property, and the specific information submitted by the Applicant and/or presented at the hearing by all parties. Planning Commission must evaluate whether the application meets the appropriate criteria/findings and forward their recommendations to the City Council for a subsequent public hearing and final decision, currently scheduled for August 5, 2014. The appropriate criteria/findings, along with staff analyses, are provided below in Section VIII. of this staff report.

III. KEY ISSUES:

Key issues for this project are:

- the amount of land to be devoted to multi-family development,
- the proportion of land to be developed for both primary workplace uses and non- primary workplace uses,
- assuring that the location, orientation, and internal connections of the multi-family areas are appropriate for the site,
- assuring that necessary utility and street improvements will be adequate and available to meet the City standards

IV. ATTACHMENTS:

1. Project Narrative and Justification
2. Applicant's proposed findings
3. Applicant's Pro Forma
4. Executive Summary of Market Analysis prepared by King & Associates, Inc.
5. TIS Memo for Alternative 5 (aka 5A)
6. TIS Memo for Alternative 6 (aka 5B)
7. Assessment of Infrastructure Adequacy, prepared by Owen Consulting Group, Inc.
8. Concept Plan Amendment Land Use Study, prepared by TFG Design.
9. Loveland Eisenhower MAC Concept Master Plan – Amendment #1 (Amended portions of the text are indicated in highlight.)
10. Loveland Eisenhower 1st Subdivision (for information purposes only)

V. SITE DATA:

ACREAGE OF SITE (GROSS ACRES)	58.8 ACRES
COMP PLAN DESIGNATION	CC – CORRIDOR COMMERCIAL & E –EMPLOYMENT
EXISTING ZONING	MAC-MIXED USE ACTIVITY CENTER
EXISTING USE	VACANT/SEASONAL RETAIL
PROPOSED USE	MIXED USE ACTIVITY CENTER
NUMBER OF DWELLING UNITS PROPOSED	248-368 DU
GROSS DENSITY (DU/A)	16 DU/AC
NET DENSITY (DU/A)	NA
EXISTING ADJACENT ZONING AND USE - NORTH	R1-UD; SF RES/LARIMER COUNTY FA-FARMING; BOYD LAKE & GREELEY WATER TREATMENT PLANT
EXISTING ADJACENT ZONING AND USE - EAST	LARIMER COUNTY C-COMMERCIAL; AG & GREELEY WATER TREATMENT PLANT
EXISTING ADJACENT ZONING AND USE - SOUTH	B-DEVELOPING BUSINESS/P-59; BUSINESS & COMMERCIAL
EXISTING ADJACENT ZONING AND USE - WEST	P-70; RETAIL & COMMERCIAL
UTILITY SERVICE PROVIDER - SEWER	CITY OF LOVELAND
UTILITY SERVICE PROVIDER - ELECTRIC	CITY OF LOVELAND

EXHIBIT A

UTILITY SERVICE PROVIDER - WATER..... CITY OF LOVELAND

VI. BACKGROUND:

5/15/84 – approval of Allendale Plaza Addition (western portion of the property - west of Mountain Lion Drive extension). The property was originally zoned R3 and DR.

4/11/2001 – approval of Allendale Plaza 3rd Subdivision to create lots, streets and easements for development of multi-family dwellings.

4/16/2001 – Approval of Final Development Plan for Stone Meadows PUD to allow development of 252 multi-family units in Allendale Plaza 3rd Subdivision.

7/31/2003 – Approval of Final Development Plan Amendment #1 to allow development of 276 multi-family units in Allendale Plaza 3rd Subdivision, and amending the name to Mountain View Apartments PUD.

10/14/2003 – approval of Allendale 5th Subdivision to relocate platted building envelopes to match the amended FDP plan.

4/20/2010 – Approval of Loveland Eisenhower Addition (eastern portion of the property - east of Mountain Lion Drive extension), accompanying Loveland Eisenhower MAC Concept Master Plan (for the entire development site), and extensive annexation agreement.

8/5/2011 – Approval of Loveland Eisenhower 1st Subdivision to incorporate all of the development into a unified subdivision and to create initial tracts for sale of individual portions to potential developers.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION:

A. Notification: An affidavit was received from TFG Design certifying that notice of this hearing was mailed to all owners of property within 1,200 feet of the site, and that notices were posted in prominent locations on the perimeter of the project site at least 15 days prior to the date of the Planning Commission hearing. A notice was also published in the Reporter Herald on June 7, 2014. All notices stated that a public hearing would be held by the Planning Commission on June 23, 2014 at 6:30 pm.

B. Neighborhood Response: A noticed neighborhood meeting was held at 6:30 pm on May 22, 2014 in the City Council Meeting Room. Twenty-three persons attended the meeting, along with City staff and the Applicant team. The concerns and question expressed by the neighborhood at the meeting, and responses provided included the following:

- How can traffic impacts decrease when revising from commercial uses to residential uses?

Response: The TIS was prepared by a professional traffic engineer. The results are based on nationwide studies by professional traffic engineers, and this is consistently shown by such studies.

- What building heights are proposed?

Response: Non-residential buildings will be 2-story, and multi-family will be 3-story.

- Where are the access points to the development and how will access and circulation affect Denver Avenue and the neighborhood to the north?

Response: Primary access points are at Mountain Lion Drive and Sculptor Drive. The access to Denver is minor and is deliberately shown on the Concept Master Plan as a circuitous path through the parking lots to discourage access to/from Denver Ave.

- What are the time-lines for the development?

Response: Residential is likely to begin soon after approval of plans by the City. Non-residential will be market-driven and is unknown.

- Will traffic lights be installed at Mountain Lion Drive and Hwy 34?

Response: No. This will be limited access.

- What prices are anticipated for the apartments?

Response: Currently anticipated to be approx. $ 1100 – $1200 per month

- Is there any potential for oil and gas extraction on the site?

Response: The applicant does not believe there are any gas or oil reserves underlying the site.

- Would the City install traffic calming measures on Denver Ave north of the site and/or along E. 18th Street?

Response: This can be considered by the City upon request, but no plans to do so are part of this development.

- Will the City Trail crossing of Denver Avenue be signalized?

Response: Yes. This is shown the approved Public Improvements Construction Plans for the development.

- Does the Denver access line with the access across the street for 34 Marketplace?

Response: Yes. This is a City requirement, and is another reason to keep the Denver Ave. access to a minor access.

- What will site work construction hours be?

Response: As allowed by City code.

- What kind of commercial uses have inquired about development?

Response: General and typical uses such as retail, restaurants, offices, etc., but no major/high volume employers

- Will there be any subsequent opportunities for neighborhood input?

Response: Planning Commission and City Council hearings will be scheduled soon and subsequent notice will be provided.

The meeting was adjourned at approximately 7:40 pm.

VIII. FINDINGS AND ANALYSIS

In this section of the report, applicable findings are recommended in italic print, followed by staff analysis as to whether the findings can be met by the submitted application. The consideration and action of the Planning Commission should focus on these findings as being the appropriate basis for their action.

> ***Finding 1.*** *Development of the property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would result in development that is consistent with relevant policies contained in Section 4.0 of the 2005 Loveland Comprehensive Plan, as amended.*

Current Planning: Staff believes this finding can be made, based on the following:

The uses allowed in the MAC zone and proposed in the Amended Concept Master Plan would be consistent with the Comprehensive Plan. The development standards in the Amended Concept Master Plan, and as provided by applicable City codes and standards, will also assure that development would be consistent with the Comprehensive Plan.

> ***Finding 2.*** *Development of the property pursuant to the plan would be consistent with the purposes set forth in Section 18.04.010 of the Loveland Municipal Code.*

Current Planning: Staff believes this finding can be made, based on the following:

The purposes of the zoning code include:

- Lessen congestion on the streets
- secure from fire and panic
- promote the health and general welfare
- provide adequate light and air
- prevent the overcrowding of land
- avoid undue concentration of population
- facilitate adequate provision of transportation, water, sewage, schools parks and other public requirements
- conserve the value of buildings
- encourage the most appropriate use of land

By controlling the number, location and type of intersection control, congestion the streets will be lessened. Development will be governed by all applicable City standards to assure adequate fire access, circulation and fire prevention measures. Providing a mix of uses on the same site makes it me convenient to access desired goods services and employment. Control of building locations, orientation, height and setbacks will assure adequate light and air; prevent the overcrowding of land; and avoid inappropriate concentration of population. The development of the site based on the standards in the Amended Concept Master Plan, and as provided by applicable City codes and standards, will assure adequate provision of all necessary transportation water, sewage, parks and other public requirements. Number and location of schools for the community are determined by the pertinent school districts and is not under the authority of the City. The development of the site based on the standards in the Amended Concept Master Plan, and as provided by applicable City codes and standards, will assure the quality of building design and appropriate uses.

> ***Finding 3.*** *Development of the property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would be consistent with the MAC- Mixed Use Activity and in the E- Employment Center zone district, as set forth in Title 18 of the Municipal Code.*

Current Planning: Staff believes this finding can be made, based on the following:

The uses proposed in the plan are consistent with the uses allowed in both the MAC zone district and in the E zone district. The proportion of primary workplace uses and non-primary workplace uses will also be consistent with the provisions of the E- Employment Center zone district.

> ***Finding 4.*** *Development of the subject property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would result in development that is compatible with existing land uses adjacent to and in close enough proximity to the subject property to be effected by development of it.*

Current Planning: Staff believes this finding can be made, based on the following:

At the time of approval, the original Concept Master Plan was determined to be compatible with existing and proximate land uses. With addition of multi-family development, as depicted and described in the amended plan, the proposed uses will remain compatible with existing and proximate land uses.

> ***Finding 5.*** *Development of the subject property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would result in impacts on City infrastructure and services that are consistent with current infrastructure and services master plans.*

PW-Transportation: All future development within this proposed property shall be in compliance with: the City's Adequate Community Facilities (ACF) Ordinance; the City of Loveland 2035 Transportation Plan; the Larimer County Urban Area Street Standards (LCUASS), and any updates in effect at the time of development. Moreover, as identified in the City Municipal Code Title 16, a Traffic Impact Study shall be required with all future development or other land use applications. Additionally, the developer's traffic engineer has submitted revised traffic information that demonstrates that the proposed amendment to the MAC Concept Master Plan will generate less peak hour traffic than what was previously approved.

Development of the subject property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would result in impacts on City streets that are consistent with the City's 2035 Transportation Plan. Therefore, pending future proposed development within this property, of which review and approval by the City is required, the Transportation Engineering Staff does not object to the proposed amendment to the MAC Concept Master Plan.

Water/Wastewater: This development is situated within the City's current service area for both water and wastewater. The Department finds that the Development will be compliant to ACF for the following reasons:

The Department finds that proposed Concept Plan Amendment to allow residential uses is consistent with the Department's Water and Wastewater master plan and is consistent with the 2005 Comprehensive Master Plan.

Power: The source of power for the proposed development will come from a 200 amp three phase underground system located in vaults at two different locations one being in the northwest corner of the proposed development and the other one located on the northwest corner of East Eisenhower Blvd. and the proposed Mountain Lion Drive area. These vaults will be the source for electric distribution to be routed throughout the proposed development. Power would also like to have an access road off of Denver Avenue as well as one off of E. Eisenhower in the vicinity of the future Mountain Lion Drive area. There are electrical vaults located in each of these areas that will be needed to provide a loop feed for phase 1 of the project.

The existing underground feeders is an available and adequate source for electric distribution for the proposed development. No negative impacts on the City's electric system are foreseen.

PW-Stormwater: Staff believes that this finding can be met, due to the following:

Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and service master plans.

Fire: All future development within this proposed property shall be in compliance with the currently adopted International Fire Code and NFPA standards. Therefore, pending future proposed development within this property, of which review and approval by the City is required, and of which the LFRA will be part of, the Fire Department does not object to the proposed amendment to the MAC Concept Master Plan.

Development of the subject property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company.

All future development within proposed property will not negatively impact fire protection for the subject development or surrounding properties.

Parks and Rec: The proposed development is located between the existing City Recreation Trail system along Denver Ave on the west and the Waterfall 4th Subdivision on the east. The Park & Recreation Master Plan shows a trail connection through this project to the 'Lakes at Centerra' subdivision, east of Boyd Lake Ave. The Parks Department has already secured a trail easement through the Waterfall 4th Subdivision and has already secured an easement at this project to align the proposed trail. Through dedication of the easement, the applicant has met the intent of providing adequate community facilities.

> ***Finding 6.*** *Development of the subject property pursuant to any of the uses permitted by right under the zoning district, and as proposed in the plan, would result in development that would not be detrimental to the health, safety, or welfare of the neighborhood or general public.*

Current Planning: Staff believes this finding can be made, based on the following:

At the time of approval of the original Concept Master Plan, the City determined that development of the proposed uses would not be detrimental to the health, safety or welfare of the neighborhood or general public. Addition of multi-family development to the allowed uses, as depicted and described in the amended plan, will also not be detrimental to the health, safety and welfare of the neighborhood or general public.

VIII. RECOMMENDED CONDITIONS:

There are no staff recommended conditions for these applications.

EXHIBIT A

Background

The Loveland-Eisenhower property is located on the north side of East Eisenhower Blvd., east of Denver Ave. and west of the northerly extension of Sculptor Drive and south of Boyd Lake. The total gross site area is 58.8 acres, the total dedicated Right of Way 2.1 acres. The total net site area is 56.7 acres. The original Concept Plan, approved in 2009, provided alternatives for the development of the property in compliance with the Loveland Comprehensive Plan, the Eisenhower Corridor Plan, the annexation status of the properties and the establishment of a uniform zoning for the property. With the City of Loveland's approval of the Concept Plan, the entire parcel was included in a single subdivision plat with MAC zoning applied to the entire parcel. The plat divided the property into 10 tracts and dedicated easements for private access, utilities and storm water management.

The Subdivision Plat application included Public Improvement Construction Plans (PICP) for the Eisenhower frontage, Denver Ave., Sculptor Drive and an internal private roadway system, main line utility extensions and drainage plan. The plans also included improvements to the Boise Ave. intersection, when the traffic warrants are reached. A phasing plan was included with the PICP's, and a Development Agreement dated August 12, 2011 which committed to the development of Eisenhower and the internal drives with the first phase, unless the first phase was limited to a small portion of the property located at the corner of Denver Ave. and Eisenhower, where traffic warrants would be limited to Denver Ave. improvements only. The cost to develop the property's infrastructure improvements has been calculated to be in excess of $13.8 million.

The Concept Plan identified various uses and densities for commercial, employment and retail development. It was designed and approved to allow the property owner extensive flexibility to respond to market demands for portions of the property. It also established a minimum of 23.9 acres and 300,000 ft.^{2} of improvements to be devoted towards "primary workplace uses". The base Concept Planned presented with 4 alternatives to allow for flexibility in making development decisions for appropriate marketing potential. At the time, residential use was not expressly identified as one of the alternatives, though it was (and remains) an allowed use under the Concept Plan, in the MAC zoning district and with respect to the uses described in the Comprehensive Plan.

Concept Plan Amendment Analysis

This proposed Concept Plan amendment provides to depictions of an alternative for multifamily use of a portion of the property. Each option also shows how remaining portions of the property will satisfy the Concept Plan's required minimum of 23.9 acres and 300,000 ft.^{2} of primary workplace uses".

This Concept Plan amendment sets forth two additional alternatives that would provide for multi-family residential uses. Alternative 5A depicts the possibility of 368 dwelling units on 23.41 acres. Alternative 5B shows a potential for 240 total dwelling units on 15 acres.

MAC Zoning
In both alternatives the density does not exceed 16 dwelling units per acre and there is adequate development potential for primary workplace uses within the subject property. The land area dedicated to residential use is no more than 50% of the land area as required by the MAC zoning district. The applicable zoning codes are referenced below.

Applicable Zoning Codes:
Section 18.29: MAC District – Mixed-Use Activity Center District

1. 18.29.020: Uses Permitted by Right, (JJ) Dwelling, Multi-Family
2. 18.29.040: Development standards (See Amendment Narrative for a detailed explanation of compliance to these standards.)
3. 18.29.050: Development approval; (C) Plan Modifications: "*Modification to the conceptual master plan is required to show compliance with Section 18.29.040 Development Standards, or that comply with Section 18.29.060 Schedule of Flexible Standards. Changes to permitted uses or substantial changes to the location of land uses as depicted on the conceptual master plan shall be submitted for review and recommendation by the Planning Commission with final approval by the City Council.*"
4. 18.29.60 Schedule of flexible standards *(6) "There shall be no limit on the amount of land area within a MAC district that may be devoted to residential use; however, for projects exceeding 50 percent residential land area, the applicant must demonstrate that sufficient land area is devoted to commercial use within the project, or within the vicinity of the project, to meet future commercial needs and demands. Such evidence may consist of a market analysis and/or an analysis of development trends and existing and proposed land uses within the vicinity of the project.*

Comprehensive Plan

The proposed concept plan amendment further complies with the Loveland Comprehensive Plan. As shown on the Land Use Summary shown below, the total site area is subject to two Comprehensive Plan districts: The west 17 acres is in the Corridor Commercial District, and the Eastern 40 acres is within a Comprehensive Plan Employment District (not to be confused with the E-Employment zoning District). In connection with the annexation of the easterly 40 acres of the property, the Concept Plan and the Annexation and Development Agreement established the developable area for primary workplace uses to be 60% of the portion of the property subject to the Employment District, or 23.9 acres.

Conversely, the Concept Plan and the Annexation and Development Agreement established allowable non-primary workplace uses at 32.8 acres. The proposed multifamily residential use contemplated by this amendment will simply be included in the other non-primary workplace uses. The Comprehensive Plan states: *"A proposed development plan that does not contain office or light-industrial uses may be found consistent with the Employment Center category if, in the vicinity of the proposed development plan, office or light-industrial uses exist or the zoning for such uses is in place such that these uses or zoning constitute the predominant land uses." The attached exhibit shows this element of the Comprehensive Plan is satisfied since primary workplace uses and zoning constitute the predominant land use in the area.*

In the case of the Loveland Eisenhower Addition, allowing residential use as proposed will not diminish the ability for light industrial or office use to develop in the immediate area. Each of the proposed multifamily residential alternatives attached clearly demonstrates how the Concept Plan's minimum primary workplace use commitment may be met on other portions of the property.

Concept Plan
The Concept Plan states: In no event will the Project, once built out, contain less than 23.9 acres developed with no less than 300,000 square feet of buildings designed to house Primary Workplace Uses. Alternatives 5A and 5B show that this commitment will be preserved.

Justification

The primary impediment to the development of portions of the property for primary workplace uses is the infrastructure required. As mentioned above, the property will require approximately $13.8 Million of on and off-site infrastructure to be constructed. The investment in infrastructure requires a simultaneous development of substantial acreage, 20-25 acres, depending on the use. There has been no market for the approved uses which would consume substantial acreage in a single transaction. Smaller "one-off" transactions with single owner/occupant users are not feasible, as single transactions will not support the required investment in infrastructure and cannot be built without it.

From a marketing perspective, the property is not situated in a prime location that would attract large project employment uses. Regional employers require locations providing more convenient access to employees residing in different communities. Alternatively, they require a synergy with adjacent or nearby large employers. Substantial project Employment uses which come to Loveland are more attracted to large parcels of Employment allocated land found at the intersection of I-25 and Highway 34 or near the Rocky Mountain Center of Innovation and Technology (RMCIT) in southwest Loveland. There has been no market activity for Employment uses on the subject property for the past six years.

Development for primary workplace uses cannot be undertaken as a speculative investment in the present or reasonably foreseeable markets. The City of Loveland has seen firsthand with the Boyd Lake Village development project the risk of building a substantial infrastructure on a speculative basis. That development, which is located a very short distance from the subject property, was unable to financially support the infrastructure that was built and ultimately the developer lost the property. It remains substantially undeveloped today.

The market analysis prepared by King and Associates, April, 2013, concludes that overall, Loveland has a 195-year supply of land suitable for primary workplace uses. This appears to be more than adequate land available to satisfy any foreseeable demand for primary workplace uses opportunities in Loveland. The RMCIT site alone has 800,000 square feet of existing buildings and could support 1.3 million to 2.1 million square feet of primary workplace use Improvements. The RMCIT is a very high profile site prominently featured in Loveland business recruiting efforts. RMCIT could alone consume all forecasted primary workplace development for Loveland for the next 10 years.

Conversely, the City of Loveland has a shortage of rental housing opportunities. Loveland suffers from one of the lowest vacancy rates in the Front Range. The King and Associates report shows that a vacancy rate below 10% signals that there is a shortage of available apartment units. Prospective owners or users of primary workplace properties moving to the area need to be conscious of available housing for their employees. Our experience is shown that a shortage of available housing is a detriment to attracting future primary workplace uses to the City of Loveland.

We have supplied a financial pro forma for 368 Apartment unit project. This shows the financial impact of the development of a portion of the subject property in multifamily residential use will provide the necessary cash flow to develop the major infrastructure improvements for the Property. Any shortfalls between the infrastructure supported by this size of a housing development will be required to be made up by the property owner through cash investment or the sale or development of other portions of the property at the same time.

The completion of the project infrastructure will overcome the most significant impediment to the development of the property for primary workplace uses. Once the infrastructure is completed, all lots in the property will be immediately available for development of primary workplace uses and other uses necessary to create a vibrant community on the property. This would allow the property owner to respond promptly to any market transactions because the property would then be "shovel-ready" and available for in a relatively short time frame.

Conclusion

Permitting the alternative of development of apartments on the northerly portion of the subject property as depicted in the propose alternatives to the Concept Plan will provide the following material benefits to the City of Loveland:

1. The development of a high profile site on one of the primary gateways to Loveland would be "jump-started," providing development momentum for all uses allowable on the site.
2. The apartment project would generate the funds required for the site infrastructure necessary to build out employment uses desiring to come to the site on a "shovel-ready" basis.
3. The resulting ability to develop one or two "small project" primary workplace use buildings will create market confidence and an impetus for other potential employers to bring any available employment uses to the site.
4. The potential for development of primary workplace uses on the property would be significantly accelerated by having visible infrastructure in place and ready to go for prospective employers.
5. The majority of the property within and in the vicinity of the subject property would remain available for primary workplace uses.
6. The apartment use would consume the least desirable land for primary workplace uses on the subject property because of the limited visibility to the Eisenhower Corridor (once the frontage area is built out).
7. The development of the northerly portion of the property, directly adjacent to the proposed City of Loveland bike path would provide the City with a vibrant apartment community badly needed by Loveland.
8. The development of apartment units on the northerly portion of the property would help address Loveland's critical need for affordable apartments and help attract new employers to the City.

February 14, 2014

1269 Cleveland Ave.
Loveland, CO 80537
(970) 669-3737

Brian Burson
Current Planning Division
Civic Center
400 E. Third Street, Suite 310
Loveland, Colorado 80537

RE: Loveland Eisenhower Addition
Mac Zoning District – Concept Plan Amendment

Review Criteria

Dear Brian,

Thank you for your review of the enclosed application to amend the Concept Plan for the Loveland-Eisenhower Addition property. The original Concept Pan approved in 2009 was accompanied by the annexation of the eastern portion of the property (approximately 40 acres) and a re-zone of the entire property to MAC. Because there are no submittal checklists or designed application form for an Amendment to the Concept Plan, you informed us that the review criteria that would apply to this application would follow the Rezoning Assessment report as provided in the Change of Zone application even though no change of zone is requested.

The primary purpose for an amendment to the concept plan is to allow residential uses. The following is an analysis of this review criteria as it specifically relates to the addition of residential uses on the subject property.

1. **The purposes set forth in Section 18.04.010 of the Loveland Municipal Code would be met if any use permitted by right in the zone district (amendment) being requested was developed on the subject property.**

Section 18.04.010 states *"The zoning regulations and districts, as herein set forth, which have been made in accordance with a comprehensive zoning study are designed to lessen congestion in the streets; to secure safety from fire, panic and other danger; to promote health and general welfare; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements. These regulations have been made with reasonable consideration, among other things as to the character of each district its peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city in accordance with the adopted master plan for the city other approved planning or engineering studies."*

Discussion:

The proposed residential use on the subject property is specifically high density apartments, not to exceed 16 dwelling units per acre. Development yields provide for 240 apartments on 15 acres or 368 apartments on 23 acres. The apartment development would be held exclusively on the north-east quadrant of the subject property where property is less desirable

ATTACHMENT 2

for commercial and employment uses. It is also the most appropriate placement of apartments for the following reasons:

a. Traffic is more evenly distributed to portions of the property that provide roadway systems that will best support the transportation requirements of an apartment development.

b. Public Facilities and Services are within a close proximity to the apartment site. The nearest Fire Station, regional park, High School, Middle School, elementary school and hospital are all within 2 mile radius of the site.

c. With a total density of 16 dwelling units per acre, there will be ample room for parking, club house and playground facilities, with a remainder of up to 50% open space.

d. The proposed Apartment use is directly adjacent and accessible to a City bike trail system, and will look out over Boyd Lake.

e. Average daily water consumption and wastewater collection will increase with residential development. However, because the consumption of water in the residential occupancy is distributed over a greater portion of the day, the effective consumption rate is lower than for other more concentrated uses.

2. Development of the subject property pursuant to any of the uses permitted by right under the zoning district (amendment) being requested would result in development that is compatible with existing land uses adjacent to and in close enough proximity to the subject property to be effected by development of it.

Discussion: The proposed apartment use would be compatible with the following adjacent land uses:

a. Boyd Lake is situated on the north side of the property, along with a public trail system. There is a single-family residential neighborhood that borders the site on the North West side of the subject property.

b. An existing residential property is situated east of the subject property. This is currently Larimer County (not within City limits) that is zoned C-Commercial.

c. The property south of the proposed apartment complex is planned for future commercial or employment uses, per the approved MAC concept plan. The apartments will provide needed affordable housing in close proximity to employment uses. This is similar to the approach taken for the Van de Water Development in close proximity to the site, just south of the site across Eisenhower Boulevard, where various residential uses are located in close proximity to and support adjacent commercial and employment uses

3. Development of the subject property pursuant to any of the uses permitted by right under the zoning district (amendment) being requested would result in

impacts on City infrastructure and services that are consistent with current infrastructure and services master plans.

The proposed residential development portion of this property will stay within the range of expected infrastructure impacts anticipated by the various City Master Plan including regional drainage, water availability and use, sanitary sewer and transportation plans. Written studies have been included with this application materials including an impact study for Sewer and Water and a Traffic Impact Study.

4. **Development of the subject property pursuant to any of the uses permitted by right under the zoning district *(amendment)* being requested would result in development that is consistent with policies contained in Section 4 of the Loveland Comprehensive Master Plan.**

Discussion: The relevant goals and objectives provided in Section 4 of the Comprehensive Master Plan are discussed as follows:

4.2 Land use goals and objectives:

a. Land Use: The proposed amendment is to include residential use, which is an allowed use in the MAC zoning district, and is in keeping with the intent of the Comprehensive plan, and with the development commitments to primary workplace uses shown in the site's approved Concept Plan. Residential use will provide a complementary mix of land uses in the immediate area. Specifically, residential uses will support the employment and retail uses already planned for the general vicinity.

b. Growth Management and Regional Coordination: The subject property is well within the City of Loveland Growth Management Area, and provides a logical sequence for development. There are Larimer County Parcels that remain in the immediate area that are subject to annexation with future development proposals. However, the addition of residential use to the development plan will promote immediate urban-level extensions to improvements that are already in place.

c. Residential Land Use: The Loveland Comprehensive Plan states that apartment developments best serve the community when they are placed in close proximity to services, along arterial streets, or as a part of activity centers. The addition of apartments to the current Loveland-Eisenhower development plan meets this criteria. It will be placed in close proximity to Eisenhower Blvd., and adjacent to employment and commercial developments. It will serve as a transitional use between the commercial uses and single family uses adjacent to the site. The apartments will also be placed directly adjacent to a recreational trail, which will provide pedestrian and bicycle connectivity.

4.3 Land Use Categories and Future Land Use Plan Map: The subject property lies within an employment land use category. The employment land use category allows for residential development with an emphasis on "vertical" or higher density residential development, such as apartments. The Employment use category also encourages a pedestrian friendly environment. The policies regarding residential use in an employment category are adequately met. The project retains its commitment to

provide a minimum of acres of primary workplace uses following the approval of the apartment uses.

5. **Development of the subject property pursuant to any of the uses permitted by right under the zoning district being requested would result in development that is not detrimental to the health, safety, or welfare of the neighborhood or general public.**

Development of the subject property will not create an environment in which the health, safety or welfare of the neighborhood or general public will be compromised due to the overall orientation of the subject property, proximity to like uses and availability of municipal services.

Thank you for your review of our request.

Sincerely,

Deanne Frederickson, RLA
Project Planner

LOVELAND EISENHOWER FIRST SUBDIVISION

COST BREAKDOWN AND FMV ANALYSIS

Tracts E, F, G I & J

19-Nov-13

Apartment community - 368 units, including:
2 clubhouses (pool/spa, BBQ, playground)
92 garage spaces in 4 buildings

Costs - Apartments Community

	Total
Land Costs (pro rata)	1,019,304
Development Costs (pro rata)	826,084
Offsite Costs (per Coe's Estimates)	
Mountain lion & HWY 34	1,734,085
Mountain Lion Hwy 34 to tamima	468,825
Tanima peak rd (ML to Sculptor)	687,455
Sculptor (Hwy 34 to Tanima)	462,490
Sculptor Dr & HWY 34 intersection	443,307
Storm sewer (ML to ditch)	429,237
Landscaping (ML to Sculptor)	396,430
Utilities (Denver Ave to ML)	401,501
Subtotal	5,023,330
On Site	
Site survey & QC testing	85,568
Earthwork & preparation	517,857
Utilities (future N of Tanima)	183,859
Dewatering for utilities	50,000
Asphalt paving & striping	1,022,184
Concrete curb/gutter/sidewalk	357,743
Landscape parking islands	36,720
Recyle asphalt temp. road	62,500
Landscaping	450,000
Lighting @ parking	125,000
Subtotal	2,891,431
Hard - apartment buildings	
Subtotal	18,425,300
Clubhouses & Amenities	
Subtotal	893,260

ATTACHMENT 3

Hard - Garages - 62 spaces	
Subtotal	391,631
Soft Costs	
Permits and fees: $20K/unit	7,360,000
Overhead	250,000
Consultants	150,000
Financing costs:	
Int 4%, 9 mos build, 60% disburse	675,000
Carry costs during lease-up	400,000
Loan fee - 1/2 pt + closing costs	265,000
General Conditions	750,000
	9,850,000
Total Costs - Apartments	39,320,340

FMV/PROFIT ANALYSIS - APARTMENTS

Fair Market Value:		
368 units @ $115,000/ unit	42,320,000	
Excess Value over costs - Apartments	2,999,660	*

*** After Payment of $7,914,761 of on and off site infrastructure costs to enable Tracts B & C to be "shovel ready" for primary work place users.**

King & Associates, Inc.

Strategic planning and economic analysis

LOVELAND EISENHOWER ADDITION
APARTMENT MARKET ANALYSIS
LOVELAND, COLORADO

PREPARED FOR:

M. TIMM DEVELOPMENT, INC.

PREPARED BY:

KING & ASSOCIATES, INC.

9003 W. COCO DRIVE

LITTLETON, CO 80128

303.333.3834

APRIL 2013

Addendum August 2013

ATTACHMENT 4

Executive Summary

Demographics, Employment and Housing Market

- King & Associates, Inc. has been retained to analyze the multi-family rental market in Loveland, Colorado for a client considering construction of a 440-unit apartment project on a site adjacent to E. Eisenhower Drive and west of I-25.
- An Appendix has been included in the report that addresses the supply and demand characteristics in Loveland pertaining to residential and commercial land use designations.
- A trade area including the municipal boundaries of the city of Loveland has been defined to analyze residential and commercial market supply and demand factors.
- Over the next several years (2010 – 2020), demographic growth rates in Loveland are projected to be comparable with recent trends.
  Employment levels have increased substantially in the Fort Collins / Loveland, MSA (Larimer County) during the past three years, with 400 jobs added in 2010, 1,800 in 2011 and nearly 4,000 jobs in 2012.
- The state of Colorado projects strong employment growth in the Fort Collins / Loveland, MSA in the next ten years with growth averaging 2,300 jobs per year.
- Improving conditions have characterized the northern Colorado and Loveland area housing markets over the past two years.
  - 2009 marked the bottom of the northern Colorado housing market.
  - Since 2009, building permits in Larimer County and Loveland have increased.
  - Existing home sales have also increased since 2009.
- From 2010 through 2020, Loveland housing demand is forecast to range from 600 to 700 units per year with rental apartment demand ranging from 180 to 210 units annually.

Apartment Market

- The multi-family rental market has in Loveland and northern Colorado has improved over the past several years and market performance has been particularly strong during the past three years (2010 - 2012).
- Apartment vacancy rates in Loveland are extremely low.
  - The current apartment vacancy rate in Loveland is just 1.9% and decreased significantly from a 5.3% rate at the end of 2011.
  - The 1.9% vacancy rate in Loveland signals there is a shortage of rental housing in the city and there is more than sufficient demand to drive new project construction.
- Apartment rental rates in Loveland have been increasing rapidly.
  - The average apartment rental rate dipped slightly at the end of 2012 to $952 per unit from an average of $1,007 per unit at the end of 2011.
  - Even considering the slight decrease in the past year (2012), average apartment rental rates in Loveland have increased by nearly 25% since 2009.

Competitive Projects

- There are seven projects, totaling nearly 1,300 units that will compete with the client's proposed 440-unit Loveland project.
- The vacancy rate in competitive projects is currently 4%.
- The average size of comparable apartment is 1,015 square feet with surveyed units ranging from 631 square feet (studio) to 1,579 square feet (3-bedrooms) in size.

- The average rental rate in competitive projects is $1.29 per square foot, with rates ranging from $.88 per square foot (Reserve at Centerra three bedroom units) to $1.90 per square foot (Lincoln Place studio apartments).
- The number and type of amenities among competitive projects are similar but the scale and design of amenities approach resort quality in newer projects such as Lake Vista and Greens at Van de Water.

Conclusions

- Economic conditions in Loveland and northern Colorado have improved greatly in the past two to three years and with very low vacancies, increasing rental rates and strong demand, the rental apartment market in northern Colorado and Loveland is prime for new unit construction.
- There is shortage of rental apartment in Loveland based on a current 1.9% vacancy rate.
- Further, with strong sales of existing homes in Loveland in 2012, the supply of non-rental housing in the city is becoming increasing tight resulting in increased prices and potential of pushing existing and perspective residents outside of the city to seek more affordable and available housing in lower cost areas of Larimer and Weld counties.
- New project construction has been constrained during the past five years as banks and institutional investors are hesitant to fund new projects.
- Tight financing continues even with positive market trends (low vacancies, strong rental rates and limited new project construction).
- Even with increased levels of single-family new home construction – particularly homes aimed at the entry-level market segment – first time buyers struggle to secure financing and many are choosing “move-up” apartment projects as an alternative to home ownership.
- The proposed development site is well located within the city of Loveland and is near shopping, urban services (hospitals, schools, city core), major roadways and recreation areas.
- The site is also in a rapidly developing area of Loveland where commercial and apartment development has been concentrated in the past several years.
- Two high-end apartment projects have recently been constructed in Loveland.
- These projects have set a higher standard in the Loveland market and renters now have higher expectations with respect to project design and amenities.
- However, with conditions extremely tight in the rental apartment market, there is sufficient demand from all types of perspective renters to drive demand for new apartment projects.
- New projects with combined market and income qualified rental rate structures are likely to be in highest demand given current market conditions.

Appendix

- Commercial demand averaging 280,000 square feet per year has been forecast in Loveland and translates into average demand of 21 acres of land per year.
- The supply of commercially developable land in Loveland has been analyzed to have an estimated equivalent development potential of approximately 61 million square feet.
- Given demand and supply characteristics per the land supply analysis, there is enough developable land in the Loveland market area to accommodate commercial (retail, office and industrial land uses) demand for the next years 224 years.
- Much of this land is located within the Centerra master planned project.

- It is further believed that land in other development areas, such as Centerra and RMCIT, are better positioned for commercial development compared with the subject site due to proximity to I-25 and momentum achieved through existing development and marketing.
- Because of these factors, a re-zoning and comprehensive plan change for the portion of the subject site proposed for an apartment use would not unduly reduce the supply of land in the city to address future commercial development projects and will allow for development of much needed multi-family housing in the city, where there is a shortage of available units that is approaching critical levels, based on a current 1.9% vacancy rate.
- The land supply analysis concludes that more than adequate land area is provided for a reserve to meet the potential demand and need for commercial goods and services that would otherwise be provided by the portion of the property proposed for apartment use.

DELICH ASSOCIATES Traffic & Transportation Engineering
2272 Glen Haven Drive Loveland, Colorado 80538
Phone: (970) 669-2061 Fax: (970) 669-5034

MEMORANDUM

TO: Greg Parker, Investec Real Estate Companies
Deanne Frederickson, The Frederickson Group
Larry Owen, Owen Consulting Group
City of Loveland

FROM: Matt Delich

DATE: February 14, 2014

SUBJECT: Loveland Eisenhower First Subdivision Transportation Impact Study Addendum for Alternative Site Plan 5A (File: 1399ME01)

This memorandum addresses the transportation impacts of the proposed uses in the Alternative Site Plan 5A of the Loveland Eisenhower First Subdivision (LEI). The LEI site is located in the northeast quadrant of the US34/Denver intersection in Loveland. The site location is shown in Figure 1. Figure 2 shows the site plan for the Alternative Site Plan 5A – LEI. The scope of this study was discussed with the Loveland Transportation Development Review staff. A memorandum addendum was requested. Appendix A contains the Transportation Impact Study Base Assumptions form and related attachments for the Alternative Site Plan 5A – LEI. The "Loveland Eisenhower First Subdivision Traffic Impact Study," (TIS) June 2010 was submitted to and accepted by the City of Loveland. This memorandum specifically addresses a change in the land uses and trip generation for the LEI site. This addendum addresses full development of the LEI site in the year 2020, in order to be consistent with the cited June 2010 TIS.

The site plan shows a right-in/right-out/left-in access (¾ Access) to/from US34 near the center of the Loveland Eisenhower First Subdivision site. There is a ¾ Access serving Mountain Lion Drive on the south side of US34. The Loveland Eisenhower First Subdivision ¾ Access is situated just west of the approved ¾ Access such that there will not be conflicting left turns. The facing left-turn lanes will have a physical separation (raised median) of at least 10 feet. There will also be access to Sculptor Drive and Denver Avenue.

Trip Generation, 9th Edition, ITE was used as the reference document in calculating the trip generation for the Alternative Site Plan 5A - LEI. Table 1 shows the trip generation for the Alternative Site Plan 5A - LEI. Full development of the Alternative Site Plan 5A - LEI is expected to generate 9856 daily trip ends, 859 morning peak hour trip ends, and 1088 afternoon peak hour trip ends. To be conservative, no internal trip capture was calculated for this analysis. This was done in case there are future changes

to the land uses and/or building square footages. The reduction in trips, by applying the internal trip capture, would not significantly affect the operation of the key intersections or change the required infrastructure improvements identified in this addendum.

Table 2 shows the trip generation from the cited June 2010 TIS. The trip generation (Trip Budget) from the cited TIS resulted in 15,420 daily trip ends, 1099 morning peak hour trip ends, and 1518 afternoon peak hour trip ends. To be consistent with the trip generation of the Alternative Site Plan 5A – LEI (Table 1), no internal trip capture was applied for the trip generation in the cited TIS. Based upon a comparison of Tables 1 and 2, the Alternative Site Plan 5A - LEI will generate less daily, morning peak hour, and afternoon peak hour trip ends than that calculated for the former proposed land use.

Based upon the peak hour traffic counts from the cited TIS at the US34/Boise, US34/Denver, Denver/34 Marketplace Access, US34/Mountain Lion, and US34/Sculptor intersections, the current peak hour operation at the key intersections is shown in Table 3. This information was obtained from the cited TIS. This is the same as Table 1 from the cited TIS. It should be noted that level of service techniques from the 2000 Highway Capacity Manual were used in these analyses.

The directional distribution from the cited TIS was used for the commercial portion of the Alternative Site Plan 5A – LEI. However, there were no residential land uses analyzed in the cited TIS. Therefore, Figure 3 shows the trip distribution used for the Alternative Site Plan 5A – LEI. Figure 4 shows the full development (2020) assigned site generated peak hour traffic for the Alternative Site Plan 5A - LEI. Figure 5 shows the pass-by traffic assignment for the retail/commercial land uses.

Figure 6 shows the full development (2020) background peak hour traffic at the key intersections analyzed in this addendum. This is the same background traffic forecast used in the cited TIS. Table 4 shows the full development (2020) background morning and afternoon peak hour operation at the key intersections. Calculation forms are provided in Appendix B. The key intersections were analyzed using the signalized and unsignalized intersection techniques from the 2010 Highway Capacity Manual (2010 HCM). Acceptable operation is defined by the City of Loveland as level of service (LOS) C or better overall. At major intersections, any leg can operate at level of service D and any movement can operate at level of service E. At minor intersections, any leg can operate at level of service E and any movement can operate at level of service F. A description of level of service at signalized and unsignalized intersections is provided in Appendix B. The Loveland Motor Vehicle LOS Standards are also provided in Appendix B. As can be seen in Table 4, the key intersections are shown to operate acceptably with existing control and geometry. The full development (2020) background peak hour operation is similar to that shown in the cited June 2010 TIS.

Figure 7 shows the full development (2020) total morning and afternoon peak hour traffic at the key intersections. Table 5 shows the full development (2020) total morning and afternoon peak hour operation at the key intersections. Calculation forms

are provided in Appendix C. The key intersections will operate acceptably during the morning and afternoon peak hours with the recommended control and geometry. The full development (2020) total peak hour operation is similar to that shown in the cited June 2010 TIS.

Table 6 shows the full development (2020) link volumes for various key street segments. Table 6 also shows the ACF volume thresholds for each street segment and whether that segment meets the Adequate Community Facilities Ordinance. The threshold volumes shown were obtained from the cited June 2010 TIS. Table 6 indicates that all links meet the requirements of the Adequate Community Facilities Ordinance. East of Sculptor Drive, it is required that three westbound through lanes be striped on the north side of US34. This third lane should extend to/through the west property line of Boyd Lake Village and connect with the improvements made at Horstman Drive. The Boyd Lake Village development has provided the width to have a third westbound through lane along its frontage. This would require developing the frontage of the McCreery Property, which is between the Loveland Eisenhower First Subdivision site and Boyd Lake Village. By/before the 2020 future, other properties along the US34 corridor may develop, which might trigger the ACF need for the third lane on US34 through the west property line of Boyd Lake Village.

Figure 8 shows the recommended full development (2020) geometry at the key intersections. As shown in Figure 8, development of the Alternative Site Plan 5A – LEI will require improvements to the US34 frontage of the site (including construction of the ¾ Site Access) and improvements to the US34/Denver and US34/Sculptor intersections. The only other geometric improvements occur with the construction of the Site Access on Denver Avenue. In the cited June 2010 TIS, the US34/Boise intersection was shown to require dual eastbound left-turn lanes due to operational issues. With the Alternative Site Plan 5A – LEI, only a single eastbound left-turn lane will be necessary at the US34/Boise intersection.

As shown in Figure 8, the US34/Denver intersection will have dual left-turn lanes on all legs, except for the eastbound direction on US34. There are existing dual northbound left-turn lanes on Denver Avenue, existing dual westbound left-turn lanes on US34, and provision for dual left-turn lanes on the two other legs. Based upon the criteria in the State Highway Access Code, the single eastbound left-turn lane should be 560 feet long (storage, deceleration, and taper @ 13.5:1) and the westbound dual left-turn lanes should be 640 feet long (storage, deceleration, and taper @ 13.5:1). The storage for the dual left-turn lanes was calculated as providing 60 percent of the prescribed storage in one of the lanes. It is noted that the existing westbound dual left-turn lanes are approximately 500 feet long with 330 feet of bay taper.

At the US34/Sculptor intersection, a single eastbound left-turn lane approaching Sculptor Drive is required. Based upon the criteria in the State Highway Access Code, the single eastbound left-turn lane should be 665 feet long (storage, deceleration, and taper @ 13.5:1). The current eastbound left-turn lane is 610 feet long (all components). There is a raised median in this segment. The eastbound left-turn lane can be

increased to approximately 1010 feet. In the long range future, the density and land uses on the McCreery property are unknown. There may be the need for dual eastbound left-turn lanes. Based upon ACF criteria, three eastbound and westbound travel lanes are required on US34, east of Sculptor Drive. In the eastbound direction, the current design shows the third through lane being carried through the US34/Sculptor intersection and being dropped on the east side of the intersection. In the westbound direction, a transition to the third through lane will be constructed, which will also double as a right-turn lane. This transition lane (including taper) will extend 700 feet east of the US34/Sculptor intersection. Details regarding the design of this segment of US34 will be provided by the project civil engineer as this development goes through the review process.

According to the State Highway Access Code, the proposed ¾ Site Access to/from US34 will require an eastbound left-turn lane of 710 feet (storage, deceleration, and taper) at 45 mph. The actual length (stop bar to stop bar) available for this and the westbound left-turn lanes approaching Denver Avenue is approximately 1200 feet. The bay taper for the eastbound left-turn lane can begin at/near the location where the bay taper for the westbound left-turn lanes ends. Since the westbound bay taper is for dual left-turn lanes, the eastbound bay taper will allow a longer full-width eastbound left-turn lane to occur (some overlap). The existing left-turn lanes/median for the westbound dual left-turn lanes has been revised to shorten them slightly, thus providing sufficient length for the eastbound left-turn lane approaching the 3/4 intersection. By doing this, the need for a design waiver for the 3/4 intersection turn lane has been avoided.

The north leg of Denver Avenue is in a constrained condition. The distance between US34 and the access to 34 Marketplace is approximately 400 feet, on-centers. Full deceleration cannot be provided in either direction in the space available. Since this is an existing approved condition, it is concluded that the necessary variance was approved by City staff a number of years ago. Therefore, it is recommended that the necessary storage be provided both for the dual southbound left-turn lanes approaching US34 and the northbound left-turn lane approaching the 34 Marketplace Access. As was discussed with the City, the deceleration requirement for these left-turn lanes is being waived. Provision of only the storage was approved by the City of Loveland for the 34 Marketplace and the previously approved apartment development on this site. Figure 8-2 in LCUASS indicates that the southbound storage for the left turns should be 225-300 feet (minimum-desirable) and the northbound storage for the left turns should be 100 feet. The southbound storage can be distributed over the dual left-turn lanes. The long range morning peak hour (highest) queue analysis indicates that there should be provision of 134 feet southbound at the 95th percentile output. Approaching the 34 Marketplace Access, the queue analysis indicates less than 10 feet at the 95th percentile output. The queue analysis indicates that the storage that is being provided is more than adequate. In the northbound direction, north of US34, Denver Avenue will have two receiving lanes for the potential of dual eastbound left-turn lanes. The right northbound lane will become a right-turn lane into the Loveland Eisenhower First Subdivision. This northbound right-turn lane will be free-flowing into the site. There will be no negative impact to the US34/Denver intersection. Details with regard to the

design of Denver Avenue, north of US34, will be provided by the project civil engineer as this development goes through the review process. However, dual eastbound left-turn lanes are not required as noted earlier.

It is concluded that the new proposed land uses (Alternative Site Plan 5A – LEI) will generate less daily trip ends, less weekday morning peak hour trip ends, and less afternoon peak hour trip ends as compared to that in the cited June 2010 TIS.

DELICH ASSOCIATES Traffic & Transportation Engineering
2272 Glen Haven Drive Loveland, Colorado 80538
Phone: (970) 669-2061 Fax: (970) 669-5034

MEMORANDUM

TO: Greg Parker, Investec Real Estate Companies
Deanne Frederickson, The Frederickson Group
Larry Owen, Owen Consulting Group
City of Loveland

FROM: Matt Delich

DATE: February 14, 2014

SUBJECT: Loveland Eisenhower First Subdivision Transportation Impact Study Addendum for Alternative Site Plan 5B (File: 1399ME02)

This memorandum addresses the transportation impacts of the proposed uses in the Alternative Site Plan 5B of the Loveland Eisenhower First Subdivision (LEI). The LEI site is located in the northeast quadrant of the US34/Denver intersection in Loveland. The site location is shown in Figure 1. Figure 2 shows the site plan for the Alternative Site Plan 5B – LEI. The scope of this study was discussed with the Loveland Transportation Development Review staff. A memorandum addendum was requested. Appendix A contains the Transportation Impact Study Base Assumptions form and related attachments for the Alternative Site Plan 5B – LEI. The "Loveland Eisenhower First Subdivision Traffic Impact Study," (TIS) June 2010 was submitted to and accepted by the City of Loveland. This memorandum specifically addresses a change in the land uses and trip generation for the LEI site. This addendum addresses full development of the LEI site in the year 2020, in order to be consistent with the cited June 2010 TIS.

The site plan shows a right-in/right-out/left-in access (¾ Access) to/from US34 near the center of the Loveland Eisenhower First Subdivision site. There is a ¾ Access serving Mountain Lion Drive on the south side of US34. The Loveland Eisenhower First Subdivision ¾ Access is situated just west of the approved ¾ Access such that there will not be conflicting left turns. The facing left-turn lanes will have a physical separation (raised median) of at least 10 feet. There will also be access to Sculptor Drive and Denver Avenue.

Trip Generation, 9th Edition, ITE was used as the reference document in calculating the trip generation for the Alternative Site Plan 5B - LEI. Table 1 shows the trip generation for the Alternative Site Plan 5B - LEI. Full development of the Alternative Site Plan 5B - LEI is expected to generate 12,430 daily trip ends, 835 morning peak hour trip ends, and 1261 afternoon peak hour trip ends. To be conservative, no internal trip capture was calculated for this analysis. This was done in case there are future

ATTACHMENT 6

changes to the land uses and/or building square footages. The reduction in trips, by applying the internal trip capture, would not significantly affect the operation of the key intersections or change the required infrastructure improvements identified in this addendum.

Table 2 shows the trip generation from the cited June 2010 TIS. The trip generation (Trip Budget) from the cited TIS resulted in 15,420 daily trip ends, 1099 morning peak hour trip ends, and 1518 afternoon peak hour trip ends. To be consistent with the trip generation of the Alternative Site Plan 5B – LEI (Table 1), no internal trip capture was applied for the trip generation in the cited TIS. Based upon a comparison of Tables 1 and 2, the Alternative Site Plan 5B - LEI will generate less daily, morning peak hour, and afternoon peak hour trip ends than that calculated for the former proposed land use.

Based upon the peak hour traffic counts from the cited TIS at the US34/Boise, US34/Denver, Denver/34 Marketplace Access, US34/Mountain Lion, and US34/Sculptor intersections, the current peak hour operation at the key intersections is shown in Table 3. This information was obtained from the cited TIS. This is the same as Table 1 from the cited TIS. It should be noted that level of service techniques from the 2000 Highway Capacity Manual were used in these analyses.

The directional distribution from the cited TIS was used for the commercial portion of the Alternative Site Plan 5B – LEI. However, there were no residential land uses analyzed in the cited TIS. Therefore, Figure 3 shows the trip distribution used for the Alternative Site Plan 5B – LEI. Figure 4 shows the full development (2020) assigned site generated peak hour traffic for the Alternative Site Plan 5B - LEI. Figure 5 shows the pass-by traffic assignment for the retail/commercial land uses.

Figure 6 shows the full development (2020) background peak hour traffic at the key intersections analyzed in this addendum. This is the same background traffic forecast used in the cited TIS. Table 4 shows the full development (2020) background morning and afternoon peak hour operation at the key intersections. Calculation forms are provided in Appendix B. The key intersections were analyzed using the signalized and unsignalized intersection techniques from the 2010 Highway Capacity Manual (2010 HCM). Acceptable operation is defined by the City of Loveland as level of service (LOS) C or better overall. At major intersections, any leg can operate at level of service D and any movement can operate at level of service E. At minor intersections, any leg can operate at level of service E and any movement can operate at level of service F. A description of level of service at signalized and unsignalized intersections is provided in Appendix B. The Loveland Motor Vehicle LOS Standards are also provided in Appendix B. As can be seen in Table 4, the key intersections are shown to operate acceptably with existing control and geometry. The full development (2020) background peak hour operation is similar to that shown in the cited June 2010 TIS.

Figure 7 shows the full development (2020) total morning and afternoon peak hour traffic at the key intersections. Table 5 shows the full development (2020) total morning and afternoon peak hour operation at the key intersections. Calculation forms

are provided in Appendix C. The key intersections will operate acceptably during the morning and afternoon peak hours with the recommended control and geometry. The full development (2020) total peak hour operation is similar to that shown in the cited June 2010 TIS.

Table 6 shows the full development (2020) link volumes for various key street segments. Table 6 also shows the ACF volume thresholds for each street segment and whether that segment meets the Adequate Community Facilities Ordinance. The threshold volumes shown were obtained from the cited June 2010 TIS. Table 6 indicates that all links meet the requirements of the Adequate Community Facilities Ordinance. East of Sculptor Drive, it is required that three westbound through lanes be striped on the north side of US34. This third lane should extend to/through the west property line of Boyd Lake Village and connect with the improvements made at Horstman Drive. The Boyd Lake Village development has provided the width to have a third westbound through lane along its frontage. This would require developing the frontage of the McCreery Property, which is between the Loveland Eisenhower First Subdivision site and Boyd Lake Village. By/before the 2020 future, other properties along the US34 corridor may develop, which might trigger the ACF need for the third lane on US34 through the west property line of Boyd Lake Village.

Figure 8 shows the recommended full development (2020) geometry at the key intersections. As shown in Figure 8, development of the Alternative Site Plan 5B – LEI will require improvements to the US34 frontage of the site (including construction of the ¾ Site Access) and improvements to the US34/Denver and US34/Sculptor intersections. The only other geometric improvements occur with the construction of the Site Access on Denver Avenue. In the cited June 2010 TIS, the US34/Boise intersection was shown to require dual eastbound left-turn lanes due to operational issues. With the Alternative Site Plan 5B – LEI, only a single eastbound left-turn lane will be necessary at the US34/Boise intersection.

As shown in Figure 8, the US34/Denver intersection will have dual left-turn lanes on all legs, except for the eastbound direction on US34. There are existing dual northbound left-turn lanes on Denver Avenue, existing dual westbound left-turn lanes on US34, and provision for dual left-turn lanes on the two other legs. Based upon the criteria in the State Highway Access Code, the single eastbound left-turn lane should be 570 feet long (storage, deceleration, and taper @ 13.5:1) and the westbound dual left-turn lanes should be 645 feet long (storage, deceleration, and taper @ 13.5:1). The storage for the dual left-turn lanes was calculated as providing 60 percent of the prescribed storage in one of the lanes. It is noted that the existing westbound dual left-turn lanes are approximately 500 feet long with 330 feet of bay taper.

At the US34/Sculptor intersection, a single eastbound left-turn lane approaching Sculptor Drive is required. Based upon the criteria in the State Highway Access Code, the single eastbound left-turn lane should be 680 feet long (storage, deceleration, and taper @ 13.5:1). The current eastbound left-turn lane is 610 feet long (all components). There is a raised median in this segment. The eastbound left-turn lane can be

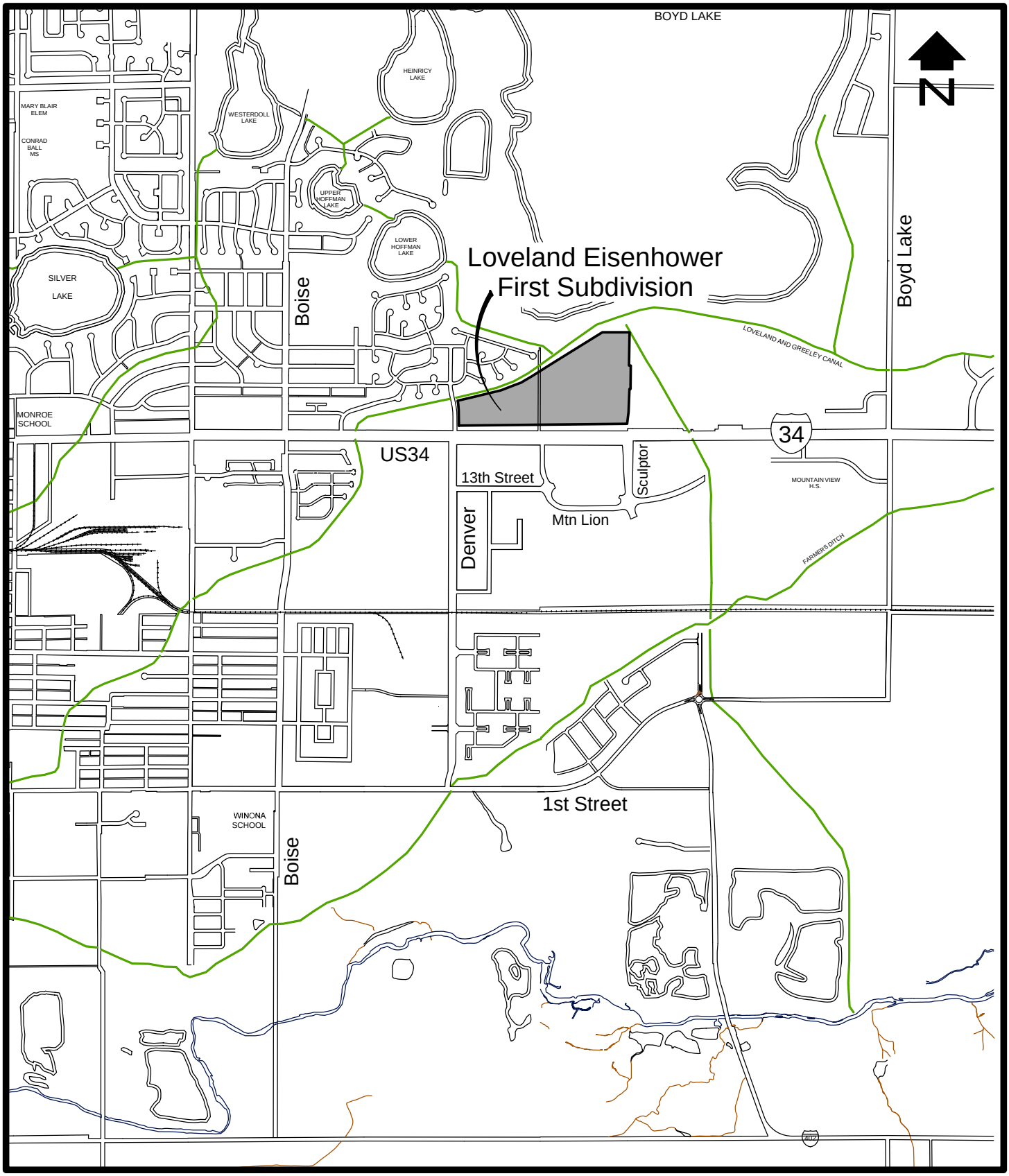
increased to approximately 1010 feet. In the long range future, the density and land uses on the McCreery property are unknown. There may be the need for dual eastbound left-turn lanes. Based upon ACF criteria, three eastbound and westbound travel lanes are required on US34, east of Sculptor Drive. In the eastbound direction, the current design shows the third through lane being carried through the US34/Sculptor intersection and being dropped on the east side of the intersection. In the westbound direction, a transition to the third through lane will be constructed, which will also double as a right-turn lane. This transition lane (including taper) will extend 700 feet east of the US34/Sculptor intersection. Details regarding the design of this segment of US34 will be provided by the project civil engineer as this development goes through the review process.

According to the State Highway Access Code, the proposed ¾ Site Access to/from US34 will require an eastbound left-turn lane of 710 feet (storage, deceleration, and taper) at 45 mph. The actual length (stop bar to stop bar) available for this and the westbound left-turn lanes approaching Denver Avenue is approximately 1200 feet. The bay taper for the eastbound left-turn lane can begin at/near the location where the bay taper for the westbound left-turn lanes ends. Since the westbound bay taper is for dual left-turn lanes, the eastbound bay taper will allow a longer full-width eastbound left-turn lane to occur (some overlap). The existing left-turn lanes/median for the westbound dual left-turn lanes has been revised to shorten them slightly, thus providing sufficient length for the eastbound left-turn lane approaching the 3/4 intersection. By doing this, the need for a design waiver for the 3/4 intersection turn lane has been avoided.

The north leg of Denver Avenue is in a constrained condition. The distance between US34 and the access to 34 Marketplace is approximately 400 feet, on-centers. Full deceleration cannot be provided in either direction in the space available. Since this is an existing approved condition, it is concluded that the necessary variance was approved by City staff a number of years ago. Therefore, it is recommended that the necessary storage be provided both for the dual southbound left-turn lanes approaching US34 and the northbound left-turn lane approaching the 34 Marketplace Access. As was discussed with the City, the deceleration requirement for these left-turn lanes is being waived. Provision of only the storage was approved by the City of Loveland for the 34 Marketplace and the previously approved apartment development on this site. Figure 8-2 in LCUASS indicates that the southbound storage for the left turns should be 225-300 feet (minimum-desirable) and the northbound storage for the left turns should be 100 feet. The southbound storage can be distributed over the dual left-turn lanes. The full development (2020) morning peak hour (highest) queue analysis indicates that there should be provision of 134 feet southbound at the 95th percentile output. Approaching the 34 Marketplace Access, the queue analysis indicates less than 10 feet at the 95th percentile output. The queue analysis indicates that the storage that is being provided is more than adequate. In the northbound direction, north of US34, Denver Avenue will have two receiving lanes for the potential of dual eastbound left-turn lanes. The right northbound lane will become a right-turn lane into the Loveland Eisenhower First Subdivision. This northbound right-turn lane will be free-flowing into the site. There will be no negative impact to the US34/Denver intersection. Details with regard

to the design of Denver Avenue, north of US34, will be provided by the project civil engineer as this development goes through the review process. However, dual eastbound left-turn lanes are not required as noted earlier.

It is concluded that the new proposed land uses (Alternative Site Plan 5B – LEI) will generate less daily trip ends, less weekday morning peak hour trip ends, and less afternoon peak hour trip ends as compared to that in the cited June 2010 TIS.



SCALE: 1"=2000'

SITE LOCATION

Figure 1

DELICH ASSOCIATES

Alternative Site Plan 5B - LEI TIS Addendum, February 2014

OWEN
CONSULTING
GROUP, INC.

MEMORANDUM

To: Greg Parker
CC:
From: Larry C. Owen, P.E.
Date: January 28, 2014
Proj. No.: 11-377 **Project Name:** LEI – Alts 5A & 5B
Subject: **Adequacy of Approved Infrastructure to Serve Proposed Alts 5A & 5B**

Following are the findings of an assessment of the adequacy of the currently approved infrastructure designs, as presented on the Public Improvement Construction Plan (PICP) drawings for the LEI project, to meet the incremental utilities demands resulting from the introduction of a multi-family residential component into the project.

Water Distribution

- A comparative assessment was made of the anticipated water demands (average day, peak day, peak hour) for the approved Concept Plan (Alt 1) and for the proposed Alternatives 5A and 5B. An attached table, entitled Comparative Water Demand Analysis, presents a summary of the respective demands. A discussion of the findings of the assessment follows.
- Addition of the residential component results in a 60% increase in the average daily demand for Alt. 5A and a 39% increase for Alt. 5B. However, because the consumption of water in the residential occupancy is distributed over a greater portion of the day, the effective consumption rate is lower than for other, more concentrated uses, and thus, the increases in the peak day and peak hour demands are much lower (20% and 31% for Alt. 5A and 12% and 21% for Alt. 5B, respectively).
- An update of the hydraulic model for the water distribution system for Alternative 5A was also prepared (copy attached). That model demonstrates that the proposed network of 8" diameter mains throughout the site, fed from the 12" main along the Eisenhower Blvd. frontage, will be more than adequate to meet the peak hour demand, plus a fire flow of 1,500 gpm drawn from each of two hydrants in the extreme northeast corner of the site (furthest from the source of supply). The residual pressure at the hydrants, under these flow conditions, is in the range of 23 – 24 psi, which exceeds the minimum requirement of 20 psi.

Water Rights Credits

- A review of the water rights credits allocated to the site was also conducted, to assess the impact of the increased average day water demand associated with the proposed residential component of the project. Water rights previously dedicated to the City for the Allendale (western) portion of the site are represented by water credits that can be applied to any development that occurs within the platted subdivision. These credits significantly exceed the anticipated requirements for development of the western portion of the site. Discussions with City staff have led to the understanding that the available credits can be applied to development throughout the contiguously platted subdivision on a first come, first served

3715 Shallow Pond Dr., Fort Collins, CO 80528 • Phone (970) 226-0264 • Fax (970) 226-3760

ATTACHMENT 7

basis, until the credits are exhausted. Additional water rights will be acquired and transferred to the City to satisfy the remainder of the development requirements throughout the site. The amount of additional water required will be determined on an ongoing basis as the project evolves and corresponding water demands are determined.

- Water rights currently associated with the Glick (eastern) portion of the site are not acceptable for transfer to the City for application against domestic demands, but these water rights can be used for irrigation of landscaped areas of the site, provided that certain conditions set out in the City Code are met.
- As the project is built out, and actual occupancy and irrigation demands are established, further assessment of water rights requirements and options will be warranted. If additional water rights are required, due to specific occupancies, those credits will be acquired and transferred to the City, prior to final approval of any plan including such occupancies.

Wastewater Collection

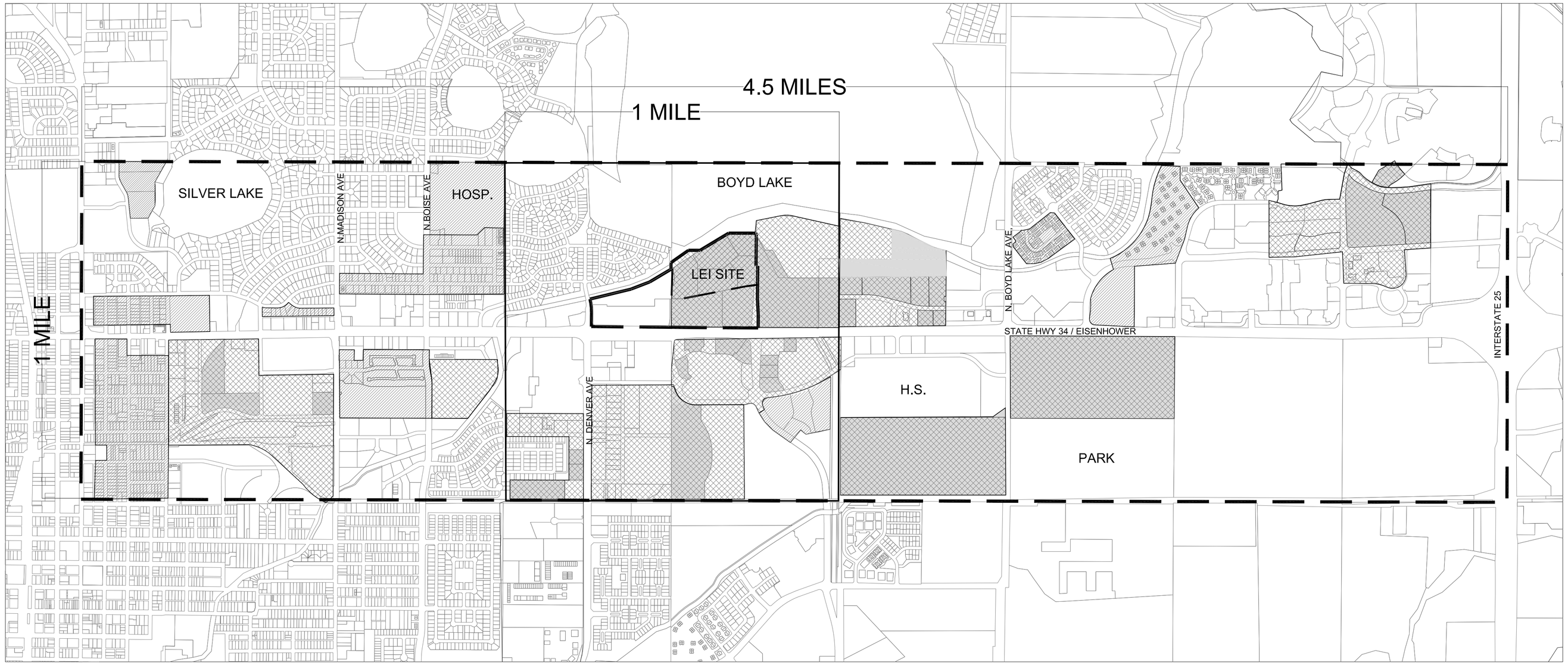
- A comparative analysis was also conducted to assess the anticipated volume and peak flow rates for wastewater generation due to the proposed development, as well as the capacity of the infrastructure, as presented in the approved PICP drawings, to convey such flows. A summary of the results of the analysis is presented in the attached table entitled Comparative Wastewater Generation Analysis.
- As found in the analysis of water demands, introduction of the apartment component into the project will result in an increase in average daily wastewater flow from the development. For Alt. 5A, (the most demanding scenario) that increase is calculated to be 24%. However, due to the distribution of that average daily flow for the residential occupancy over a greater period of time each day, compared to the flows from the previously contemplated commercial and employment occupancies, the peak day flow rate will actually be decreased by 1% and the peak hour flow rate will be increased by only 7% for the overall development, compared to those associated with the approved Concept Plan, Alt. 1.
- A review of the capacity of the sewage collection infrastructure designed for the Concept Plan indicates that that infrastructure will be adequate to serve the proposed development with the residential component.

Storm Drainage

- Introduction of the multi-family residential component into the project significantly increases the aggregate footprint area of buildings within the portion of the site east of Mountain Lion Dr. That increase, relative to the aggregate building footprint area contemplated in the Concept Plan, is estimated to be approximately 115,000 s.f. or 49%. However, due to the reduced parking requirements for residential occupancy, compared to commercial or employment occupancies, the area of pavement in the same region of the site will be substantially reduced. The reduction is estimated to be approximately 269,000 s.f. or 33%. The net effect of the greater reduction in pavement area is an increase in the area of landscaped open space by approx. 154,000 s.f. or 23%.
- Consequently, the composite runoff coefficient and composite percent imperviousness for the eastern portion of the site are both significantly reduced. The value of C_{100} for the proposed Alt. 5A is 0.71, compared to 0.76 for the Concept Plan, and the "I" value for the proposed Alt. 5A is 50.42%, compared to 60.10% for the development as presented in the Concept Plan.
- A detailed revision of the complete drainage analysis for the proposed amended project has not been yet conducted. However, it is reasonable to expect that the storm runoff from the

project site, with the apartment occupancy, will be somewhat lower than for the project with all commercial and employment occupancies. Similarly, the detention requirements will also be lower.

- Therefore, it can be concluded that the stormwater management infrastructure designed for the development, as presented in the PICP's for the approved Concept Plan, will be more than adequate to serve the proposed development with a multi-family residential component.

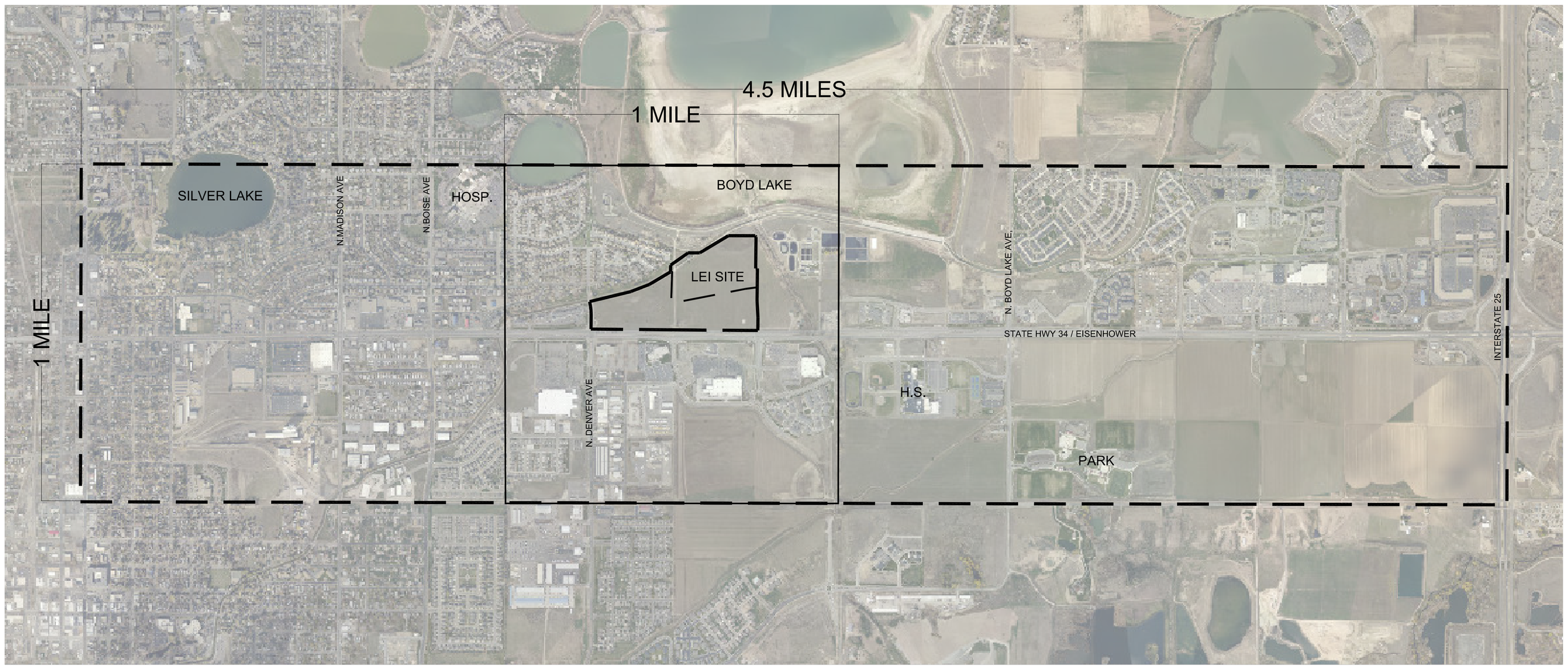


LOVELAND-EISENHOWER FIRST SUBDIVISION CONCEPT PLAN AMENDMENT

LAND USE STUDY

LEGEND

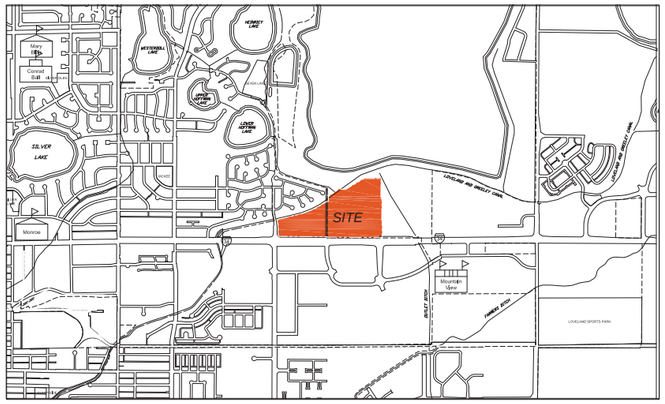
- Developed Employment Uses, per the City of Loveland Comprehensive Plan
- Undeveloped Employment Uses, per the City of Loveland Comprehensive Plan
- Existing High Density Residential uses.
- Study Area A: 4.5 miles, $\frac{1}{2}$ mile each side of Eisenhower
- Study Area B: 1 square mile, $\frac{1}{2}$ mile each side of Eisenhower



TFG design
1269 Cleveland Ave.
Loveland, CO 80550

ATTACHMENT 8

SCALE: 1"= 1000'
NORTH
0 500' 1000' 2000' 3000'



Vicinity Map
NTS

Introduction

The Loveland Eisenhower Development Project (The Project) represents an assembly of land parcels that extends approximately ½ mile along the north side of East Eisenhower Boulevard between Denver Avenue and what will become the future northward extension of Sculptor Drive.

The total area of the Project is approximately 58.7 acres. The westerly 17.5 acres of the site is currently known as the Allendale 5th Addition. This land was previously annexed into the City of Loveland and zoned PUD with plans for a high density residential development. The residential project was not constructed due to changes in the local economy and an excess of supply of similar improvements. The easterly 41.2 acres were subsequently acquired with the intention of developing a comprehensive project that responds to the Commercial / Employment designation in the Comprehensive Plan, as well as the needs and opportunities of the community. The two sites are shown on the Concept Plan and are divided by a private collector roadway (Mountain Lion Drive).

Land Use Categories

AMENDMENT #1 *(note: all amendments are highlighted)*

The Project straddles two "land use categories" as defined in the City of Loveland 2005 Comprehensive Plan. The westerly portion of the site (west of Mountain Lion Drive) lies within the land use category designated for Corridor Commercial development. The easterly portion (east of Mountain Lion Drive) lies within the land use category designated for Employment development. Multifamily residential use shall also be included in Non-Primary Workplace Uses.

Highway 34 Corridor Zones

The Project also straddles two corridor zones as described in the Highway 34 Corridor Plan. The westerly portion of the site lies within the "Transition Zone", while the easterly portion is included in the "Central Zone". Additionally, the intersection of Sculptor Drive and Highway 34 is designated as an important view corridor node, which places certain height restrictions on buildings near Highway 34 within the project area, in order to maintain views to the western mountain ranges.

Zoning

Under the City's adopted Comprehensive Plan, the westerly portion of the site is covered by a Corridor Commercial land use designation, which would allow Mixed-Use Activity Center (MAC), and B-Business zoning. The easterly portion are covered by an Employment land use designation, which would allow B-Business, I-Industrial, and E-Employment zoning.

The desired zoning for the entire project site is MAC, with provisions to create a unified and flexible framework that allows developers to be responsive to market demands, while ensuring compliance with the Comprehensive Plan and the Highway 34 Corridor Plan.

Goals & Objectives

The primary goals of the development concept for the Project are as follows:

- Construction of facilities that meet regional needs and market demands for all uses permitted under the Comprehensive Plan and the requested zoning.
- Establishment of a flexible project plan that will be quickly adaptable in response to the needs of prospective occupants.
- Accommodation of prospective businesses that wish to maintain a City of Loveland identity while capitalizing on direct access to major transportation corridors.
- Preservation of land use flexibility by establishing land use parameters that can be distributed throughout the site.
- Creation of a framework that will lend itself to an overall "campus style" of development.
- Provision of clear design standards that will establish a unified development theme.

Land Use

AMENDMENT #1

The B-Business, E-Employment, and I-Industrial zoning requirements are referenced in this development plan to establish compliance with the Comprehensive Plan in conjunction with an overall MAC zoning designation as shown in Table 1.

E-Employment zoning requires a balance of land uses between "Primary Workplace Uses" and "Non-Primary Workplace Uses". Primary Workplace Uses include, but are not limited to such activities and facilities as office, research, light industrial, public and private schools, financial services, health care service facilities, hospitals, congregate care facilities, long-term care facilities, medical and dental laboratories, print shop, research laboratory, and accessory buildings and uses. Non-Primary Workplace Uses are those uses that are intended to support and complement the Primary Workplace Uses, including but not limited to retail, restaurant, multi-family residential, convenience, and other compatible uses and facilities. Under the terms of the E-Employment zoning district, "Not more than 40% of the land area within a development plan should be dedicated to Non-Primary Workplace Uses." (Section 18.30.040 Loveland Municipal Code 2/26/08). Multi-family residential use shall also be included in Non-Primary Workplace Uses. With the addition of residential uses to the concept plan, a maximum number of Dwelling Units per Acre (du/acre) is introduced. Consistent with the MAC Zone, residential uses are allowable up to 16 du/acre.

The Concept Plan for the Project addresses this land use requirement by distributing the Primary Workplace Uses throughout the 58.7 acre site to provide a well integrated development. Distribution of the Primary Workplace Uses also serves to effectively influence the flow of traffic to and from the development away from constricted areas and toward access points with adequate capacity.

The various sections of the City's Zoning Code also regulate inclusion of open space within the development. While the MAC zoning district does not specify open space requirements, the E-Employment district requires a minimum of 20% open space distributed in a manner that will ensure an integrated open space network as a component of effective "campus style" site design. In the B-Business and I-Industrial zoning districts, the open space requirement is 10%. For the purposes of this Plan, open space refers to common open space features, including landscaped buffer yards, parks, plaza spaces, entrance treatments and natural areas, but excludes landscaped areas within the portions of the Highway 34 Corridor setback area on the Easterly parcel and landscaped areas within parking lots.

The following table presents a reconciliation of land uses presented in the Concept Plan for the Project in compliance with requirements of the City's Comprehensive Plan and Zoning Code. Within the Concept Plan for the Project, Primary Workplace Uses are collectively designated as "Office/Employment" or "Light Industrial" and Non-Primary Workplace Uses are collectively designated as "Retail" or "Restaurant". Open space uses are designated as such. As shown, the allocation of uses shown in the Concept Plan satisfies the Comprehensive Plan requirements for both the Western and Eastern parcels, when viewed as a single Project.

Framework

Framework elements for the Project will establish the basic structure of the Project and facilitate design continuity as the site is developed over time. The Framework elements include the frontage along East Eisenhower Boulevard, Plan Areas, vehicular access points, primary internal circulation corridors, and pedestrian connectivity routes. Within the structure of the project framework, flexibility will be allowed in the design of specific components and the development sequence of the various Plan Areas, which may be implemented in phases under the coordination of the Master Developer.

AMENDMENT #1

Table 1: Land Use Summary

		Existing Parcel	Annexation Parcel
Total Gross Site Area	58.8 Acres	17.4 Acres	41.4 Acres
Total Area Dedicated to R.O.W.	2.1 Acres	.5 Acres	1.6 Acres
New Site Development Area:	56.7 Acres	16.9 Acres	39.8 Acres

	Concept Plan Designation	Existing Parcel	Annexation Parcel	Project Total
Comprehensive Plan Designation		Corridor Commercial	Employment	
Allowable Zoning (excluding PUD)		B-Business MAC	B-Business E-Employment I-Industrial	MAC
Required Primary Workplace Uses	Office, Employment or Light Industrial		60% 23.9 Acres	23.9 Acres
Allowable Non-Primary Workplace Uses	Retail Restaurant Residential	100% 16.9 Acres	40% 15.9 Acres	32.8 Acres
Site Area		16.9 Acres	39.8 Acres	56.7 Acres
Open Space	Open Space	10% 1.7 Acres	20% 8.0 Acres	9.7 Acres

Notes:
1. Site areas presented represent a compilation of individual land use designations that are merged and re-distributed throughout the site in the concept Plan.
2. Open space excludes the Highway 34 corridor setback area on the Eastern Parcel pursuant to Section 18.30.040 of the Loveland Municipal Code. Highway 34 Corridor setbacks are included in open space calculations on the Western Parcel as allowed in Section 18.29 of the Loveland Municipal Code.
3. Open space excludes landscaped islands within parking lots.
4. Primary and Non-Primary Workplace Use areas will incorporate a minimum of 9.6 acres of open space throughout the Project site.

East Eisenhower Frontage

The East Eisenhower frontage will consist of a 60-80 foot setback area along the Eisenhower Boulevard frontage, measured from the ultimate edge of asphalt of East Eisenhower Boulevard. A minimum 6 foot wide concrete walk will meander along the entire frontage of the property. Sculpted berms, extending 4-6 feet above existing grade, or landscape hedges will create visual interest and screen adjacent parking lots. Storm water detention facilities will be incorporated into this area, with smooth, gradual transitions between high and low points. Irregular drifts of landscape materials will provide additional screening, where appropriate, and frame important views into the Project site.

Plan Areas / Tracts

The Project is divided into 8 Plan Areas, which are designated A - H on the Concept Plan. The boundaries of these Plan Areas correspond exactly to similarly designated Tracts on the Preliminary Plat. With the exception of Plan Area H, which consists of a small area of the site projecting north across the Greeley-Loveland Irrigation Canal, and which will remain as undeveloped open space, these Plan Areas will serve to delineate the fundamental development parcels for the Project. The location and configuration of these Plan Areas are illustrated in the Concept Plan on Sheet 4.

Five non-exclusive concept alternatives, covering a total of 8 Plan Areas, are illustrated on Sheets 5 and 6. The depiction of the development of each Plan Area on the Concept Plan, as well as in the alternative layouts, is conceptual in nature, and is designed to demonstrate the intended planning flexibility needed for the overall effective and efficient development of the Property. This flexibility will permit land uses within each Plan Area to be tailored to respond to market conditions and demands, within the overall development constraints of the Project, facilitating the development while maintaining compliance with the requirement of the Comprehensive Plan and the Zoning Code, for the zoning districts set forth above.

For example, if the alternate conceptual layouts for Plan Areas A and D are implemented, the westerly portion of the site may include uses consistent with the B – Business land use category, as well as the E – Employment land use category. Similarly, the eastern portion of the site may also include a mixture of uses consistent with the B – Business land use category as well as the E – Employment land use category, such that the overall mix of land uses throughout the Project is in compliance with the intent of the Comprehensive Plan. The alternate conceptual layout for Plan Area E simply shows the substitution of a single large office building for the three smaller office buildings shown on the Concept Plan, with no change in the Primary Employment Use. Likewise, no change in the Primary Employment Use would result from the substitution of the alternate conceptual layout shown for Plan Areas E, F, and G where larger, Flex Space buildings are shown in lieu of the smaller office buildings shown on the Concept Plan; however Alternative 4 illustrates all employment uses on the eastern 40 acre area which would result in a greater quantity of employment uses.

AMENDMENT #1

Alternative 5 illustrates multifamily residential development on Plan Areas E, F and G and alternative 6 illustrates employment uses on Plan Area E and multifamily residential development on Plan Areas F and G.

For alternatives 5 and 6, the area north of Tanima Peak Road and east of Mountain Lion Drive has been reconfigured to illustrate alternatives for a multifamily residential development. The Plan Areas will remain the same as the Concept Plan. To the extent required, property lines will be accommodated through a subdivision or lot merger permitted under the City of Loveland Development Code.

Alternative 5 illustrates multifamily residential development on the 23.4 acre area that encompasses Plan Areas E, F, G, H, I, and J. Alternative 6 illustrates a smaller multifamily residential development on Plan Areas I and J and portions of Plan Areas F and G. The Development Yield Tables for both alternatives illustrate that there is sufficient land remaining available to accommodate the minimum 23.9 acres and 300,000 square feet of Primary Workplace Uses required by the Concept Plan in the areas shown. This will be confirmed by the City's approval of the Comprehensive Plan Compliance Checklist submitted by the developer pursuant to section 2.2.17 of the Annexation and Development Agreement.

ATTACHMENT 9

MIG
4696 Broadway St.
Boulder, CO 80304
303-440-9200

LOVELAND EISENHOWER ADDITION
MAC CONCEPT MASTER PLAN
AMENDMENT #1
Loveland, Colorado | April 2014 (submittal 7)

CLIENT
Loveland Eisenhower Investments, LLC

CONSULTANTS
MIG, Inc.
Urban Design/Planning

TFG Design, LLC
Landscape Architect

Owen Consulting Group Inc.
Engineering

Delich Associates
Traffic & Transportation

NARRATIVE

Minimum Primary Workplace Uses

AMENDMENT #1

In no event will the Project, once built out, contain less than 23.9 acres developed with no less than 300,000 square feet of buildings designed to house Primary Workplace Uses. Primary Workplace Uses may share a building with other uses, in which case, the land area will be calculated proportionally, determined by the floor area of the building allocated to each such use. Pursuant to the Annexation and Development Agreement applicable to the Project, as amended, each Plan Area Development Plan application must include a reconciliation of land uses presented in the Concept Plan to ensure Comprehensive Plan compliance. See Figure 1- Comprehensive Plan Compliance Checklist" for compliance requirements.

Figure 1: Comprehensive Plan Compliance Checklist

Loveland Eisenhower Addition
Comprehensive Plan Compliance Validation

	Previously Approved LEI Tracts	Tract Proposed for Approval	Cumulative Project (Approved and Proposed)	Comprehensive Plan Requirements	Comp Plan Requirements able to be Satisfied with Remaining Acreage?
Required Primary Workplace Uses	____ acres	____ acres	____ acres	24 acres	[ ] yes [ ] no
Allowable Non-Primary Workplace Uses	____ acres	____ acres	____ acres	33 acres	[ ] yes [ ] no
Residential Uses	____ acres	____ acres	____ acres	16 DU/Acre	[ ] yes [ ] no
Open Space	____ acres	____ acres	____ acres	9.7 acres	[ ] yes [ ] no
Trafic Study Addendum attached validates compliance with ACF exemption?					[ ] yes [ ] no
Tract proposed in compliance with Comprehensive Plan?					[ ] yes [ ] no
All uses proposed in compliance with MAC Zone?					[ ] yes [ ] no

Traffic Generation

The basic infrastructure and internal circulation patterns will remain substantially the same regardless of the internal development of the individual Plan Areas. Traffic volumes expected to be generated by the Project will be generally as shown in the Tables 2, 3, 5, 6, 7 and 8. The peak hour trips are anticipated to be distributed among the Project accesses generally as shown in the following Table 4. The data in these two tables are excerpted from the Traffic Impact Study for the Project (Delich Associates, November, 2008).

The data presented in these tables represent the material traffic impacts due to site development as depicted on the Concept Plan and the layout alternatives. The actual traffic impacts may vary slightly as a result of implementation of various alternatives in the ultimate development of the respective Plan Areas. However, the impacts represented by the data presented above are considered to be a reasonable representation of the maximum anticipated traffic impacts of the Project, and can be used to establish a "traffic budget" for the Project. Any proposal to adopt an alternative land use mix for a particular Plan Area will require a demonstration that the aggregate traffic impacts for the Project (including the proposed alternative) are consistent with this traffic budget.

TABLE 2
Trip Generation for the "Concept Plan"

Code	Use	Size	AWDTE		AM Peak Hour				PM Peak Hour			
			Rate	Trips	Rate	In	Rate	Out	Rate	In	Rate	Out
West 17 Acres												
710	General Office	167.5 KSF	11.01	1840	1.36	228	0.19	32	0.25	42	1.24	208
820	Retail	5.0 KSF	42.94	210	0.63	3	0.40	2	1.80	9	1.95	10
912	Drive-in bank	5.0 KSF	168.58	840	5.10	26	3.85	19	7.44	37	7.60	38
		3 Windows	101.06	300	6.20	19	4.68	14	9.05	27	9.25	28
Average				570		23		17		32		33
Subtotal				2620		254		51		83		251
East 40 Acres												
820	Retail	100.3 KSF	42.94	4310	0.63	63	0.40	40	1.80	181	1.95	196
710	General Office	271.0 KSF	11.01	2980	1.36	369	0.19	51	0.25	68	1.24	336
932	Sit-down Restaurant	7.4 KSF	127.15	940	5.99	44	5.53	41	6.66	49	4.26	32
934	Fast-food Restaurant w/Drive-thru	3.5 KSF	496.12	1740	27.09	95	26.02	91	18.01	63	16.63	58
Subtotal				9970		571		223		361		622
Total East & West				12,590		825		274		444		873
Less Internal Trip Capture				2510		69		69		74		74
Total				**10,080**		**756**		**205**		**370**		**799**

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Tables 7 and 8 incorporate maximum development yields for each basic type of use. This information is provided to best analyze associated traffic impacts, fiscal impacts and economic projections for land use designations. The floor areas and du/acres directly correlate to the concept plan in terms of general placement and concentrations of uses throughout the development. Traffic volumes and patterns expected to be generated by the uses shown in Alternatives 5 and 6 are illustrated on tables 7 and 8, below. The peak hour trips are anticipated to be distributed among the project accesses.

TABLE 3
Trip Generation for "Alternative 1"

Code	Use	Size	AWDTE		AM Peak Hour				PM Peak Hour			
			Rate	Trips	Rate	In	Rate	Out	Rate	In	Rate	Out
West 17 Acres												
881	Pharmacy w/drive-thru	15.0 KSF	88.16	1320	1.52	23	1.14	17	4.22	63	4.40	66
820	Retail	33.0 KSF	42.94	1420	0.63	21	0.40	13	1.80	59	1.95	64
710	General Office	60.0 KSF	11.01	660	1.36	82	0.19	11	0.25	15	1.24	74
932	Sit-down Restaurants (2)	10.0 KSF	127.15	1270	5.99	60	5.53	55	6.66	67	4.26	43
820	Retail	5.0 KSF	42.94	210	0.63	3	0.40	2	1.80	9	1.95	10
912	Drive-in bank	5.0 KSF	168.58	840	5.10	26	3.85	19	7.44	37	7.60	38
		3 Windows	101.06	300	6.20	19	4.68	14	9.05	27	9.25	28
Average				570		23		17		32		33
Subtotal				5450		212		115		245		290
East 40 Acres												
820	Retail	100.3 KSF	42.94	4310	0.63	63	0.40	40	1.80	181	1.95	196
710	General Office	271.0 KSF	11.01	2980	1.36	369	0.19	51	0.25	68	1.24	336
932	Sit-down Restaurant	7.4 KSF	127.15	940	5.99	44	5.53	41	6.66	49	4.26	32
934	Fast-food Restaurant w/Drive-thru	3.5 KSF	496.12	1740	27.09	95	26.02	91	18.01	63	16.63	58
Subtotal				9970		571		223		361		622
Total East & West				15,420		783		338		606		912
Less Internal Trip Capture				3520		98		98		102		102
Total				**11,900**		**685**		**240**		**504**		**810**

Table 4
Trip Generation for Alternative 2

AWDTE	AM Peak Hour		PM Peak Hour	
Trips	In	Out	In	Out
11,900	**756**	**205**	**504**	**810**

TABLE 5
Trip Generation for "Alternative 3"

Code	Use	Size	AWDTE		AM Peak Hour				PM Peak Hour			
			Rate	Trips	Rate	In	Rate	Out	Rate	In	Rate	Out
West 17 Acres												
710	General Office	167.5 KSF	11.01	1840	1.36	228	0.19	32	0.25	42	1.24	208
820	Retail	5.0 KSF	42.94	210	0.63	3	0.40	2	1.80	9	1.95	10
912	Drive-in bank	5.0 KSF	168.58	840	5.10	26	3.85	19	7.44	37	7.60	38
		3 Windows	101.06	300	6.20	19	4.68	14	9.05	27	9.25	28
Average				570		23		17		32		33
Subtotal				2620		254		51		83		251
East 40 Acres												
820	Retail	100.3 KSF	42.94	4310	0.63	63	0.40	40	1.80	181	1.95	196
110	Industrial	80.0 KSF	6.97	560	0.69	55	0.15	12	0.18	14	0.86	69
710	General Office	161.0 KSF	11.01	1770	1.36	219	0.19	31	0.25	40	1.24	200
932	Sit-down Restaurants	7.4 KSF	127.15	940	5.99	44	5.53	41	6.66	49	4.26	32
934	Fast-food Restaurant w/Drive-thru	3.5 KSF	496.12	1740	27.09	95	26.02	91	18.01	63	16.63	58
Subtotal				9320		476		215		347		555
Total East & West				11,940		730		266		430		806
Less Internal Trip Capture				2510		69		69		74		74
Total				**9430**		**661**		**197**		**356**		**732**

TABLE 6
Trip Generation for "Alternative 4"

Code	Use	Size	AWDTE		AM Peak Hour				PM Peak Hour			
			Rate	Trips	Rate	In	Rate	Out	Rate	In	Rate	Out
West 17 Acres												
710	General Office	167.5 KSF	11.01	1840	1.36	228	0.19	32	0.25	42	1.24	208
820	Retail	5.0 KSF	42.94	210	0.63	3	0.40	2	1.80	9	1.95	10
912	Drive-in bank	5.0 KSF	168.58	840	5.10	26	3.85	19	7.44	37	7.60	38
		3 Windows	101.06	300	6.20	19	4.68	14	9.05	27	9.25	28
Average				570		23		17		32		33
Subtotal				2620		254		51		83		251
East 40 Acres												
110	Industrial	200.0 KSF	6.97	1400	0.69	138	0.15	30	0.18	36	0.86	172
710	General Office	200.0 KSF	11.01	2200	1.36	272	0.19	38	0.25	50	1.24	248
Subtotal				3600		410		68		86		420
Total East & West				6220		664		119		169		671
Less Internal Trip Capture				460		16		16		18		18
Total				**5760**		**648**		**103**		**151**		**653**

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TABLE 7
Trip Generation for Alternative 5

Code	Use	Size	AWDTE		AM Peak Hour				PM Peak Hour			
			Rate	Trips	Rate	In	Rate	Out	Rate	In	Rate	Out
West 17 Acres												
Area A												
881	Pharmacy	15.0 KSF	96.91	1454	1.79	27	1.66	25	4.955	74	4.955	74
932	Sit-down Restaurant (2)	10.0 KSF	127.15	1272	5.95	60	4.86	49	5.91	59	3.94	39
820	Retail	20.0 KSF	42.7	854	0.60	12	0.36	7	1.78	36	1.93	39
912	Drive-in Bank	5.0 KSF	148.15	740	6.89	34	5.19	26	12.15	61	12.15	61
Area A Subtotal				4320		133		107		230		213
Area D												
710	General Office	45.5 KSF	11.03	502	1.36	62	0.19	9	0.25	11	1.24	56
110	Light Industrial	54.5 KSF	6.97	380	0.81	44	0.11	6	0.12	7	0.85	46
Area D Subtotal				882		106		15		18		102
West 17 Acres Total				5202		239		122		248		315
East 40 Acres												
710	General Office	200.0 KSF	11.03	2206	1.36	272	0.19	38	0.25	50	1.24	248
220	Apartment	368 DU	6.65	2448	0.10	37	0.41	151	0.40	147	0.22	80
East 40 Acres Total				4654		309		189		197		328
Grand Total				9856		548		311		445		643

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TABLE 8
Trip Generation for Alternative Site Plan 6

Code	Use	Size	AWDTE		AM Peak Hour				PM Peak Hour			
			Rate	Trips	Rate	In	Rate	Out	Rate	In	Rate	Out
West 17 Acres												
Area A												
881	Pharmacy	15.0 KSF	98.91	1454	1.79	27	1.66	25	4.955	74	4.955	74
932	Sit-down Restaurant (2)	10.0 KSF	127.15	1272	5.95	60	4.86	49	5.91	59	3.94	39
820	Retail	50.0 KSF	42.70	2136	0.60	30	0.36	18	1.78	89	1.93	97
850	Supermarket	30.0 KSF	102.24	3068	2.11	63	1.29	39	4.83	145	4.65	140
West 17 Acres Total				7930		180		131		367		350
East 40 Acres												
710	General Office (Areas B & C)	200.0 KSF	11.03	2206	1.36	272	0.19	38	0.25	50	1.24	248
110	Light Industrial (Area E)	100.0 KSF	6.97	698	0.81	81	0.11	11	0.12	12	0.85	85
220	Apartment (Areas F-J)	240 DU	6.65	1596	0.10	24	0.41	98	0.40	96	0.22	53
East 40 Acres Total				4500		377		147		158		386
Grand Total				**12,430**		**557**		**278**		**525**		**736**

MIG
4696 Broadway St.
Boulder, CO 80304
303-440-9200

LOVELAND EISENHOWER ADDITION
MAC CONCEPT MASTER PLAN
AMENDMENT #1
Loveland, Colorado | April 2014 (submittal 7)

CLIENT
Loveland Eisenhower Investments, LLC

CONSULTANTS
MIG, Inc.
Urban Design/Planning

TFG Design, LLC
Landscape Architect

Owen Consulting Group Inc.
Engineering

Delich Associates
Traffic & Transportation

NARRATIVE

SHEET 2 OF 12

Access
Major points of ingress and egress have been identified on the Concept Plan. Primary access to the eastern portion of the Project site will occur from Tanima Peak Street and Sculptor Drive. A ¾ movement access will be available from Eisenhower Boulevard in the central region of the site, at the future extension of Mountain Lion Drive. A third, and lesser, access to the western portion of the site will be available from Denver Avenue. The Concept Plan, as well as the alternative layouts, are designed to focus traffic flows to the appropriate access points and to limit traffic volumes, as much as possible, at the Denver Avenue access point. This focusing of traffic flow will mitigate Level of Service (LOS) concerns that already exist at the intersection of Denver Avenue and Eisenhower Boulevard.

Vehicular Circulation
Mountain Lion Drive and Tanima Peak Street will serve as the primary internal vehicular circulation routes. These will be designated as private drives, although constructed to LCUASS standards, and will be the first internal roadways constructed. Secondary, emergency access will be provided congruent to the recreation trail easement located along the north property line and portions of the east property line.

Recreation Trail
A recreation trail is shown on the Concept Plan along the north and east perimeters of the site. This location will allow for uninterrupted regional pedestrian circulation through the Project. The City of Loveland 10' Recreation Trail & City of Loveland 30' Recreation Trail Easement will be constructed by the City of Loveland Parks and Recreation Department. Pedestrian connections will be made at logical intervals along the regional trail to draw pedestrians into the Project site. Internal pedestrian circulation routes will consist of an interconnected network of walkways and shall be constructed and maintained by the owner/developer.

Defining Elements
Defining elements are common area features that are built in coordination with Site Specific Development Plans for the respective plan areas. They are shown on the Concept Plan relative to the Framework elements listed above. Defining elements include public plazas, open spaces, building orientation, pedestrian connectivity, common spaces (including a pool and clubhouse) signs, views, and parking. Defining elements may shift or evolve as developments in the respective Plan Areas emerge, but will serve to unify the entire Project by incorporating the common design themes into Site Specific Development Plans in accordance with the Concept Plan and the Design Standards.

AMENDMENT #1

The defining elements of residential uses include pedestrian connectivity, common spaces (including a pool and clubhouse). Defining elements may shift or evolve as developments in the respective Plan Areas emerge, but will serve to unify the entire Project by incorporating the common design themes into Site Specific Development Plans in accordance with the Concept Plan and the Design Standards.

Public Plazas and Shared Open Spaces
In general open spaces in the non-Primary Workplace areas will be primarily hardscape plazas, while the open space areas of the employment campuses will have a more "softscape" character. There will be a minimum of 60% hardscape in retail-commercial public plazas, while Primary Workplace open space areas will be shared between buildings, and will consist of a minimum 60% softscape features. The Primary Workplace campuses will incorporate more passive trail linkages and informal landscape groupings with seating, etc. as described below.

Formal public plazas will be provided in any retail-commercial areas in both the east and west regions of the Project, as shown on the Concept Plan (between Denver Avenue and Mountain Lion Drive, and between Mountain Lion Drive and Sculptor Drive). These plazas are intended for pedestrian movement, as well as a public gathering place. They should accommodate both functions by providing enough space for pedestrian through traffic, as well as providing tables and outdoor seating areas for gathering. Outdoor features should have flexible layouts to accommodate various activities that may occur in the plaza. Public plazas should incorporate a mixture of hardscape and landscape with a minimum of 60% hardscape area (see Figure 1 on Sheet 7).

Office plazas are intended to be used during office hours as passive outdoor spaces for eating, strolling, outdoor meetings, and relaxation. The space should provide shaded outdoor sitting areas and landscaping. Office plazas should incorporate a mixture of landscape and hardscape with a minimum of 60% landscaped area (see Figure 2 on Sheet 7).

Open Space
The Concept Plan, as presented, complies with the open space requirements of the applicable zoning districts. In accordance with the requirements of the Comprehensive Plan land use designations for the Project site, the entire Project will include a minimum of 9.7 acres of open space exclusive of the East Eisenhower Boulevard setback and the parking lot islands. Wherever possible, open spaces will be interconnected and continuous, and in addition to maintaining separation between the various buildings, open space areas will also be used to incorporate visual interest, pedestrian connections, and open swale storm water management facilities throughout the Project site.

Pedestrian Connectivity
Internal pedestrian and bicycle circulation routes will be provided as part of every Site Specific Development Plan. Each plan will integrate continuous connections between major features and buildings on the site.

Where it is necessary for the primary pedestrian circulation routes to cross major vehicular corridors, drive aisles, parking lots, or other internal circulation routes, the pedestrian crossing will emphasize and place priority on pedestrian access and safety by utilizing distinctive paving materials. The material and layout of the pedestrian access will be continuous as it crosses the vehicular route, with a break in continuity of the driveway paving and not the pedestrian circulation way. The pedestrian crossings will be well marked, using low-maintenance pavement treatments such as scored concrete with an appropriate size score pattern, colored concrete, pavers, brick or other similar materials that are compatible with the architectural and landscape theme of the Project.

Views
View protection is provided in the Concept Plan. The Concept Plan delineates the view corridor required by the Highway 34 Corridor Plan and building height limitations are shown on the various building envelopes within the view corridor. These limitations will be strictly enforced.

A sculpture or architectural or landscape feature will be provided at the northern terminus of Mountain Lion Drive to provide a focal point for this corridor. An example is illustrated in the Mountain Lion Drive perspective sketch (see Figure 3 on Sheet 7). This element will be large enough to be visible from the intersection of Highway 34 and Mountain Lion Drive.

Signs
Project signage will be located at the major access points to the site at Denver Avenue, Mountain Lion Drive and Sculptor Drive. These major project signs will be of similar materials and character to the buildings within the Project. An internal way-finding system will utilize signage design that is also consistent with building materials and architectural character. All buildings throughout the Project will employ a common signage treatment, utilizing graphics and materials that help to unify the Project. All signs will be subject to review and approval in accordance with a sign program for the Project that will be submitted under a separate cover for review and approval by City staff.

Parking
The parking lots are predominantly located within reasonable proximity to the buildings they serve, and are located so as to encourage shared use. The office portions of the Project will also include several linked parking lots rather than one large parking area. Ample landscaping will be provided throughout the parking areas for shade and screening. Large expanses of parking will be avoided by partitioning the parking lots with landscaped medians and islands. See Section entitled "Parking Lot Landscaping" in the Landscape Development Standards included herein for specific standards for placement and size of parking lot islands, medians and walks. These standards are provided to create parking lots that are pedestrian-friendly and attractive.

Implementation
The Concept Plan is presented to account for three basic elements for land use planning: *Floor Area, Open Space, and Parking*. All three elements fit together to create an integrated Concept Plan with a stable framework that can be consistently applied to specific development projects while maintaining the overall development intent. The three elements exceed current City of Loveland Development Code minimums to allow for design flexibility without compromising minimum standards for development. The plan incorporates the following allowances:

Floor Area is provided in maximum square footage for primary and non-primary uses. The tables provided for each of the concept alternatives incorporate maximum development yields for each basic type of use. This information is provided to best analyze associated traffic impacts, fiscal impacts and economic projections for land use designations. The floor areas directly correlate to the concept plan in terms of general placement and concentrations of uses throughout the development.

The plan seeks vesting for the floor areas as provided. It should be noted that the floor areas provided on the plan are approximately 10-15% less than would be allowed under current City of Loveland development codes. However, the floor areas maintain an appropriate ratio of Primary Workplace to Non-Primary Workplace uses as required in the Comprehensive Plan. The reduction in overall density will contribute to traffic mitigation measures, allow for increased open space, and allow for increased parking allocations that better meet market demands for particular uses.

Open Space shown on the concept plan exceeds the minimum requirement as provided in the City of Loveland Development Codes. The Plan depicts a Comprehensive Plan minimum overall open space requirement of 9.7 acres as calculated in Table 1. The actual open space areas shown on the Concept Plan are in the form of public plazas, common areas, pedestrian connections and buffer yards are in excess of 20% of the total land area. The building envelopes provide a general placement for buildings and are somewhat larger than the actual building footprints. This will allow for additional open space in the form of entry features and foundation landscape features.

Parking allocations provided are in excess of City of Loveland Development Codes in order to maximize potential for higher parking yields without compromising open space and development yields.

Procedures for Design Review
Each of the Plan Areas will be implemented in its entirety through the creation of a Subdivision Plat for the platted tract, (which correlates to the Plan Areas in the Concept Plan). The Subdivision Plat will provide for required public improvements and coordinated implementation of individual pad sites located within the tract. Pad sites will be implemented by the establishment of a Site Specific Development Plan, as required by the City of Loveland Building Department.

Throughout this process the Property Owner or Master Developer will present documentation to the City demonstrating continued compliance with the Comprehensive Plan, as well as with the Project Traffic Budget and minimum Primary Workplace Uses criteria as described in the Plan. This demonstration of compliance will occur at the time of approval of the final plat for each Plan Area.

The implementation of alternative development concepts for respective Plan Areas, such as those depicted in the non-exclusive examples shown for several of the Plan Areas will be considered with every Subdivision Plat application. The goal is to ensure compatibility of the overall Project and full compliance with the Comprehensive Plan and the Traffic Budget for the Project.

Unified Design Agreement
The fact that the boundaries of the Property abut streets and an irrigation ditch means that there is no necessity to enter into a unified design agreement with adjacent property owners. The Master Developer and any other developers of improvements on the site will be required to comply with the "campus style" character design standards and guidelines included herein. The design guidelines will accommodate changing conditions over time.

Phasing
AMENDMENT #1

The infrastructure for the Project will be developed in phases. The first phase will include construction of the Highway 34 improvements and frontage, as well as the Sculptor Drive and Denver Avenue improvements. In the event there are no phase one improvements for the Plan Areas west of the private drive extension of Mountain Lion Drive (A and D); the first phase will not include Denver Avenue.

Landscape treatments for the Sculptor Drive and Denver Avenue frontage will be included with the roadway improvements. These treatments will be shown and approved in the Final Public Improvement Construction Package (PICP) included with the Preliminary Plat application materials. The landscape treatments will satisfy City of Loveland buffer yard requirements to the greatest extent practicable in light of unknown future development that may occur within lots fronting these roadways.

Next, the primary internal circulation routes will be constructed, including the private drive extensions of Mountain Lion Drive and Tanima Peak Street. All applicable utilities that will lie within these streets and drives will be installed at the time of their construction. The buildings, private drives and associated infrastructure within the various Plan Areas will be constructed in response to market demand. Plazas and other public spaces will be constructed in conjunction with the construction of adjacent buildings comprising more than 30% of the buildings fronting on a particular plaza or open space.

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4696 Broadway St.
Boulder, CO 80304
303-440-9200

LOVELAND EISENHOWER ADDITION
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CLIENT
Loveland Eisenhower Investments, LLC

CONSULTANTS
MIG, Inc.
Urban Design/Planning

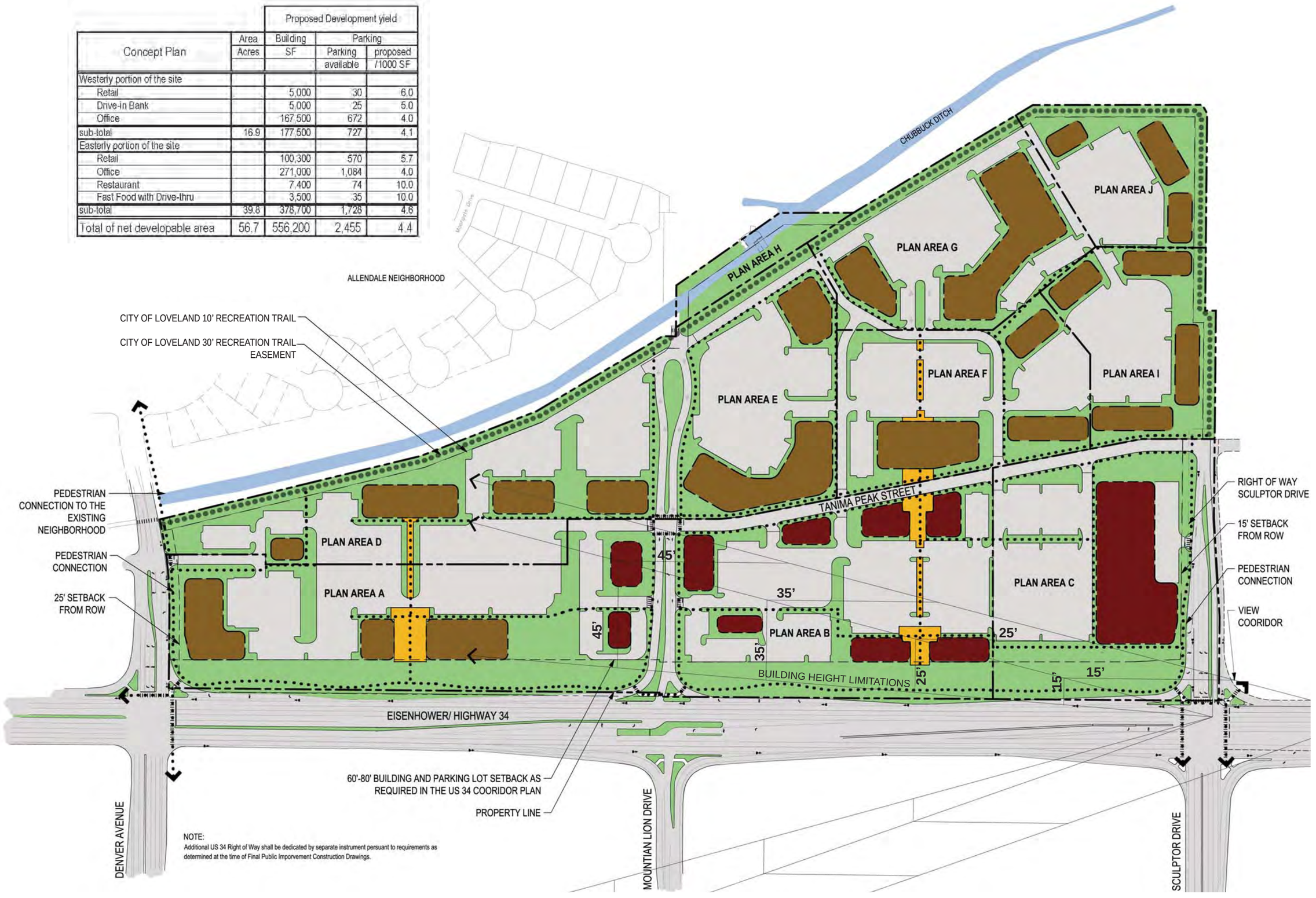
TFG Design, LLC
Landscape Architect

Owen Consulting Group Inc.
Engineering

Delich Associates
Traffic & Transportation

NARRATIVE

Concept Plan	Area Acres	Proposed Development yield: Building SF	Parking: available	Parking: proposed /1000 SF
Westerly portion of the site				
Retail		5,000	30	6.0
Drive-in Bank		5,000	25	5.0
Office		167,500	672	4.0
sub-total	16.9	177,500	727	4.1
Easterly portion of the site				
Retail		100,300	570	5.7
Office		271,000	1,084	4.0
Restaurant		7,400	74	10.0
Fast Food with Drive-thru		3,500	35	10.0
sub-total	39.8	378,700	1,728	4.6
Total of net developable area	56.7	556,200	2,455	4.4



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4696 Broadway St.
Boulder, CO 80304
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Loveland Eisenhower Investments, LLC

CONSULTANTS
MIG, Inc.
Urban Design/Planning

TFG Design, LLC
Landscape Architect

Owen Consulting Group Inc.
Engineering

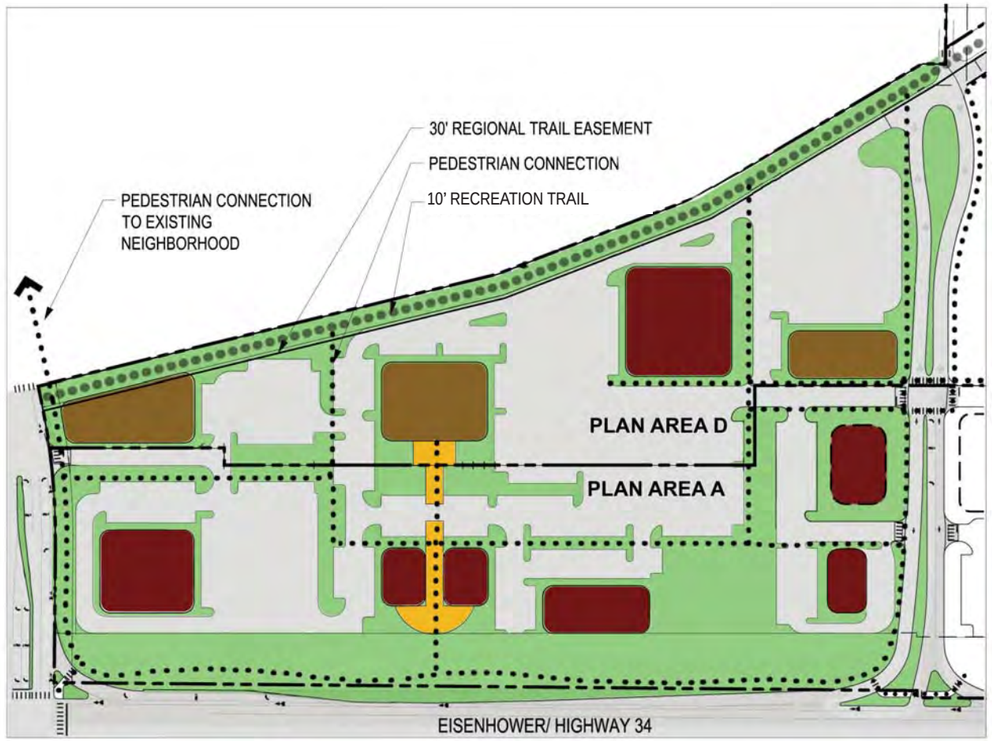
Delich Associates
Traffic & Transportation

- Office/ Employment
- Commercial/Retail/ Restaurant
- Major Pedestrian Plaza
- Residential
- Parking Area
- Open Space

0 50 100 200

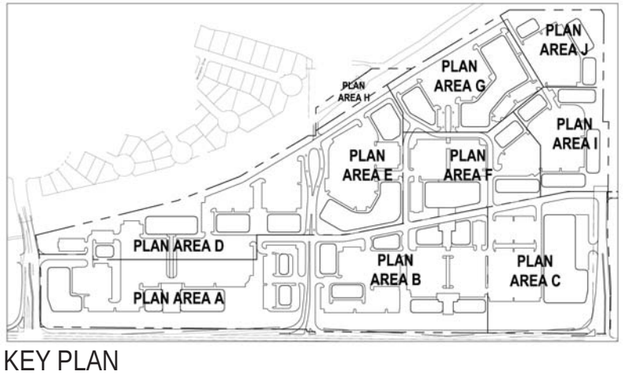
CONCEPT PLAN

SHEET 4 OF 12



ALTERNATIVE 1: PLAN AREAS A, D

Alternative 1 (Alternate Plan Areas A and D)	Area Acres	Proposed Development yield: Building SF	Parking: Parking available	Parking: proposed /1000 SF
Westerly portion of the site				
Retail		53,000	275	5.2
Office		60,000	240	4.0
Restaurant		10,000	135	13.5
Drive-in Bank		5,000	25	5.0
sub-total	16.9	128,000	675	5.3
Easterly portion of the site				
Retail		100,300	570	5.7
Office		271,000	1,084	4.0
Restaurant		7,400	74	10.0
Fast Food with Drive-thru		3,500	35	10.0
sub-total	39.8	382,200	1,763	4.6
Total of net developable area	56.7	510,200	2,438	4.8



KEY PLAN

ALTERNATIVE 2: PLAN AREA E

Alternative 2 (Alternate Plan Areas E)	Area Acres	Proposed Development yield: Building SF	Parking: Parking available	Parking: proposed /1000 SF
Westerly portion of the site				
Retail		5,000	30	6.0
Drive-in Bank		5,000	25	5.0
Office		167,500	672	4.0
sub-total	16.9	177,500	727	4.1
Easterly portion of the site				
Retail		100,300	570	5.7
Office		271,000	1,084	4.0
Restaurant		7,400	74	10.0
Fast Food with Drive-thru		3,500	35	10.0
sub-total	39.8	382,200	1,763	4.6
Total of net developable area	56.7	559,700	2,490	4.4

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Boulder, CO 80304
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Loveland Eisenhower Investments, LLC

CONSULTANTS
MIG, Inc.
Urban Design/Planning

TFG Design, LLC
Landscape Architect

Owen Consulting Group Inc.
Engineering

Delich Associates
Traffic & Transportation

Office/ Employment
Commercial/Retail/ Restaurant
Major Pedestrian Plaza
Residential
Parking Area
Open Space

0 50 100 200

PLAN AREAS ALTERNATIVES

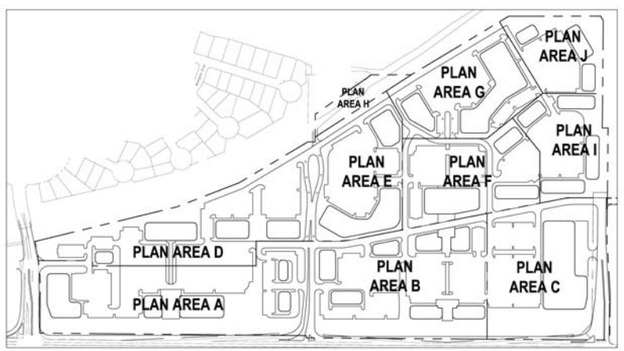
SHEET 5 OF 12

ALTERNATIVE 3: PLAN AREAS F, G, I, J

Alternative 3 (Alternate Plan Areas F, G, I, J)	Area Acres	Proposed Development yield: Building SF	Parking: Parking available	Parking: proposed /1000 SF
Westerly portion of the site				
Retail		5,000	30	6.0
Drive-in Bank		5,000	25	5.0
Office		167,500	672	4.0
sub-total	16.9	177,500	727	4.10
Easterly portion of the site				
Retail		100,300	570	5.7
Fast Food with Drive-thru		3,500	36	10.3
Lt Industrial		80,000	267	3.3
Office		161,000	651	4.0
Restaurant		7,400	74	10.0
sub-total	39.8	352,200	1,598	4.5
Total of net developable area	56.7	529,700	2,325	4.4

ALTERNATIVE 4: PLAN AREAS B, C, E, F, G, I, J

Alternative 4 (Alternate Plan Areas B, C, E, F, G, I, J)	Area Acres	Proposed Development yield: Building SF	Parking: Parking available	Parking: proposed /1000 SF
Westerly portion of the site				
Retail		5,000	30	6.0
Drive-in Bank		5,000	25	5.0
Office		167,500	672	4.0
sub-total	16.9	177,500	727	4.10
Easterly portion of the site				
Lt Industrial / Flex		200,000	400	2.0
Office		200,000	800	4.0
sub-total	39.8	400,000	1,200	3.0
Total of net developable area	56.7	577,500	1,927	3.3



KEY PLAN

MIG
4696 Broadway St.
Boulder, CO 80304
303-440-9200

LOVELAND EISENHOWER ADDITION
MAC CONCEPT MASTER PLAN AMENDMENT #1
Loveland, Colorado | April 2014 (submittal 7)

CLIENT
Loveland Eisenhower Investments, LLC

CONSULTANTS
MIG, Inc.
Urban Design/Planning

TFG Design, LLC
Landscape Architect

Owen Consulting Group Inc.
Engineering

Delich Associates
Traffic & Transportation

- Office/ Employment
- Commercial/Retail/ Restaurant
- Major Pedestrian Plaza
- Residential
- Parking Area
- Open Space

0 50 100 200

PLAN AREAS ALTERNATIVES

SHEET 6 OF 12

ALTERNATIVE 5 PROPOSED PLAN AREAS D, E-H

Alternative 5 (Plan Areas D, E-H)	Area Acres	Proposed Development Yield: Building SF / DU	Parking: Parking available	Parking: proposed /1000 SF
Westerly portion of the site				
Light Industrial		54,500	109	2.0
Office		45,500	182	4.0
Retail		35,000	145	4.1
Drive-in Bank		5,000	25	5.0
Restaurant		10,000	135	13.5
sub-total	16.9	150,000	596	4.0
Easterly portion of the site (East 40 Acre)				
Residential (16DU/ACRE)	23.41	368 DU	777	2.1/DU
Office	16.39	200,000	800	4.0
sub-total	39.8	200,000 SF / 368 DU	1,577	
Total of net developable area	56.7	350,000 SF / 368 DU	2,173	

ALTERNATIVE 5 PROPOSED DEVELOPMENT YIELD

KEY: PLAN AREAS

MULTIFAMILY HOUSING ELEVATIONS - 24 UNIT BUILDING

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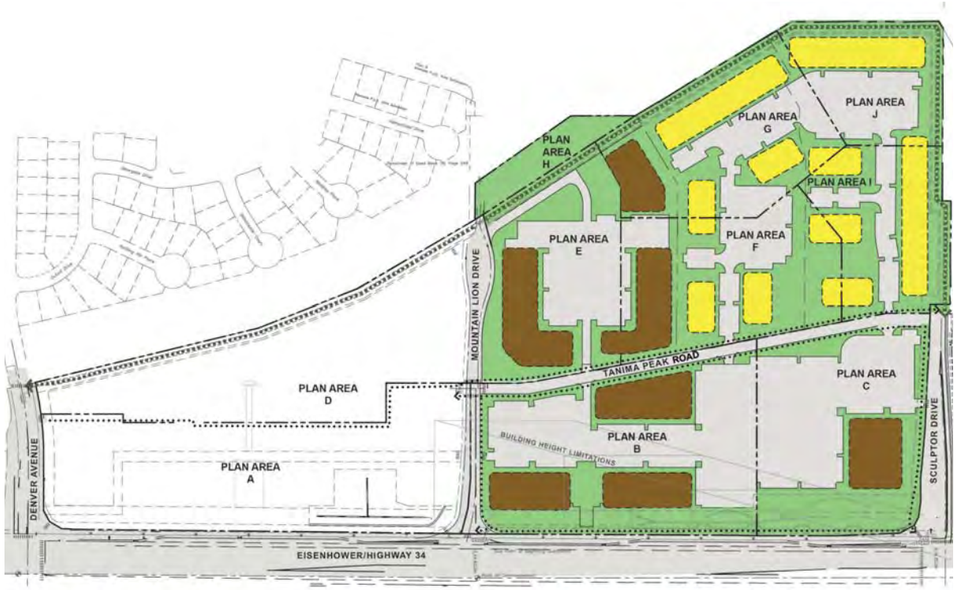
AMENDMENT #1



ALTERNATIVE 6 PROPOSED PLAN AREAS B, C, E-H

Alternative 6 (Plan Areas B, C, E-H)	Area Acres	Proposed Development Yield: Building SF/DU	Parking Req'd / Proposed	Parking Ratio Stalls / 1000 SF / DU
Westerly portion of the site (17 acres)				
Retail		50,000	167	3.33
Restaurant (2, Sit-down)		10,000	50	5.00
Supermarket		30,000	100	3.33
Pharmacy		15,000	50	3.33
Sub-total	**16.9**	**105,000**	**367**	**3.50**
Easterly portion of the site (40 acres)				
Residential	15.0	240 DU	480	2 / DU
Light Industrial	7.9	100,000	200	2.00
Office	16.9	200,000	800	4.00
Sub-total	**39.8**	**300,000 SF / 240 DU**	**1,480**	**3.00 / 2.00**
Total of Net Developable Area	**56.7**	**405,000 SF / 240 DU**	**1,847**	**3.375 / 2.00**

ALTERNATIVE 6 PROPOSED DEVELOPMENT YIELD

KEY: PLAN AREAS

MULTIFAMILY HOUSING ELEVATIONS - 16 UNIT BUILDING

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- Residential
- Parking Area
- Open Space

0 50 100 200

Perspective Vantage Points

3 Figure 3. Mountain Lion Drive Looking North to Focal Point

1 Figure 1. Retail Plaza South of Tanima Peak Street

4 Figure 4. Highway 34 Looking into Site

2 Figure 2. Plaza Between Office Buildings

5 Figure 5. Tanima Peak Street West of Sculptor Drive

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CHARACTER ILLUSTRATIONS

DESIGN STANDARDS

The following standards are provided to create a unified design theme throughout the Project. These standards will be incorporated into Site Specific Development Plans that are presented for City approval. These standards will be applied in addition to the development standards that have been adopted by the City of Loveland, as modified from time to time, including but not limited to the City of Loveland Municipal Code, Site Development Performance Standards and the Larimer County Urban Area Street Standards (LCUASS).

Architecture Development Standards

The Project will have a style of architecture that is rustic with a modern flair. Developers of respective Plan Areas will be required to design buildings that have a human scale, interest, and variety while maintaining an overall compatibility with adjoining or nearby buildings. All buildings should include a minimum of three of the following unifying design elements:

- Standing seam sloped metal roofs for small and medium buildings; parapet elements indicating the same for large buildings,
- Stone or brick bases,
- Stone entrance columns,
- Varying roof elements to signify building entries,
- Tower elements to delineate building terminuses,
- Awnings or suspended metal brows for shade and weather protection,
- Projecting sills.
  - *A small building should be defined as any single structure that has a total gross floor area not to exceed 10,000 SF on the ground floor.*
  - *A medium building should be defined as any single structure that has a total gross floor area of more than 10,000 SF and less than 75,000 SF on the ground floor.*
  - *A large building should be defined as any single structure that is (1) 75,000 SF or larger in total gross square footage on the ground floor or (2) any building taller than 5 stories.*

To maintain overall compatibility of the buildings throughout the Project, while allowing sufficient variation to avoid buildings being identical, the following techniques should be employed:

- Consistent building proportions and massing
- Consistent window and door patterns
- Similar building materials, textures, and colors
- Unifying elements in the building form such as recessed or projecting bays

Building Form

- Roof slopes should be consistent with adjacent buildings.
- Buildings should be designed so as to minimize snow shedding and runoff onto pedestrian areas and public ways.
- Building form should be oriented to take advantage of solar access and views.

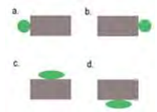
Building Placement and Orientation

Buildings should be placed in substantial compliance with the building envelopes as shown on the Concept Plan to create attractive and useful outdoor spaces that frame “campus character”. To the greatest extent possible,

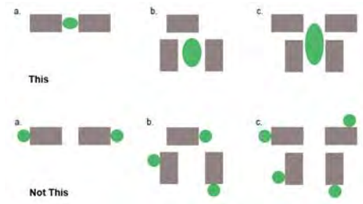
- Buildings should be placed to provide edges or enclosure to street and open space, creating linkages and gateways, as well as framing or terminating views.
- Building primary entries should be oriented towards street, pedestrian circulation, plaza area or open space.
- Buildings should be placed to create a terminal vista on the northern ends of major plazas.
- Building envelopes shown in Plan Areas A, B & C on the conceptual plan that are shown without drive-aisles or parking lots between the building face and the E. Eisenhower frontage should be reflected this way on the associated Site Specific Development Plan .
- Buildings along the south side of Tanima Peak Street should be placed in close proximity of the street and streetscape features to maintain an urban-activity character.
- Buildings in Employment areas (such as in Plan areas E, F, G, I & J.) should be situated so that shared open space and common areas can be incorporated between the buildings.
- Buildings should typically stand between primary automobile circulation routes and parking lots. Parking lots should not be placed between primary circulation routes and the buildings they serve, with the exception of large buildings and buildings that include an industrial or “flex” space component, which are located North of Tanima Peak. In any case parking lots can front primary circulation routes with the appropriate landscape screening as defined in the Landscape Development Standards included herein.
- In situations where large buildings or buildings that include an industrial or “flex” space component, which are located North of Tanima Peak are constructed it may be necessary to place service drives and parking between the primary circulation routes and the buildings to allow for appropriate freight/service access and to meet fire protection standards. These access drives, when placed between such a building and the primary circulation routes should be no wider than a standard access drive isle width plus the width required for a double-loaded parking configuration.
- Building placement should also, capitalize on views of the western mountains, Boyd Lake and off-site open spaces.
- Buildings should be placed in a manner that will provide visibility and facilitate public access.
- Buildings should also be oriented to preserve sun and sky exposure onto streets and into plazas.
- To the extent feasible, buildings should be oriented so that the face on which the primary entrance is located within +/- 20 degrees of true south, to minimize the potential for hazards due to accumulation of snow, ice and or other products of severe weather conditions on pedestrians and vehicles, on and off site.
- Large buildings should not be placed within 50 feet of the lot line of a residential use.
- Placement of large buildings that are 100 feet in height or higher must be accompanied by a shadow analysis to demonstrate the impact of the building on the adjacent buildings, plazas and open spaces.

Shared Common Open Space

Site Specific Development Plans for Plan Areas should include shared common open space such as plazas or green space features to create a campus like setting. Each building should have a minimum of one common open space attached to it.



To promote a campus setting, common open space should be shared by two or more adjacent buildings.

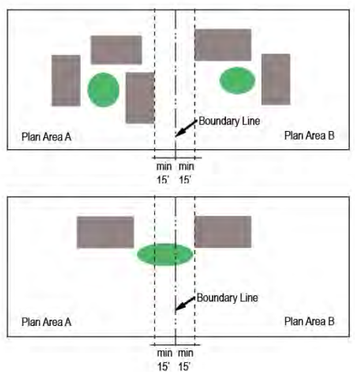


Buildings are considered adjacent if they are not separated by a driveway, vehicular circulation route, or parking lot. Buildings with drive-thru lanes or convenience stores with gas pumps do not need to provide shared common open space next to the building so long as the overall development of which they are a part provides the open space required by City ordinance. In order to accommodate these common open spaces buildings should be sited as follows:

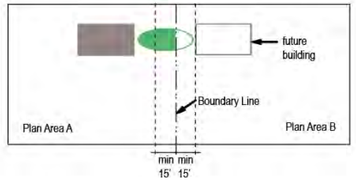
All Plan Areas should have buildings and associated common open space placed in such a way that coordination and contiguity exists or is easily attainable between the adjacent buildings and shared common open space.

- The minimum building setback from a Plan Area boundary line is 15 feet

- Plan Area boundary lines do not necessarily have to be centered in particular open spaces.

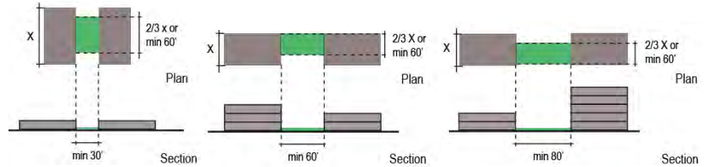


The first building abutting a shared open space should complete the associated common open space on its Plan Area so that it is fully functional until the construction of the adjacent building and associated adjacent common open space. The construction plans for the adjacent building and common open space should fulfill the dimensional requirements of the common open space and provide an integrated development so that the transition is seamless and functional for all users. If two buildings in two different plan areas are constructed at the same time, the 15’ setback from the plan area may be waived as long as the minimum distance between the two buildings is 30’ – 80’, depending on the number of stories as described below.



Shared common open space between two buildings:

- One-story buildings should have a minimum of a 30 foot wide common open space located between the buildings with a minimum of 2/3 the length of the building facade fronting this area or a minimum of 60 feet whichever is less.
- Buildings with 2 or 3 stories should have a minimum of a 60 foot wide common open space located between the buildings with a minimum of 2/3 the length of the building face fronting this area or 60 feet, whichever is less.
- Buildings that have more than 3 stories should have a minimum of an 80 foot wide common open space located between the buildings with a minimum of 2/3 the length of the building facades fronting this area or a minimum of 60 feet whichever is less. If 2/3 of both, or all, building facades fronting the open space are less than 60 feet in length, the minimum length of the open space should equal the length of the longest facade fronting the open space.



Large buildings should incorporate common open space into the Site Specific Development Plan. The common open space areas for large buildings should follow the standards as provided above.

Facades

- Building facades should generally have three vertical divisions: bases, middles, and tops (see Figure 6).
- Buildings should orient facades and main entries toward a plaza, parking area or pedestrian way that leads directly to a street.
- Building should incorporate 360 degree architecture. Side and rear walls of all stories that face a public right-of-way or a pedestrian way should be constructed of the same building materials and contain similar architectural treatment as the front/entrance of the building.
- Buildings should provide inviting street level storefronts that are oriented toward pedestrians and provide visually interesting forms or displays.
- Long horizontal facades on all buildings should be broken up to reduce the appearance of massive, blank walls. No uninterrupted length of any façade should exceed 30% of the façade’s total length, or 100 horizontal feet, whichever is less. At least two of the following techniques should be used to break up long uninterrupted facades:
  a. Color and/or material changes.
  b. Expression of structure with a frequent rhythm of column/bay spacing to subdivide the façade into smaller, more human scaled elements.
  c. For small and medium buildings, facades greater than 50 feet in length, measured horizontally, should incorporate wall place projections or recesses having a depth of at least 18 inches and extending at least 20% of the length of the façade (see Figure 6 and 7).
  d. For large buildings, facades greater than 100 feet in length, measured horizontally, should incorporate wall place projections or recesses having a depth of at least 4 feet and extending at least 20% of the length of the façade (see Figure 8,9, and 10)

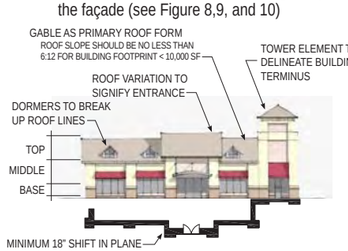


Figure 6. Pad Restaurant

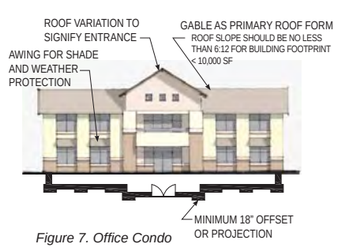


Figure 7. Office Condo

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DESIGN STANDARDS

DESIGN STANDARDS (Continued)

Figure 8. Large Format Office

Figure 9. Light Industrial

Transparency
- Transparent glazing should be provided on the ground floor entrances to buildings to ensure the visibility of active uses and goods.
- Glazing should have a visible light transparency of at least 60%.
- Building facades adjoining or oriented toward streets, plazas, and pedestrian areas should incorporate at least 40% transparency.
- On retail buildings, at least 60% of the total front façade should remain as transparent glass. Lesser proportions of transparency that are appropriate for a respective architectural style may be considered. Rear and sides of buildings should provide not less than 10% transparency through the use of glazing, including opaque or frosted to increase the building's relationship to the street. However, where operational requirements prevent glazing or display windows on the rear and sides of the building, the blank wall should include architectural features to create scale, interest, and variety.
- Window glazing bigger than 100 square feet should incorporate a variety of mullion patterns, bay dimensions, or detailing to provide scale. Window glazing exceeding 100 square feet without mullion patterns or any detailing and flush glass walls is not allowed.

Building Entries
- Building entrances should be easily identifiable by projecting or recessing them and should have distinguishing details, materials, or colors that enhance the visual quality.
- Entrances to buildings should be designed to ensure smooth and safe pedestrian circulation, and ease of snow removal.
- Primary building entrances should be well lit.
- Service entrances should be planned to be visually unobtrusive to site entries, building entrances, and public right-of-ways.

Materials
- Traditional building materials such as brick, stone, or wood should be used on facades of all buildings.
- Plaster may be used when combined with the above materials used as accents.
- No more than 80% use of a single material should be allowed.

Roof Treatments
- Building design should create varied roof parapet and cornice lines in order to create interesting and human scaled skylines.
- Gable or hip roofs as the primary roof form are preferred for structures lower than 35 feet high, except to the extent flat roof portions are incorporated (below).
- The primary gable roof slope for small buildings should be not less than 6:12 and should be sloping metal shed roofs with overhangs (see Figures 6 and 7).
- The gable roof slope for medium and large buildings should be not less than 4:12, and may combine flat roofs with sloped standing seam metal roofs (see Figures 8, and 9).
- Roof forms should be designed in ways, and/or used in combinations to break up large, continuous building forms. Long unbroken ridgelines are not allowed. Sloped roofs should not exceed 100 linear feet in length without a break or profile change (See Figure 10). Where flat roofs are used, other techniques to provide scale and interest should be used to refine large, continuous building forms.
- For large format retail buildings, dormers or towers should be used to break up roof lines longer than 100 linear feet.
- Rooftop mechanical units and equipment should be fully screened in elevation.

Building Lighting
- Important architectural components of the buildings should be accentuated with lighting.
- Primary building entrances should be externally lit to promote a more secure environment at the door and to emphasize the primary point of entry into the building.
- Entry lighting should complement the building's architecture.

Drainage
- Drainage should be conveyed along private drives, streets, and open space.
- Detention areas should be designed to be aesthetically pleasing, useable open space when not detaining water.
- Surface storm water should not be discharged across sidewalks and bike trails.
- The majority of the detention capacity will be provided in the Highway 34 buffer areas, with the use of some parking lot detention to supplement.

Site furnishings
Site furnishings such as bicycle racks, benches, light fixtures, tree grates, bollards, and planters will be designed with a unified theme that is consistent with and complementary to the architectural character of the buildings.

Service Areas, Utilities and Mechanical Equipment
- Potentially unsightly service areas should be screened from sidewalks, streets, trails and open spaces with a combination of walls and/or shrubs and trees.
- Service areas should generally not be located at the terminus of a view corridor.
- Mechanical equipment and service areas should be screened from the view of streets, sidewalks, and trails. Screening can be accomplished using landscaping, berms, and architectural walls that match building materials.
- If an architectural wall is used as a screening method, the height of the wall should be minimum 6 feet and maximum 12 feet.
- All service areas should be clearly marked for delivery vehicles.

Convenience Store with Gas Station
A single pad site within the Project may be designated for a combination Gas Station and Convenience Store (C-Store). For this pad, the following standards will apply. (Note: these standards are provided in detail in Section 18.52.060 of the Loveland Municipal Code.)
- The C-Store should provide no more than 8 fueling stations
- C-Store uses should be located only along E. Eisenhower Boulevard, and should not be placed west of Mountain Lion Drive.
- "Reverse-mode" orientation of the building and fuel stations is encouraged.
- Canopies for fueling stations should not exceed 16.5 feet in total height. Canopies should be architecturally integrated with the main building and all other accessory structures on the site.
- Any lighting should conform to City of Loveland standards and guidelines related to reduced glare and emission beyond the boundary of the site.
- Landscape materials and/or screening berms or walls should be installed along all portions of the street frontage in order to screen gasoline service islands, pumps and any other product dispensing areas from abutting public roadways.
- The minimum distance between parallel fuel pump islands should be 25 feet.
- No fast food or drive-in restaurant should be operated in conjunction with a convenience store in the same site and/or within the same building without first obtaining from the City approval of a Special Review pursuant to Chapter 18.4 of the Municipal Code.

Figure 10. Large Format Retail

Design Standards - Multifamily Residential AMENDMENT #1

Except as specifically modified below, all Design Standards in this Concept Plan shall apply to Multifamily Residential buildings. Multifamily Residential buildings shall be architecturally complementary in terms of colors, materials, and visual appearance. Below is an image illustrating a typical multifamily façade.

- Residential buildings will deviate from Concept Plan standards relating to Building Entries, Materials, Roof Treatments, and Transparency.
- Residential buildings may have entries oriented toward residential parking areas.
- Residential buildings may be placed within 50' of the lot line of other residential uses.
- Residential buildings located outside of the Highway 34 Corridor Zone shall not be subject to the "campus style or character" design protocols or the Shared Common Open Space elements that are associated with the employment and commercial uses described in the Concept Plan. However, multifamily land uses will provide for continuous pedestrian routes that will connect entrances with common-use buildings, open space, parking and the regional recreation trail system.
- Shared common open space and recreational facilities or clubhouses will be placed to optimize resident uses rather than placed with respect to particular buildings.
- Residential building entries will be lit for safety and identification purposes only.
- Windows will be adequately sized and placed on the buildings to allow for aesthetic quality and residential appeal.

Landscape Standards

General Landscape Theme
Landscape treatments throughout the development should comply with the theme described below to create unity between the various Plan Areas. Landscape features will create spatial elements, connectivity, and promote pedestrian activity.

The landscaping for the Project will be designed and arranged to provide a natural feel which reflects the native landscapes of the Rocky Mountain Region. The grading, detention and storm water accommodations will be important elements in accomplishing this feel. Natural boulders and varying grades of smooth river rock will be used to simulate naturally occurring dry stream beds. Berms, swales and detention features will also be constructed in natural shapes and configurations to assist in carrying out the described theme. Plantings will be planned in informal groupings, not formal rows or highly structured arrangements. Drifts and groupings of plants will be used as found in nature, as opposed to individual specimens, unless the tree or shrub is being used as an accent or to fill an individual space or need. Groupings of boulders will also be used as additional accents to assist in the accomplishment of the natural theme.

- Canopy Trees will provide shade and height within the development, softening building elevations and corners.
- Evergreen Trees will provide screening and a sense of permanence and lasting effect in winter.
- Shrubs will be selected from an assortment of shapes, textures and colors (bloom and foliage) to provide variety, accents, year-round interest, screening of parking and service areas, and an attractive lower level of vegetation.
- Perennials and groundcovers will soften the ground plane and provide attractive xeric alternatives to large expanses of turf that provide little benefit for the resources they consume.
- Irrigated turf areas will be limited in size.
- Low-water-use grasses will also play a role in the overall landscape theme. These grasses in some areas will be provided with irrigation systems so the grasses can be irrigated occasionally to maintain a healthy look without the heavy water usage and maintenance of traditional turf grasses.

East Eisenhower Frontage
The East Eisenhower Frontage will conform to recommendations provided by the "Highway 34 Corridor Plan" (September, 1993). Corridor features will include 60-80 feet landscape zones characterized by a minimum 6 feet wide meandering walk, 4-6 feet high berms and vegetation hedges to screen parking, and drifts of informal tree groups with large masses of shrubs, naturalized grasses and wildflowers (see Figure 11). The entire Hwy 34 Corridor frontage will be implemented during the first phase of Public Improvement construction by the Master Developer to ensure consistency along the corridor. Final Landscape Plans will be produced and submitted to the City of Loveland with the Technical Review submittal materials for the Preliminary Plat and Preliminary Public Improvement Construction Plans (PICP).

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Urban Design/Planning

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Landscape Architect

Owen Consulting Group Inc.
Engineering

Delich Associates
Traffic & Transportation

DESIGN STANDARDS

SHEET 11 OF 12

Figure 11: US 34/ Eisenhower Landscape Character

Tanima Peak Street

Uniformly spaced canopy trees, at 40 feet on center, will provide shade for pedestrians and vehicles while providing unity that will be carried throughout the Project. Landscape treatments along Tanima Peak Street will also include low-growing ornamental planting beds and building foundation planting beds. These should be designed to maintain visibility between the buildings along both sides of the private drive and to insure automobile visibility of pedestrian traffic along the corridor and those crossing the street at unexpected locations (see Figure 12 and 13).

Entry Landscaping

The entry landscape will work with the signage theme to bring natural elements to the entry. The design and materials of the buildings will be echoed in the signage. The accompanying landscape surrounding the signage will provide large evergreen trees as a background, ornamental trees for interest and accent, a selection of appropriate shrubs to embrace the signs and tie them to the site while interesting groundcovers and perennials will complete the foreground area (see Figure 14).

Landscape Setbacks and Buffer Yards

Landscape buffer yards are required along the perimeter of the site. Buffer yard treatments along Denver Avenue and Sculptor Drive will consist of more formal colonnade tree lawns and shrub beds. Buffer yard requirements will coincide with the recreation trail located along the north perimeter and will be primarily non-irrigated grasses and drip irrigated trees and shrubs. Irrigation components will be placed to minimize potential damage when the trail is maintained by the City of Loveland. All landscape buffer yards will comply with the City of Loveland's Site Development and Performance Standards and Guidelines, as amended from time to time.

Recreation Trail Landscaping

A City of Loveland 10' Recreation Trail & City of Loveland 30' Recreation Trail Easement will be provided along the northern perimeter of the Project. Landscape treatments associated with the trail will consist of non-irrigated vegetation along the north side between the trail and property line. Existing vegetation and topography should discourage trail users from diverting off the trail toward the southern bank of the canal. The required landscape buffer yard along the north side of the Project will be established in various widths along the length of the trail between the south side of the trail and the buildings, parking areas and drive aisles. A 2 feet shoulder will be included along both sides of the 10 feet wide concrete trail. Landscape treatments adjacent to the shoulder will be restricted to low level shrubs, low-water-use grasses and perennials that are exclusively drip irrigated. Required buffer yard trees, turf and larger shrubs can be placed within the designated trail easement. All trees adjacent to the trail will adhere to the following standards:

- Minimum offset for coniferous trees from edge of trail to tree center is 12 feet.
- Minimum offset for deciduous trees from edge of trail to tree center is 6 feet.
- Minimum clear zone defined as the vertical height from trail to lowest branch is 10 feet. Shrub and perennial beds are permitted within the City of Loveland 30' Recreation Trail Easement. Plant materials will not extend beyond the edge of the trail. All beds will utilize wood fiber mulch only.

Building Landscaping

Building landscape treatments will provide visual interest and integrate the building structure into the surrounding landscape. Enhanced landscape features will guide the user to the main entries, important building features and common open space areas.

Street Trees

Street trees will be provided along all internal streets and access streets to shade sidewalks and improve the pedestrian environment. Street trees will be planted typically at 40 feet on center.

Parking Lot Landscaping

Parking lot interior landscaping should include 1 canopy tree and 5 shrubs per 15 parking spaces.

Landscape islands will be provided in parking lots in excess of 15 parking spaces. They will be a minimum of 6 feet in width, and they will be located so as to limit continuous rows of parking stalls to a maximum of 15 spaces. Each island will contain at least 1 tree and 5 shrubs. 2 feet at the end of landscape islands will be left unplanted where cars have a tendency to run over curbs of end islands. The use of cobbles, patterned concrete or brick pavers will be implemented at the ends of landscape islands.

Figure 12: Tanima Peak Street Landscape Treatments

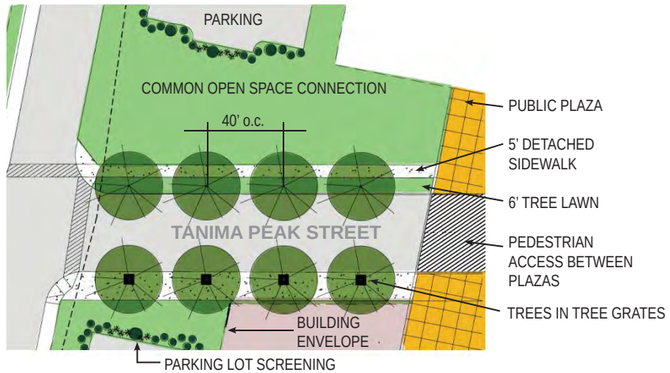


Figure 13: Tanima Peak Street Landscape Treatments, Plan View

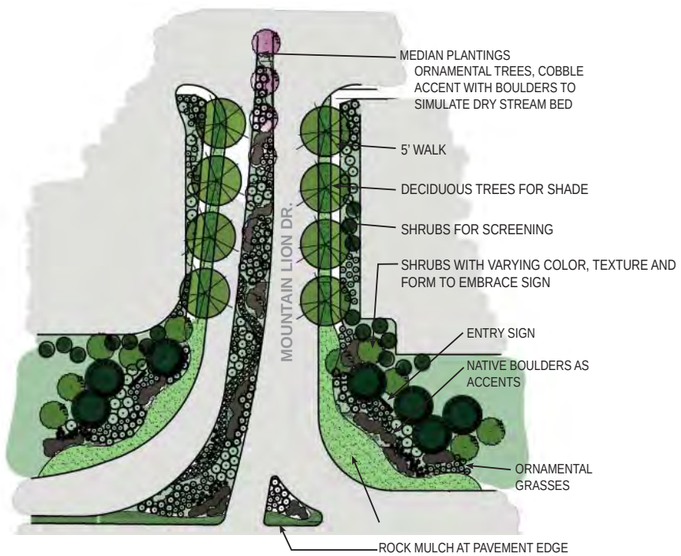


Figure 14: Entry Landscape Treatments

Landscape Maintenance

Common area landscape treatments, including East Eisenhower frontage, primary roadway frontage, and common area open spaces shall be continually maintained in good condition by a single landscape maintenance company to insure ongoing health and vitality of landscape materials and uniformity. The master developer shall record Covenants, Conditions and Restrictions mandating the common maintenance program for common area landscape and irrigation. The common maintenance program will be funded by assessments made on each property owner. Modifications to the common maintenance program will require master developer approval or approval by a property owner's association after the master developer has sold the majority of the project.

Trash Enclosures

Trash enclosures will be placed around dumpsters and any other proposed receptacle of trash. The enclosure will be designed to entirely screen the dumpster from view. The enclosure will be constructed and placed so as to prevent trash from being scattered by wind or animals. The enclosure will include a concrete pad, on which the dumpster will be placed, enclosed by an opaque wall at least 6 feet in height, with opaque gates. The enclosure will be sturdy and built with quality wood and/or masonry materials. Shrubs at a minimum of 4 feet in height will be used on 3 sides of the enclosure.

AMENDMENT #1

Landscape Standards - Multifamily Residential

The Multifamily Residential development shall remain open and interconnected. The landscape shall remain continuous between the various buildings so that residents can move freely throughout the residential portions of the site. Residents shall be allowed to utilize all of the open areas between the buildings for passive and active recreation without restriction. Multifamily Residential developments shall include the following components:

- Active recreation areas shall be place strategically within the residential development for the use and enjoyment by all of the residents. Active recreation areas could include but are not limited to swimming pools, club houses, tennis courts, basketball courts, picnic shelters and tot lots.
- Fences and walls shall be used only for active recreation areas. Fences and walls can be used on the perimeter of the overall multi-family residential development, but are prohibited for use in separating the various buildings from each other.
- Passive recreation areas include an interconnected system of walkways and large open turf areas.
- Landscape buffer yards will be placed between residential uses and conflicting uses to mitigate potential for issues associated with traffic, activity, density, loss of privacy, and unsightly views that may be associated with industrial or commercial uses. Buffer yards shall comply with the City of Loveland Site Development Performance Standards and Guidelines. Buffer yards will include walls, landscape materials, berms or a combination of the above techniques.
- Building landscaping will include foundation plantings to "ground" residential structures, to create residential scale and to keep irrigated turf away from walls and foundations where water seepage could damage the structure. These landscape beds shall include the following components:
  - A 3' minimum non-planted/non-irrigated strip directly adjacent to the building that is mulched and easily maintained.
  - A minimum 4' landscape strip that includes a variety of shrubs, perennials and ground covers,
  - A permanent header shall be used to separate planting beds from turf areas and between changes in mulches - such as between rock mulch and fiber mulch.
  - Mulch shall be used throughout the planting bed. Rock mulch, minimum 1/2" nominal size, or fiber mulch can be used. Bark chips, sand, and gravel are strictly prohibited for mulch purposes.
  - The use of boulders in planting beds is encouraged to provide for visual interest and an overall Rocky Mountain theme.
- Parking Lot landscape will comply with the City Development Standards as outlined in the Concept Plan for the entire development area.

MIG
4696 Broadway St.
Boulder, CO 80304
303-440-9200

LOVELAND EISENHOWER ADDITION
MAC CONCEPT MASTER PLAN
AMENDMENT #1
Loveland, Colorado | April 2014 (submittal 7)

CLIENT
Loveland Eisenhower Investments, LLC

CONSULTANTS
MIG, Inc.
Urban Design/Planning

TFG Design, LLC
Landscape Architect

Owen Consulting Group Inc.
Engineering

Delich Associates
Traffic & Transportation

DESIGN STANDARDS

Final Plat of

Loveland Eisenhower First Subdivision

to the City of Loveland, County of Larimer, State of Colorado

Addition and all of the Loveland Eisenhower Being a subdivision and amended plat of Allendale Plaza 5th Subdivision, a portion of Tract B of Loveland Business Plaza First Addition to the City of Loveland, Larimer County, Colorado, located within that portion of the Southeast One-Quarter of the Southeast One-Quarter of Section 7, and that portion of the Southwest One-Quarter of Section 8, both situate in Township 5 North, Range 69 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado

Dedication and Acknowledgement

KNOW ALL PERSONS BY THESE PRESENTS that the undersigned, **Loveland Eisenhower Investments, LLC**, a California limited liability company, and **First National Bank of Omaha**, a National Banking Association, it's successors and/or assigns, being all the owners and lienholders of the following described property, except any existing public streets, roads or highways, which property is located in that portion of the Southeast One-Quarter of the Southeast One-Quarter of Section 7, and the Southwest One-Quarter of Section 8, both in Township 5 North, Range 68 West of the 6th P.M., Larimer County, Colorado, being more particularly described as follows:

Legal Description:

All that portion of Allendale Plaza Fifth Subdivision recorded in the Office of the Clerk and Recorder, Larimer County, Colorado at Reception No. 2003-0131660, a portion of Tract B of Loveland Business Plaza First Addition, recorded in the Office of the Clerk and Recorder, Larimer County, Colorado in Book 1622 at Page 097 and 479, both being located in the Southeast One-Quarter of the Southeast One-Quarter of Section 7, Township 5 North, Range 68 West of the 6th P.M., and all of the Loveland Eisenhower Addition to the City of Loveland, County of Larimer, State of Colorado being recorded in the Office of the Clerk and Recorder, Larimer County, Colorado at Reception No. 2010-002-9959, being located in that portion of the Southeast One-Quarter of the Southeast One-Quarter of Section 7, and that portion of the Southwest One-Quarter of Section 8, both in Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, more particularly described as:

Considering the East line of the Southeast One-Quarter of the Southeast One-Quarter of Section 7, Township 5 North, Range 68 West of the 6th P.M., as monumented by a 3/4" rebar with 2 1/2" aluminum cap in monument box bearing the Registration No. 17662 dated 1996 on the South end, and a 5/8" rebar with 2 1/2 " aluminum cap bearing the Registration No. 33643 dated 2004 on the North end, assumed from area plats and deeds to bear N00°29'43"E, and with all bearings contained herein relative thereto;

COMMENCING at the Southeast corner of said Section 7;

THENCE along the East line of the Southeast One-Quarter of the Southeast One-Quarter of said Section 7 North 00°29'43" East for a distance of 114.00 feet to the Northerly Right-of-Way line of U.S. Highway 34 as recorded in the Office of the Clerk and Recorder, Larimer County, Colorado in Book 1287 at Page 546, being also the TRUE POINT OF BEGINNING;

THENCE departing said East line and Westerly along the Northerly Right-of-Way line of U.S. Highway 34, being also the South line of Tract B of Loveland Business Plaza First Addition North 89°27'39" West for a distance of 1252.14 feet to a point on the South line of said Tract B;

THENCE departing the South line of said Tract B, being also the Northerly Right-of-Way line of U.S. Highway 34 North 00°26'29" East for a distance of 10.00 feet to the Southwest corner of Allendale Plaza Fifth Subdivision, being also the Southeast corner of Tract A, Denver Avenue Second Addition;

THENCE along the East line of said Tract A North 00°26'29" East for a distance of 199.82 feet to a point on the Easterly Right-of-Way line of North Denver Avenue, being also the beginning of a tangent curve to the left, the radius point bearing North 89°33'31" West for a distance of 930.00 feet, the central angle being 12°07'26", and the long chord bearing North 05°37'14" West for a distance of 196.42 feet;

THENCE along the arc of said curve, being also the Easterly Right-of-Way line of North Denver Avenue, a distance of 196.79 feet to the end of said tangent curve, being also a point on the Easterly line of Tract A of Denver Avenue First Addition;

THENCE continuing along the Easterly Right-of-Way line of North Denver Avenue, being also the Easterly line of said Denver Avenue First Addition North 11°40'57" West for a distance of 24.44 feet to the Southwest corner of Tract C of Parcel 1, Allendale Plaza Addition;

THENCE departing the Easterly Right-of-Way line of North Denver Avenue, and along the Southerly line of said Tract C, being also the Northerly line of Allendale Plaza Fifth Subdivision North 76°19'08" East for a distance of 667.52 feet to an angle point;

THENCE continuing along the Southerly line of said Tract C, being also the Northerly line of Allendale Plaza Fifth Subdivision North 68°51'38" East for a distance of 307.91 feet to an angle point;

THENCE continuing along the Southerly line of said Tract C, being also the Northerly line of Allendale Plaza Fifth Subdivision North 59°14'53" East for a distance of 364.94 feet to the Northeast corner of Allendale Plaza Fifth Subdivision, being also a point on the West line of that certain parcel of land recorded in the Office of the Clerk and Recorder, Larimer County, Colorado in Book 78 at Page 249;

THENCE departing said West line North 59°14'53" East for a distance of 19.30 feet to a point on the bisector line of said parcel of land;

THENCE along said bisector line, and parallel with the East line of the Southeast One-Quarter of the Southeast One-Quarter of said Section 7 North 00°29'43" East for a distance of 104.86 feet to an angle point;

THENCE departing said bisector line North 54°34'02" East for a distance of 20.29 feet to the West line of the Southwest One-Quarter of the Southwest One-Quarter of said Section 8;

THENCE departing said West line North 54°34'02" East for a distance of 313.58 feet to the North line of the Southwest One-Quarter of the Southwest One-Quarter of said Section 8;

THENCE along said North line North 89°55'47" East for a distance of 183.20 feet to an angle point;

THENCE departing said North line North 58°59'47" East for a distance of 520.00 feet to the Northerly line of that certain parcel of land recorded in the Office of the Clerk and Recorder, Larimer County, Colorado in Book 1359 at page 290;

THENCE along said Northerly line and parallel with the North line of the Southwest One-Quarter of the Southwest One-Quarter of said Section 8 North 89°55'47" East for a distance of 421.00 feet to an angle point;

THENCE South 29°09'13" East for a distance of 24.27 feet to the East line of the Northwest One-Quarter of the Southwest One-Quarter of said Section 8;

THENCE along said East line South 00°32'41" West for a distance of 246.10 feet to the Northeast corner of the Southwest One-Quarter of the Southwest One-Quarter of said Section 8;

THENCE along the East line of the Southwest One-Quarter of the Southwest One-Quarter of said Section 8 South 00°32'41" West for a distance of 244.30 feet to the Northwest corner of that certain parcel of land recorded in the Office of the Clerk and Recorder, Larimer County, Colorado at Reception No. 20070025682;

THENCE departing perpendicularly said East line South 89°27'19" East for a distance of 26.50 feet to an angle point;

THENCE the following three (3) courses and distances:

(1.) South 00°32'41" West for a distance of 514.52 feet to an angle point;
(2.) South 03°16'13" East for a distance of 247.99 feet to an angle point;
(3.) South 00°32'41" West for a distance of 207.32 feet to the Northerly Right-of-Way line of U.S. Highway 34 as recorded in Book 1286 at Page 284, records of said County;

THENCE along said Northerly Right-of-Way line South 89°53'01" West for a distance of 43.00 feet to the East line of the Southwest One-Quarter of the Southwest One-Quarter of said Section 8, being also the Southeast corner of that deed recorded at Reception No. 20070025330, records of said County;

THENCE continuing along the Northerly Right-of-Way line of U.S. Highway 34 as recorded in Book 1287 at Page 546, records of said County North 89°35'12" West for a distance of 1,313.28 feet to the TRUE POINT OF BEGINNING,

containing 58.768 acres (2,559,953 sq. ft.) , more or less, and is subject to all easements and rights-of-way on record or existing, do hereby subdivide the same into lots, blocks, tracts, outlots, rights-of-way, and easements, as shown on this plat; and do hereby designate and dedicate: (1) all such rights-of-way and easements, other than utility easements and private easements, to and for public use, except where indicated otherwise on this plat; and (2) all such utility easements to and for public use for the installation and maintenance of utility, irrigation and drainage facilities; and do hereby designate the same as LOVELAND EISENHOWER FIRST SUBDIVISION to the City of Loveland, Colorado;

and further,

All expenses involving necessary improvements for water system, sanitary sewer system, curbs and gutters, sidewalks, street improvements, street signs, traffic control signs, alley grading and surfacing, gas service, electric system, grading and landscaping shall be paid by Loveland Eisenhower Investments, LLC.

Dedication Statement:

The owner(s) hereby dedicates all private drives and pedestrian walkways within Loveland Eisenhower First Subdivision as delineated on this plat, as a non-exclusive blanket private access easement, and public emergency access easement to the occupants, invitees, customers, vendors, service agents, emergency personnel, public officials and their representatives and/or guests of Loveland Eisenhower First Subdivision, for their reciprocal and mutual use and enjoyment.

This dedication shall run with the land, be binding and enforceable upon the owner, and the owner's successors and/or assigns, and it shall inure to the benefit of all current and future occupants, invitees, customers, vendors, service agents, emergency personnel, public officials and their representatives and/or guests of Loveland Eisenhower First Subdivision for their reciprocal and mutual use and enjoyment.

This non-exclusive blanket private access easement, and public emergency access easement, shall be maintained by the property owner(s).

Owner(s): Loveland Eisenhower Investments, LLC
a California limited liability company

State of California)
) SS
County of Santa Barbara)

The foregoing instrument was acknowledged before me this 10TH day of May, 2011,
by Richard Ridgway
Richard Ridgway as Manager, Loveland Eisenhower Investments, LLC
a California limited liability company

Witness my hand and official seal.

My commssion expires Mar 20, 2012

Notary Public

Lienholder(s) First National Bank of Omaha, N.A.

State of Nebraska)
) SS
County of Douglas)

The foregoing instrument was acknowledged before me this 12TH day of May, 2011,
by as Vice President
First National Bank of Omaha, N.A.

Witness my hand and official seal.

My commssion expires 12-24-11

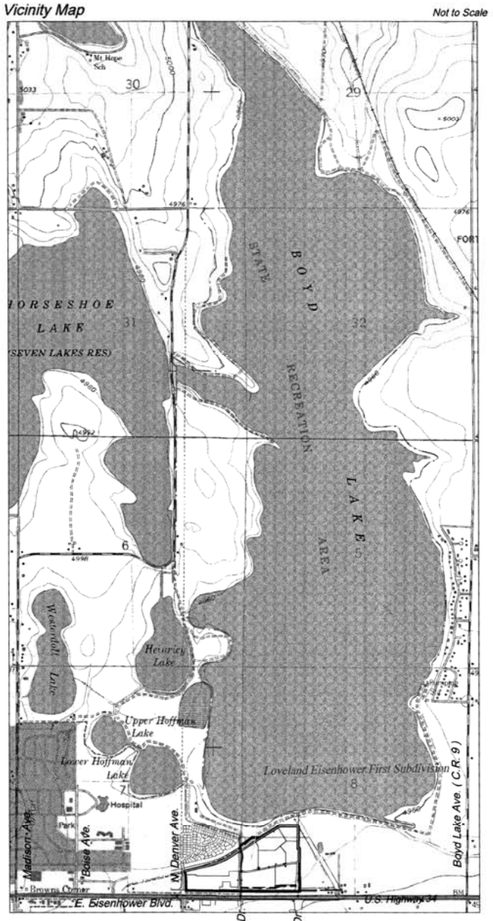
TRACY MORRISON
My Comm. Exp. Dec. 24, 2011

Notary Public Tracy Morrison

Plat Notes:

1. Lineal units cited in this plat are defined as U.S. survey feet.
2. Tierra Surveys, Inc. relied on, and prepared this plat based on title research provided by Chicago Title Commitment No. 1392800, 1425260, 1426119, and 1445876.
3. The names of the property owner(s), subdivision designer, subdivision engineer and subdivision surveyor are as follows:
   Property Owner(s): Loveland Eisenhower Investments, LLC, 200 East Carrillo Street, Suite 200, Santa Barbara, CA 93101
   Subdivision Designer: The Fredericson Group, LLC, 7711 Windsong Dr., Windsor, CO 80538
   Subdivision Engineer: Owen Consulting Group, Inc., 3715 Shallow Pond Drive, Fort Collins, CO 80528
   Subdivision Surveyor: Tierra Surveys, Inc., 179 Green Ridge Rd., Drake, CO 80515
4. All maintenance within the City of Loveland 30' Recreation Trail Easement, except for the City of Loveland 10' concrete Recreation trail shall be at the Owner's liability and expense.
5. All private landscape easements within this subdivision shall be operated and maintained by the Owner(s), their successors, and/or assigns.
6. All storm drainage easements and related appurtenances, including but not limited to storm drainage pipes, ponds, inlets, storm and outlet works are to be privately owned and privately maintained. Further, maintenance and upkeep of stormwater detention ponds and permanent stormwater quality improvements are required by the City of Loveland, and are a continuing obligation of the Business Owner Association (BOA), or private property owner. The Owner(s) or responsible parties (BOA) shall provide ongoing maintenance to the private stormwater improvements as needed to maintain compliance with the approved construction plans and reports.
7. No Postal Easements fronting U.S. Highway 34, North Denver Ave. and Sculptor Drive are shown. A waiver has been granted in writing by the Postmaster pertaining to frontage postal easements. In lieu of a six (6) foot frontage postal easement, a blanket public postal easement, coincident with other private access easements throughout the site, is granted by this plat in favor of the U.S. Postal Service.
8. This plat and project is subject to a development agreement which has been recorded in the real property records of Larimer County, Colorado.
9. Unless otherwise approved by the City, all unsatisfied conditions of approval for the original subdivision shall continue to apply to this property.
10. Pursuant to Sub-section 16.36.010.A of the City of Loveland Municipal Code, all public easements dedicated on previous plats of this property, but not depicted or noted on this plat, are hereby vacated.
11. According to Colorado law you must commence any legal action based on any defect in the survey within 3 years after you first discover such defect. In no event may any action based upon any defect in the survey be commenced more than 10 years from the date of certification shown hereon.

Vicinity Map — Not to Scale



Basis of Bearing Statement:

The Basis of Bearings for this plat is the West line of the Southwest One-Quarter of the Southwest One-Quarter of Section 8, Township 5 North, Range 68 West of the 6th P.M. as monumented by a found 2 1/2 " aluminum cap, PLS 17662 dated 1996 in monument box on the South end and a found 2 1/2" Aluminum cap, PLS 33643 dated 2004 on 5/8" rebar on the North end, assumed from prior plats and deeds in the area to bear North 00°29'43" East , and with all bearings contained herein relative thereto.

Surveyor's Certification:

I, Richard Allen Toth, being a registered Professional Land Surveyor in the State of Colorado, do hereby certify that the survey of LOVELAND EISENHOWER FIRST SUBDIVISION was made by me or under my supervision and that the survey is accurately represented on this map and that the statements contained hereon were read by me and are true to the best of my knowledge.

Dated this 31ST day of MARCH, 2011.

Richard Allen Toth
Colorado Registered Professional Land Surveyor 33643
Date of Preparation: 3/31/11

COLORADO REGISTERED RICHARD ALLEN TOTH PLS 33643 3/31/2011 PROFESSIONAL LAND SURVEYOR

Attorney's Certification:

I, Keirstin Beck, an attorney licensed to practice law in the State of Colorado, certify that I have examined title by review of that certain Commitment of Title Insurance issued by Chicago Title Insurance Company with an effective date of March 24th, 2011 (the "Commitment") to the above described land dedicated to the City of Loveland, Colorado and as set forth on the Commitment, that the parties executing the dedication are the owners thereof in fee simple, and the dedicated land is free and clear of all liens and encumbrances, except as set forth herein on this final plat. So sworn this 13TH day of May, 2011.

Attorney at Law

City of Loveland Certificate

This subdivision plat is approved by the Director of Development Services of the City of Loveland, Larimer County, Colorado this 5TH day of AUGUST, 2011, for filing with the Clerk and Recorder of Larimer County and for conveyance to the City of the public dedications shown hereon, which are accepted; subject to the provision that that approval in no way obligates the City of Loveland, for the financing or constructing of improvements on land, streets, or easements dedicated to the public except as specifically agreed to by the Director of Development Services.

Director of Development Services
For Greg George

Witness my hand and seal of the City of Loveland

ATTEST:

City Clerk

CITY OF LOVELAND SEAL COLORADO

ATTACHMENT 10

CLIENT: Loveland Eisenhower Investments, LLC
PROJECT: Final Plat of Loveland Eisenhower First Subdivision
PROJECT NO.: 07-07-589
DATE of PREPARATION: 3/31/2011

Tierra Surveys, Inc.
P.O. Box 138, Drake, Colorado 80515
Phone (970) 203-9653 Fax (970) 667-8762 Email Tierrasurv@aol.com

REVISION: 5/05/2010 Add 20' wide Irrigation Easement through Tracts H, I & J
REVISION: 5/05/2010 Modify Attorney's Certification language
REVISION: 5/10/2010 Add Greeley Loveland Irrigation Co. 50' R.O.W. line overlap detail
REVISION: 9/21/2010 Add 16' Public Utility Easements, Add Access Easement abutting Sculptor Drive, Add Detail
REVISION: 9/21/2010 Add Plat Notes 8 & 9
REVISION: 11/26/2010 Modify sub-Dedication statement, delete plat notes 7, 8 & 9, renumber plat notes 10 through 14, enlarge Vicinity Map, center in column 3, revise spacing signature blocks column 4 Add delineating language to Mountain Lion Drive and Tract H notating recent supplementary Grants of Easement by separate document
REVISION: 1/17/2011 Plat 10' Non-exclusive Utility Easement overlapping 30' Recreation Trail Easement
REVISION: 3/31/2011 Easement recordation numbers added and signature dates revised

Final Plat of

Loveland Eisenhower First Subdivision

to the City of Loveland, County of Larimer, State of Colorado

Being a subdivision and amended plat of Allendale Plaza 5th Subdivision, a portion of Tract B of Loveland Business Plaza First Addition and all of the Loveland Eisenhower Addition to the City of Loveland, Larimer County, Colorado located within that portion of the Southeast One-Quarter of the Southeast One-Quarter of Section 7, and that portion of the Southwest One-Quarter of Section 8, both situate in Township 5 North, Range 69 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado

Graphic Scale 1" = 100'

Legend

- Found 1/2" rebar with cap, PLS 11989
- Found 1/2" rebar with disintegrated cap, PLS 11989 Replaced with 1 1/2" Aluminum cap, 33643 by prior survey
- Set 1/2" x 18" rebar with cap, PLS 33643 at Road Alignment nodes after paving is completed.
- Set 1/2" x 18' rebar with 2" alum. cap, PLS 33643
- Found 1/2" x 18' rebar with 1 1/2" alum. cap, PLS 33643
- Found 1/2" x 18' rebar with 1 1/2" alum. cap, PLS 33643, Witness corner
- Found 1/2" x 18" rebar with red plastic cap, PLS 33643
- Set 1/2" x 18' rebar with red plastic cap, PLS 33643
- Set 3/4' brass tag, PLS 33643 Witness corner in bridge deck
- Set 1/2" x 18' rebar with 1 1/2" Alum. cap, PLS 33643 Witness corner
- (m) Indicates measured dimension
- R.O.W. Indicates Right-of-Way
- Slanted hatching indicates proposed subdivision boundary
- UE Indicates Utility Easement

Curve Table

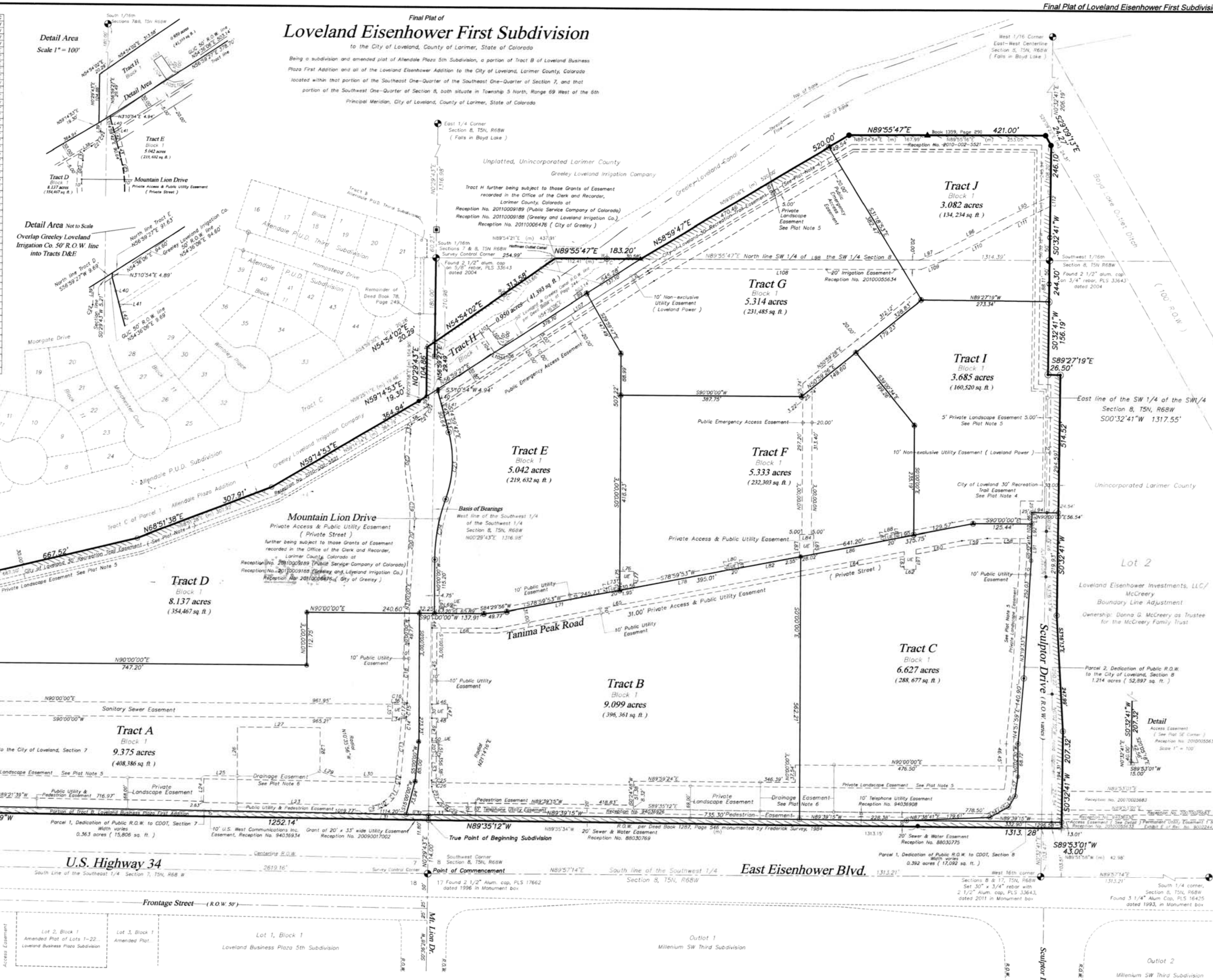
NUM	Central Angle	ARC	RADIUS	Chord BEARING	Chord DISTANCE
C1	12°07'26"	196.79'	930.00'	N5°37'14"W	196.42'
C2	89°54'08"	106.13'	67.64'	S44°30'35"E	95.58'
C3	6°11'01"	7.30'	67.64'	S86°22'09"E	7.30'
C4	83°43'07"	98.83'	67.64'	S41°25'05"E	90.27'
C5	6°13'14"	102.34'	942.65'	N2°40'08"W	102.29'
C6	1°50'09"	30.21'	942.65'	N6°41'49"W	30.21'
C7	3°45'19"	61.78'	942.65'	N9°29'34"W	61.77'
C8	0°18'44"	5.14'	942.65'	N11°31'35"W	5.14'
C9	12°35'07"	43.82'	199.50'	N73°06'31"E	43.73'
C10	9°06'17"	10.25'	64.50'	N62°15'49"E	10.24'
C11	50°50'08"	57.23'	64.50'	N32°17'36"E	55.37'
C12	0°19'19"	14.05'	2499.50'	N6°42'52"E	14.05'
C13	2°54'01"	126.52'	2499.50'	N5°06'13"E	126.50'
C14	0°04'08"	3.00'	2499.50'	N3°37'08"E	3.00'
C15	0°41'19"	30.05'	2499.50'	N3°14'25"E	30.05'
C16	0°04'08"	3.00'	2499.50'	N2°55'49"E	3.00'
C17	0°41'19"	30.05'	2499.50'	N3°18'32"E	30.05'
C18	2°53'45"	126.33'	2499.50'	N1°26'52"E	126.31'
C19	13°04'09"	88.85'	389.50'	N3°32'05"W	88.65'
C20	16°15'39"	110.83'	390.50'	N1°56'20"W	110.45'
C21	29°09'58"	20.11'	39.50'	N44°39'54"E	19.89'
C22	27°10'27"	18.73'	39.50'	N16°29'42"E	18.56'
C23	34°40'02"	145.52'	240.50'	S2°20'19"W	143.31'
C24	19°40'20"	132.02'	384.50'	S9°30'10"W	131.37'
C25	1°38'46"	5.01'	174.50'	S0°49'23"E	5.01'
C26	2°51'06"	8.69'	174.50'	S3°04'19"E	8.68'
C27	33°14'37"	37.42'	64.50'	S21°07'11"E	36.90'
C28	24°03'08"	27.08'	64.50'	S49°46'03"E	26.88'
C29	6°58'07"	21.22'	174.50'	S65°16'40"E	21.21'

Line Table

NUM	DISTANCE	BEARING
L1	10.00'	N0°26'29"E
L2	12.66'	N76°19'08"E
L3	24.88'	N11°40'57"W
L4	91.11'	N0°26'29"E
L5	38.49'	N0°26'29"E
L6	12.98'	N0°26'29"E
L7	13.68'	N28°28'47"W
L8	22.79'	N28°28'47"W
L9	17.72'	N59°44'07"W
L10	33.67'	N28°28'47"W
L11	47.44'	N10°11'25"W
L12	150.67'	S0°00'00"E
L13	218.30'	S89°59'22"W
L14	199.72'	N89°59'22"E
L15	231.74'	N0°00'00"W
L16	203.48'	S90°00'00"W
L17	237.01'	N90°00'00"E
L18	36.00'	S0°00'00"E
L19	10.00'	N90°00'00"E
L20	20.00'	S0°00'00"E
L21	10.00'	S90°00'00"W
L22	50.07'	S0°00'00"E
L23	373.76'	N89°27'39"W
L24	54.88'	N0°32'21"E
L25	71.42'	N89°59'22"E
L26	104.06'	N0°00'00"W
L27	177.00'	N90°00'00"E
L28	92.53'	S0°00'00"E
L29	35.34'	S70°09'29"E
L30	139.53'	N89°59'26"E
L31	94.43'	N89°21'39"W
L32	47.96'	N89°21'39"W
L33	59.71'	S89°39'15"E
L34	29.69'	S90°00'00"W
L35	30.00'	N0°00'00"E
L36	31.39'	N90°00'00"E
L37	21.05'	N6°11'30"E
L38	18.72'	N59°14'53"E
L39	21.18'	N2°54'28"E
L40	27.36'	S14°59'42"E
L41	5.26'	S14°59'42"E
L42	21.03'	S14°59'42"E
L43	37.00'	S14°59'42"E
L44	31.00'	S0°00'00"E
L45	162.54'	S0°00'00"E
L46	33.41'	N90°00'00"E
L47	30.00'	S0°00'00"E
L48	33.41'	S90°00'00"W
L49	52.57'	S0°00'00"E
L50	13.95'	N90°00'00"E
L51	20.00'	S0°00'00"E
L52	13.95'	S90°00'00"W
L53	60.26'	S0°00'00"E
L54	16.52'	N60°12'54"E
L55	29.49'	N60°12'54"E
L56	26.89'	N30°14'42"E
L57	43.14'	N7°36'33"E
L58	94.76'	S90°00'00"W
L59	54.55'	S84°29'56"W
L60	100.29'	S78°59'53"W
L61	43.05'	S0°00'00"E
L62	25.00'	S90°00'00"W

Line Table

NUM	DISTANCE	BEARING
L63	38.19'	N0°00'00"W
L64	225.65'	S78°59'53"W
L65	662.70'	S78°59'53"W
L66	138.39'	S90°00'00"W
L67	19.77'	N90°00'00"E
L68	13.00'	N0°00'00"E
L69	20.00'	N90°00'00"E
L70	13.00'	S0°00'00"E
L71	223.78'	N78°59'53"E
L72	12.50'	N11°00'07"W
L73	20.00'	N78°59'53"E
L74	12.50'	S11°00'07"E
L75	40.98'	N0°00'00"W
L76	30.00'	N90°00'00"E
L77	35.15'	S0°00'00"E
L78	209.36'	N78°59'53"E
L79	13.00'	N11°00'07"W
L80	20.00'	N78°59'53"E
L81	13.00'	S11°00'07"E
L82	132.54'	N78°59'53"E
L83	48.16'	N0°00'00"W
L84	30.00'	N90°00'00"E
L85	42.32'	S0°00'00"E
L86	157.66'	N78°59'53"E
L87	13.00'	N11°00'07"W
L88	20.00'	N78°59'53"E
L89	13.00'	S11°00'07"E
L90	40.51'	N78°59'53"E
L91	47.36'	N0°32'41"E
L92	31.00'	N0°32'41"E
L93	24.50'	N0°32'41"E
L94	32.00'	N90°00'00"E
L95	112.87'	S63°31'49"W
L96	153.54'	S62°28'34"W
L97	46.17'	N68°25'58"E
L98	597.35'	S89°55'47"W
L99	339.88'	S56°59'27"W
L100	9.95'	S79°37'30"W
L101	5.84'	N69°40'48"W
L102	41.60'	N34°49'02"W
L103	20.00'	S55°10'58"W
L104	47.88'	S34°49'02"E
L105	17.61'	S69°40'48"E
L106	19.44'	N79°37'30"E
L107	337.97'	N56°59'27"E
L108	595.24'	N89°55'47"E
L109	51.00'	N68°25'58"E
L110	154.40'	N62°28'34"E
L111	102.49'	N63°31'49"E
L112	22.45'	N0°32'41"E
L113	5.00'	S89°33'31"E
L114	17.48'	S0°26'29"W
L115	17.48'	S89°27'39"E
L116	3.83'	S0°32'21"W



CLIENT: Loveland Eisenhower Investments, LLC
PROJECT: Final Plat of Loveland Eisenhower First Subdivision
PROJECT NO.: 07-07-589
DATE of PREPARATION: 3/31/2011

Tierra Surveys, Inc.
P.O. Box 138, Drake, Colorado 80515
Phone (970) 203-9653 Fax (970) 667-8762 Email Tierrasurv@aol.com

REVISION 5/05/2010 Add 20' wide Irrigation Easement through Tracts H, I & J
REVISION 5/05/2010 Modify Attorney's Certification language
REVISION 5/10/2010 Add Greeley Loveland Irrigation Co. 50' R.O.W. line overlap detail
REVISION 9/21/2010 Add 10' Public Utility Easements, Add Access Easement abutting Sculptor Drive, Add Detail
REVISION 9/21/2010 Add Plat Notes 8 & 9
REVISION 11/26/2010 Modify sub-Dedication statement; delete plat notes 7, 8 & 9, renumber plat notes 10 through 14, enlarge Vicinity Map, center in column 3, revise spacing signature blocks column 4 Add delineating language to Mountain Lion Drive and Tract H notating recent supplementary Grants of Easement by separate document
REVISION 1/17/2011 Plat 10' Non-exclusive Utility Easement overlapping 30' Recreation Trail Easement
REVISION 3/31/2011 Easement recordation numbers added and signature dates revised

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
June 23, 2014

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on June 23, 2014 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Molloy, Crescibene, Prior, Forrest, and Ray. Members absent: Commissioners Dowding and Jersvig. City Staff present: Bob Paulsen, Current Planning Manager; Sharon Citino, Assistant City Attorney.

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

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1. **Mr. Paulsen, Current Planning Manager,** shared with the Commissioners that there are items scheduled for the July 14th and 28th meetings.
2. **Chair Meyers** would like staff to send out a redlined version of the Boards and Commissions handbook to the commissioners.

COMMITTEE REPORTS

There were no committee reports.

COMMISSIONER COMMENTS

Commissioner Ray wanted to make sure everyone knows that the primary collection place for ballots is the City Clerk's Office.

Commissioner Middleton thanked **Mr. Karl Barton, Senior Planner** and the citizens who attended the Comprehensive Plan sessions, which were for the purpose of getting input from citizens on what the priorities should be.

APPROVAL OF THE MINUTES

Commissioner Middleton made motion to approve the June 6, 2014 meeting minutes. Upon a second by **Commissioner Ray** the motion passed with 4 ayes and 3 commissioners abstaining due to absences.

REGULAR AGENDA

1. **Loveland – Eisenhower Investments: Master Plan Amendment**
   Chair Meyers read the item on the regular agenda: This is public hearing to consider an amendment to a Concept Master Plan for a 58.8-acre site located on the north side of

EXHIBIT B

Eisenhower Boulevard to the east of Denver Avenue and to the west of Sculptor Drive. The amendment proposes to allow the development of up to 240-368 apartment units on this site as part of a mixed-use development. The original Master Plan for the property was approved in 2009 and did not identify residential development among the contemplated uses. Review of this application requires quasi-judicial action by the Planning Commission. The Commission's responsibility is to forward a recommendation to the City Council for final action.

Mr. Brian Burson, Planner II, addressed the Commission giving a brief history of the project and explaining how the amendment fulfills the employment and residential uses of the Comprehensive Plan. He stated the amended concept plan would cover the entire site and distribute the uses more evenly across the site while allowing for the development of 240-368 apartment units. The amended plan will spread the primary workplace use and non-primary workplace use out to the 60/40 proportion of land area, creating a campus-like setting. The primary function of the amendment is to provide jobs throughout the master planned area with a variety of workplace uses. He explained that multi-family dwellings are a non-primary workplace use allowed in both the MAC and E zone districts.

A neighborhood meeting was held on May 22nd, where a number of concerns were addressed, such as traffic, specifically questioning if the City would install traffic calming measures.

When asked if the corridor plan would be affected, **Mr. Burson** stated the corridor plan was taken into consideration and the standards would be maintained.

Applicant, Mr. Greg Parker, Loveland Eisenhower Investments Corporation addressed the Commission stating that the amended plan will provide the same minimum proportion of land area and floor area to be developed for primary workplace uses as the original plan approved in 2009. He stated there will be consistent architecture with various options to the land use to show the flexibility needed to respond to the market.

He commented that $13.8 million in infrastructure cost is challenging, with the vast bulk of cost associated with widening Highway 34. Without the infrastructure in place they wouldn't have the ability to offer shovel ready space. Having an apartment development on the property will help pay for the infrastructure cost.

The street improvements will include a full intersection at Sculptor Drive and the addition of two full lanes to Highway 34. An essential element of the plan is to limit traffic on Denver Ave. The Concept Plan shows that the projected traffic would not create a cut through onto Denver Avenue since traffic would have to go through multiple parking areas to exit at Denver.

Commissioner Middleton asked if an HOA would take care of the ground maintenance and trash, in both the residential and commercial areas. **Mr. Parker** stated that there

would not be an HOA but there would be a joint agreement for the purpose of sharing the cost of maintenance of the streets, signs and drainage.

Commissioner Molloy asked about the distance of the setbacks and also stated his concern is the amount of traffic on Highway 34. **Mr. Parker** stated that the setbacks will be 80 feet. Regarding the traffic, CDOT has "signed off" on the proposal because of the great amount of widening of Highway 34.

Chair Meyers opened the meeting for public hearing.

Mr. John Ellison, 2068 Chancery Drive had two questions. He uses the Allendale Park and asked if there were plans for any type of park for the residential area. He also asked if the sound level be affected by adding more lanes of traffic.

Mr. Joe Suess, 1810 Oxford Drive, commented that he has several concerns. He has noticed an increase in "cut through traffic" from Boise Avenue and the speeding through the neighborhood. He is concerned that there will be additional cut through traffic coming off of Sculptor Drive and Mountain Lion Drive. He also stated that Mountain Lion Drive has a concrete bridge over the ditch and he sees people using the dirt road and leaving trash, he asked if this development would contribute to more of this type of use. He asked what Plan Area H is. He commented that he would like the option that adds the least amount of residential to the area.

Chair Meyers closed the public hearing.

Mr. Parker addressed the questions from the public explaining that the recreational aspects of the residential area would have a playground and a clubhouse. He stated that he would like people to use the recreational trail that is nearby.

Regarding the noise level, he agreed that traffic noise is generated by start and stop movements however the addition of buildings will help abate the traffic noise.

Mr. Mike Delich, Traffic Engineer for the applicant, spoke to the issue of cut through traffic concerns, he feels people are trying to avoid the left turn at Boise Ave. The improvements to Highway 34 will help make that a more attractive alternative and easier to get through. The Madison Avenue and Highway 34 intersection has a large amount of capacity. Denver Avenue has a limited amount of capacity and he feels it would be avoided as it becomes more crowded.

Commissioner Molloy commented that he feels that making Denver Avenue a dual turn lane would make it more comfortable for people to use it. **Mr. Delich** explained that people coming out of the development will find that Sculptor Drive will be a much better intersection to use and easier for them to access.

Commissioner Middleton would like clarity on the recreational area, if it would be open to the public. **Mr. Parker** explained that it would be for the residents use only.

Mr. Parker addressed the question regarding the concrete bridge stating that a gate would be put across it so there is no access. That would not keep people from driving on the ditch road where they could access it from another location, but the buildings overlooking that area may keep people from illegal dumping.
Plan area H is open space and will never be developed due to access limitations.

Chair Meyers recommends the applicant talk to the ditch company regarding the gate.

Commissioner Molloy stated that he is concerned about high school students crossing at Highway 34. **Mr. Parker** explained that they will have a walkway along the property, but he is unable to do anything about the undeveloped property to the East. There will be a cross walk with a signal on Sculptor and Highway 34.

Commissioner Middleton thanked the applicant for modifying the original Concept Plan and stated that he likes the plan.

Commissioner Forrest stated she likes the concept of bringing more housing to Loveland and especially to that area.

Chair Meyers commented that he likes the residential at the rear of the property. He feels the distances are good and according to code.

Commissioner Prior stated that it is a good concept and feels the distance of the easements between residential areas are good.

Commissioner Ray likes that there is some buffering between the two residential areas and that the Highway 34 corridor standards are being maintained.

Commissioner Molloy stated that the Waterford plan was to bring some residential to that area also and thinks that this plan fits in well.

Commissioner Crescibene commented that it would help fill the present and future needs of the community for both residential and commercial.

Commissioner Forrest moved to make a motion that the findings listed in Section VIII of the staff report dated June 23, 2014; and, based on those findings, recommend that MAC Concept Master Plan - Amendment #1 be approved for Loveland Eisenhower 1st Subdivision by the City Council.

Upon a second by **Commissioner Middleton** the motion passed unanimously.

ADJOURNMENT

Commissioner Ray made a motion to adjourn. Upon a second by **Commissioner Middleton**, the motion was unanimously adopted.

Approved by:

Buddy Meyers, Planning Commission Chair

Beverly Walker, Planning Commission Secretary

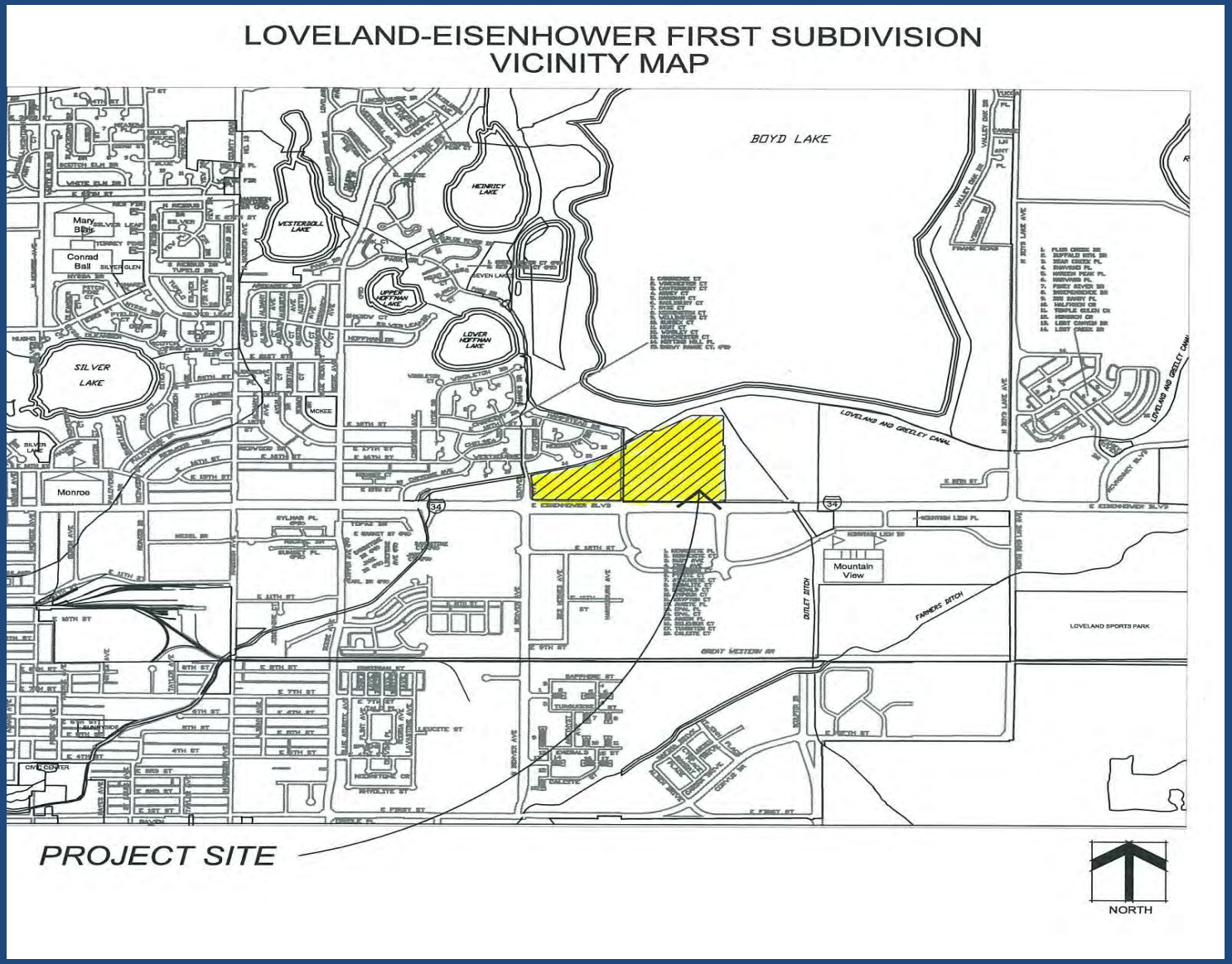
Loveland- Eisenhower Concept Master Plan – Amendment #1

City Council
August 19, 2014

1. MAC CONCEPT MASTER PLAN – AMENDMENT #1
2. AMENDED ANNEXATION & DEVELOPMENT AGREEMENT

City of Loveland

Loveland- Eisenhower Concept Master Plan – Amendment #1

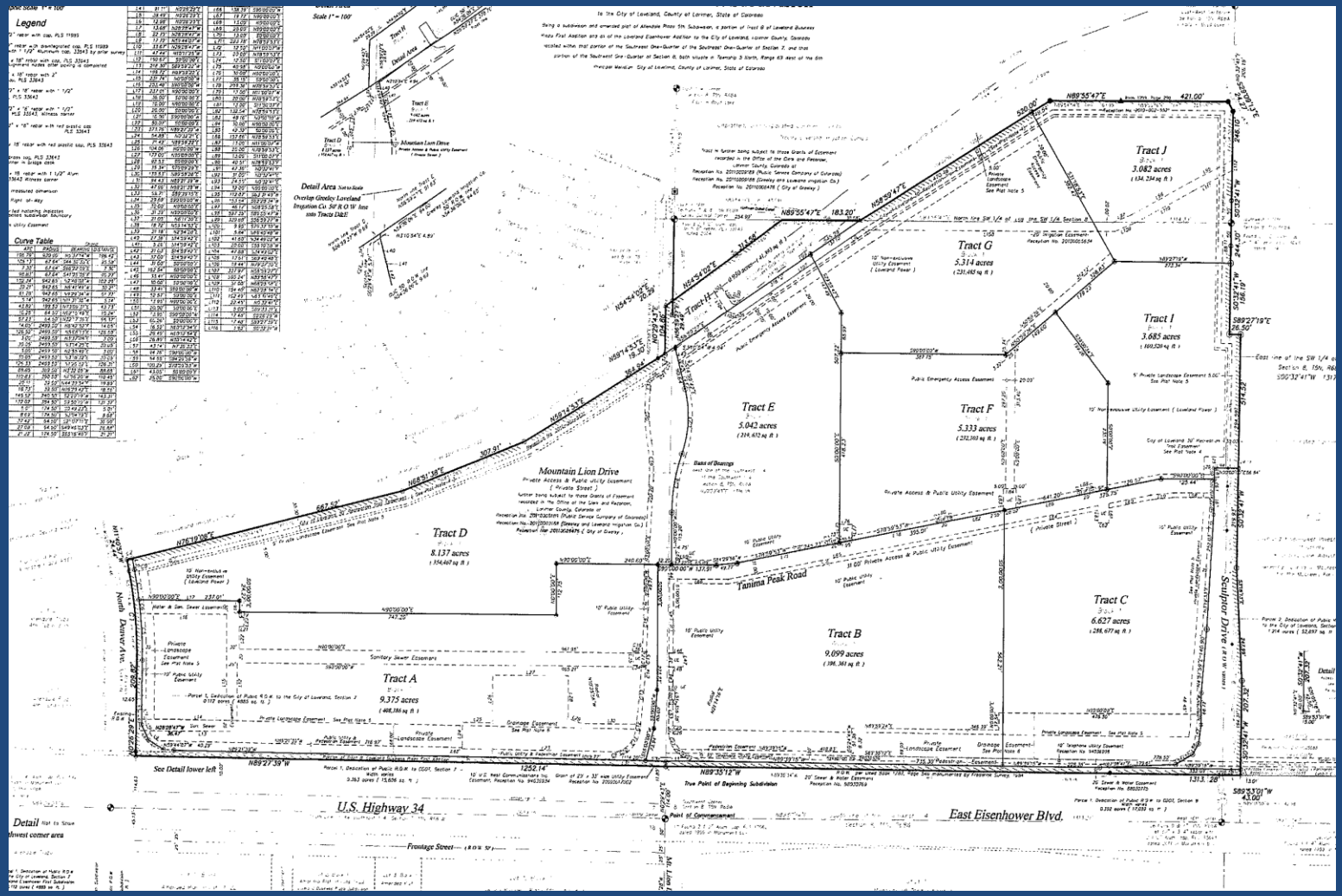


Loveland- Eisenhower Concept Master Plan – Amendment #1

Loveland- Eisenhower Concept Master Plan – Amendment #1

City of Loveland

Loveland- Eisenhower Concept Master Plan – Amendment #1



City of Loveland

AMENDMENT #1

ALTERNATIVE 6 PROPOSED PLAN AREAS B, C, E-H

Alternative 6 (Plan Areas B, C, E-H)	Area Acres	Proposed Development Yield: Building SF/DU	Parking Req'd / Proposed	Parking Ratio Stalls / 1000 SF / DU
Westerly portion of the site (17 acres)				
Retail		50,000	167	3.33
Restaurant (2, Sit-down)		10,000	50	5.00
Supermarket		30,000	100	3.33
Pharmacy		15,000	50	3.33
Sub-total	16.9	105,000	367	3.50
Easterly portion of the site (40 acres)				
Residential	15.0	240 DU	480	2 / DU
Light Industrial	7.9	100,000	200	2.00
Office	16.9	200,000	800	4.00
Sub-total	39.8	300,000 SF / 240 DU	1,480	3.00 / 2.00
Total of Net Developable Area	56.7	405,000 SF / 240 DU	1,847	3.375 / 2.00

ALTERNATIVE 6 PROPOSED DEVELOPMENT YIELD

KEY: PLAN AREAS

MULTIFAMILY HOUSING ELEVATIONS - 16 UNIT BUILDING

MIG
4696 Broadway St.
Boulder, CO 80304
303-440-9200

LOVELAND EISENHOWER ADDITION
MAC CONCEPT MASTER PLAN
AMENDMENT #1
Loveland, Colorado | April 2014 (submittal 7)

CLIENT
Loveland Eisenhower Investments, LLC

CONSULTANTS
MIG, Inc.
Urban Design/Planning

TFG Design, LLC
Landscape Architect

Owen Consulting Group Inc.
Engineering

Delich Associates
Traffic & Transportation

- Office/ Employment
- Commercial/Retail/ Restaurant
- Major Pedestrian Plaza
- Residential
- Parking Area
- Open Space

City of Loveland

ALTERNATIVE 5 PROPOSED PLAN AREAS D, E-H

Alternative 5 (Plan Areas D, E-H)	Area Acres	Proposed Development Yield: Building SF / DU	Parking available	Parking proposed /1000 SF
Westerly portion of the site				
Light Industrial		54,500	109	2.0
Office		45,500	182	4.0
Retail		35,000	145	4.1
Drive-in Bank		5,000	25	5.0
Restaurant		10,000	135	13.5
sub-total	16.9	150,000	596	4.0
Easterly portion of the site (East 40 Acre)				
Residential (16DU/ACRE)	23.41	368 DU	777	2.1/DU
Office	16.39	200,000	800	4.0
sub-total	39.8	200,000 SF / 368 DU	1,577	
Total of net developable area	56.7	350,000 SF / 368 DU	2,173	

ALTERNATIVE 5 PROPOSED DEVELOPMENT YIELD

KEY: PLAN AREAS

MULTIFAMILY HOUSING ELEVATIONS - 24 UNIT BUILDING

MIG
4696 Broadway St.
Boulder, CO 80304
303-440-9200

LOVELAND EISENHOWER ADDITION
MAC CONCEPT MASTER PLAN
AMENDMENT #1
Loveland, Colorado | April 2014 (submittal 7)

CLIENT
Loveland Eisenhower Investments, LLC

CONSULTANTS
MIG, Inc.
Urban Design/Planning

TFG Design, LLC
Landscape Architect

Owen Consulting Group Inc.
Engineering

Delich Associates
Traffic & Transportation

- Office/ Employment
- Commercial/Retail/ Restaurant
- Major Pedestrian Plaza
- Residential
- Parking Area
- Open Space

Loveland- Eisenhower Concept Master Plan – Amendment #1

PRIMARY WORKPLACE USES:

Variety of workplace uses, including light industrial, office, research and development. Intended to encourage development of planned office and business parks.

Loveland- Eisenhower Concept Master Plan – Amendment #1

NON-PRIMARY WORKPLACE USES:

Uses that complement and support primary workplace uses, such as hotels, retail, convenience and service uses, restaurants, child care, housing.

Loveland- Eisenhower Concept Master Plan – Amendment #1

PRACTICAL DESCRIPTION:

"Do most people who come there come because they work there, or because they come to obtain goods and/or services?

City of Loveland

Loveland- Eisenhower Concept Master Plan – Amendment #1

Minimum Primary Workplace Uses in Loveland Eisenhower Concept Master Plan

ORIGINAL PLAN:

"In no event will the Project, once built out, contain less than 22 acres developed with no less than 300,000 square feet of buildings designed to house Primary Workplace Uses."

City of Loveland

Loveland- Eisenhower Concept Master Plan – Amendment #1

Minimum Primary Workplace Uses in Loveland Eisenhower Concept Master Plan

AMENDMENT #1

"In no event will the Project, once built out, contain less than 23.9 acres developed with no less than 300,000 square feet of buildings designed to house Primary Workplace Uses."

City of Loveland

Loveland- Eisenhower Concept Master Plan – Amendment #1

NEIGHBORHOOD CONCERNS:

1. Will private open space and parks be provided in the multi-family areas?
2. Will traffic congestion occur at the west access from Denver?
3. Vehicles using the Denver access will use the adjacent neighborhood as a shortcut to Boise Ave.
4. Proximity of development to the Greeley-Loveland Canal will increase the likelihood and volume of pedestrian and vehicular trespass onto that land and the Boyd Lake shore area.

City of Loveland

Loveland- Eisenhower Concept Master Plan – Amendment #1

PLANNING COMMISSION CONCERNS:

1. Will the multi-family HOA have a relationship with the owners association for the non-residential portions of the development?
2. Will the open space and park areas in the multi-family areas be available to the public?
3. Does CDOT support the project?
4. Will the pedestrian crossing for Eisenhower Blvd. be safe for students travelling back and forth to school?
5. Will rent/lease rates include HOA fees to assure that residents will have access to the private open spaces and amenities?

City of Loveland

LOVELAND-EISENHOWER SUBDIVISION

Concept Plan Amendment
City Council Hearing
August 19, 2014

Project Team

Owner / Applicant
Loveland Eisenhower Investments, LLC
Greg Parker, Partner
Investec Real Estate Companies
Santa Barbara, California

Urban Design and Planning
JJ Folsom
P.U.M.A.
Denver, Colorado

Attorney
Keirstin K. Beck
Packard-Dierking
Boulder, Colorado

Landscape Architect
David Kasprzak, RLA, LEED
TFG Design, LLC
Loveland, Colorado

Civil Engineering
Larry Owen, PE
Owen Consulting Group, Inc.
Fort Collins, Colorado

Traffic Engineering
Matthew J. Delich, PE
Delich Associates
Loveland, Colorado

Vicinity Map

Development Site Overview

- Development Area
  - 58.8 ac (gross)
  - 56.7 ac (net)
- Western 16.9 ac was originally designated for retail use under a Corridor Commercial zoning
  - Subsequently approved, under a PUD, for 276 multi-family residential dwellings
- East 39.8 ac originally designated for employment uses
  - 60% (23.9 ac) required to be primary workplace uses
  - 40% (15.9 ac) allowed to be non-primary workplace uses

Approved Concept Plan (2010)

Approved Concept Plan

- Establishes framework and parameters for development
  - Flexibility to evolve and adapt to market demands
  - Permits City to monitor and control component area development
  - Ensures consistent theme, architecture and quality throughout
  - Means to confirm compliance with City performance standards

- Concept Plan Scope
  - Base development layout
  - Four alternative mixes of potential occupancies
  - Requires campus-like development with unified character
  - Residential not specifically addressed, but allowed
  - Provides a landscaped public pedestrian / bike trail along the full north and east perimeter of the site (2.5 ac)

Street Improvements

- City-approved Public Improvement Construction Plans (PICP's)
  - No changes resulting from proposed Concept Plan Amendment
  - Approval renewal has been requested
- Street Improvements on Eisenhower, Denver and Sculptor
  - Eisenhower Blvd.
    - Add'l EB and WB through lanes
    - New, continuous WB accel / decel lane
    - 3/4 intersection at Mountain Lion Dr. with designated turn lanes and raised refuge islands
  - Denver Ave.
    - Add'l SB left-turn lane on Denver Ave.
    - Dual NB receiving lanes and bike lane on Denver Ave.
    - Pedestrian refuge island in NE quadrant of Denver / 34 intersection
    - Signalized pedestrian crossing on Denver Ave. at regional trail
  - Sculptor Dr.
    - Expanded intersection at Eisenhower, with provision for add'l lane delineation as property to the east develops.
    - Construction of northward extension of Sculptor Dr. to serve not only this development, but also eastward expansion and connection to 15th St.

Approved Uses

- Developable Site Area
  - 56.7 acres
- Primary Workplace Uses
  - 23.9 acres
- Non-Primary Workplace Uses
  - 32.8 acres

Annexation Agreement Comp Plan Compliance Table

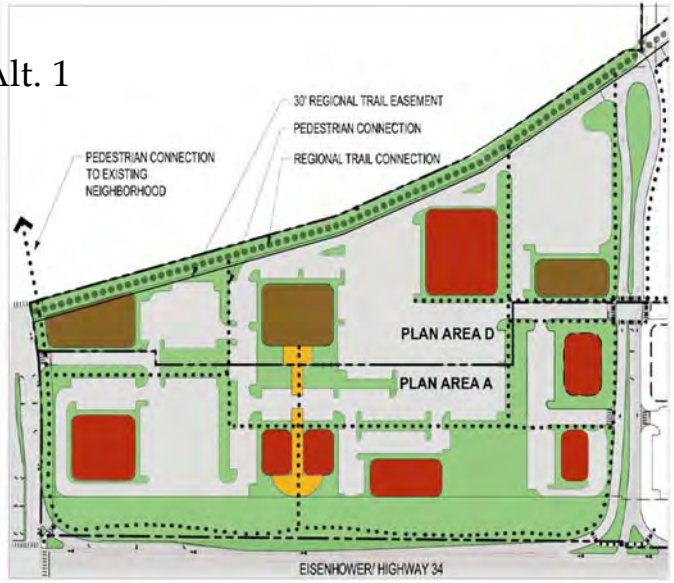
		Existing Parcel	Annexation Parcel
Gross Site Area	58.8 Acres	17.4 Acres	41.4 Acres
Total Area Dedicated to R.O.W.	2.1 Acres	0.5 Acres	1.6 Acres
Net Developable Site Area	56.7 Acres	16.9 Acres	39.8 Acres

	Concept Plan Designation	Existing Parcel		Annexation Parcel		Project Total
Comprehensive Plan Designation		Corridor Commercial		Employment		
Allowable Zoning (excluding PUD)		B-Business MAC		B- Business E-Employment I-Industrial		MAC
Required Primary Workplace Use	Office, Employment or Light Ind.			60%	23.9 Acres	23.9 Acres
Allowable Non-Primary Workplace Use	Retail Restaurant	100%	16.9 Acres	40%	15.9 Acres	32.8 Acres
Site Area		16.9 Acres		39.8 Acres		56.7 Acres
Open Space	Open Space	10%	1.7 Acres	20%	8.0 Acres	9.7 Acres

Notes:
1. Site areas presented under the heading of Project Total represent a compilation of individual land use designations that are merged and re-distributed throughout the site. Areas are shown in gross acres (which include areas to be dedicated for public right of way uses).
2. Open Space excludes Highway 34 corridor setback area on the Annexation Parcel (as such term is defined in Section 1.1) pursuant to Section 18.30.040 of the Municipal Code. Highway 34 corridor setbacks are included in open space calculations of the Existing Parcel (as such term is defined in Section 1.1) as allowed in Section 18.29 of the Municipal Code.
3. Open space excludes landscaped islands within parking lots.
4. Primary and Non-Primary Workplace Use areas will incorporate a minimum of 10.0 acres of usable Open Space throughout the Project.

Alternatives

Alt. 1



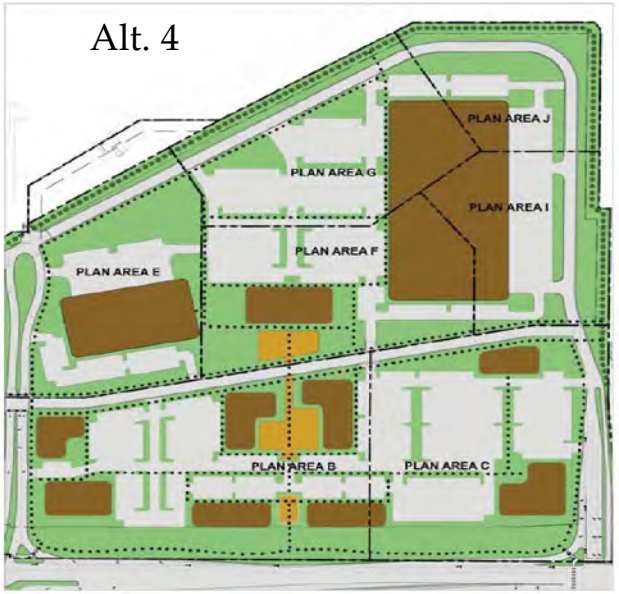
Alt. 2

OFFICE / EMPLOYMENT

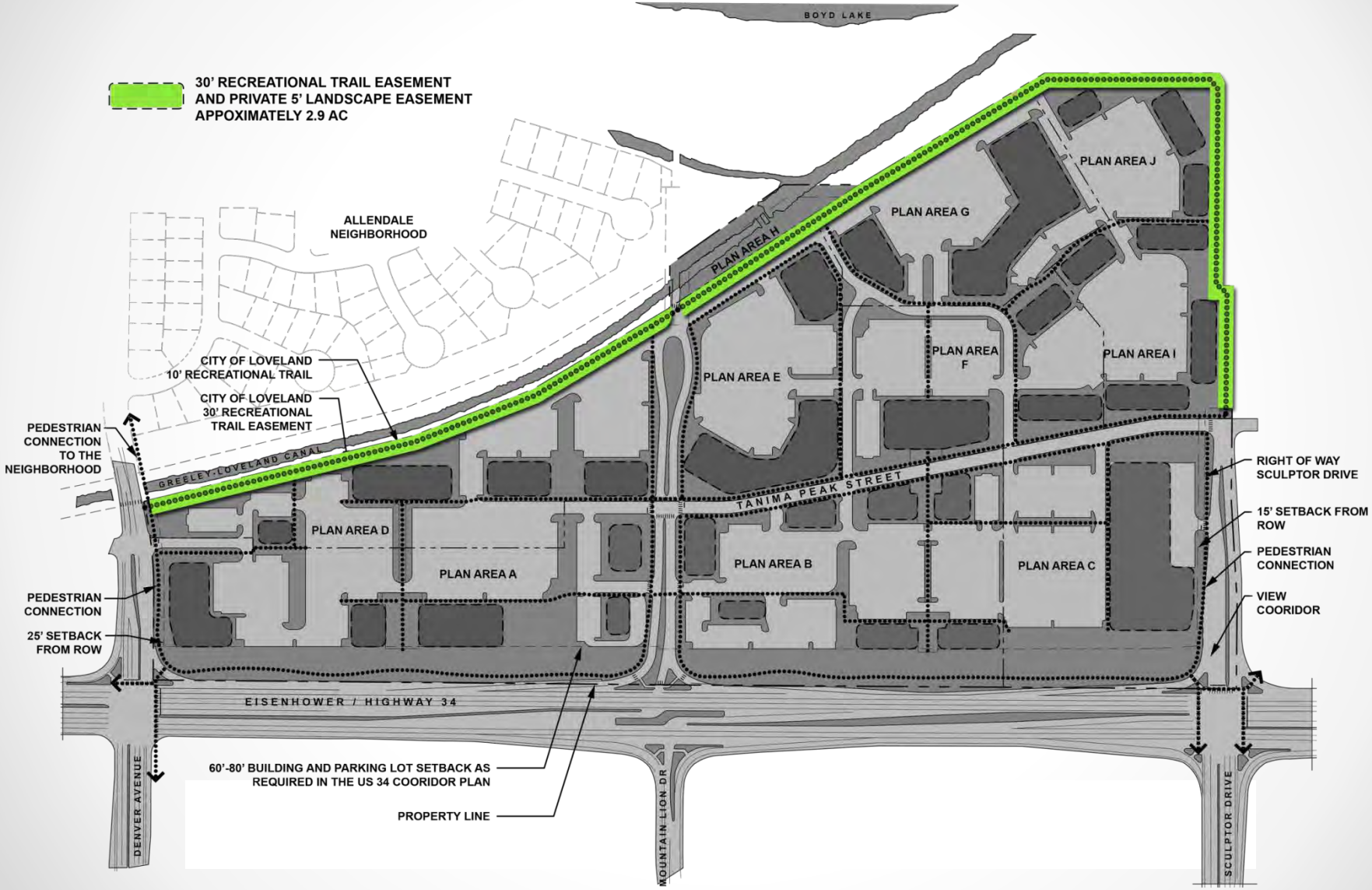
COMMERCIAL / RETAIL / RESTUAURANT

Alt. 3

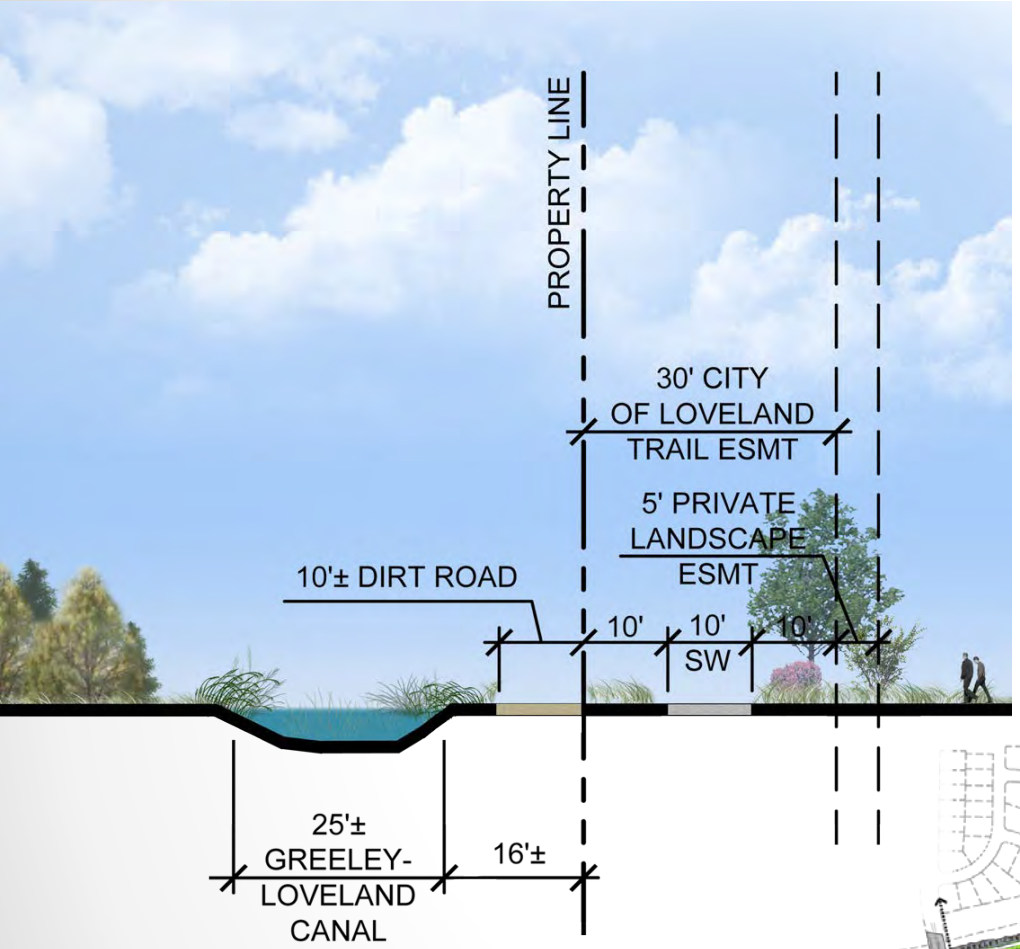
Alt. 4



Dedicated Trail Easement



Recreational Trail Section



30' Wide Recreational Trail

Typical Detail

Site Development Constraint: Infrastructure

- On-site and off-site infrastructure costs:
  - Estimated $13.8 Million+
  - Vast bulk of costs associated with widening Eisenhower/Hwy 34 and developing the Sculptor Drive intersection.
- Requires simultaneous development of substantial acreage
  - No current market for required employment uses
  - “One-off” deals not sufficient to support infrastructure costs
- Challenge: Without infrastructure in place, development sites within the property cannot be offered to potential users on a “shovel ready” basis.

Apartment Development Market

- Significant demand for new development indicated
  - Extremely low Loveland vacancy rate; lowest of any Colorado city.
  - Expected continuation of a significant downward trend in availability

- Supply and Demand
  - 10% Apartment vacancy = market equilibrium
  - Vacancy rate below 10% signals shortage
  - Projected apartment demand of 70 – 210 units per year 2012 – 2020.

Apartment Development Proposal

- Include a multi-family residential component within the development matrix for this project
  - Mix of 3-story, 24-unit and 2-story, 16-unit buildings in NE quadrant of site
  - Mix of 1-bedroom, 2-bedroom and 3-bedroom dwellings
  - Amenities including clubhouse, pool, tot lot, play structure, sports courts
- Alternative 5
  - 23.4 acre development area with 368 dwelling units
  - Six 3-story buildings and 14 2-story buildings
  - 148 1-bedroom, 192 2-bedroom and 28 3-bedroom dwellings
  - 2 clubhouse / pool / recreation area complexes
- Alternative 6
  - 15.0 acre development area with 240 dwelling units
  - Four 3-story buildings and 9 2-story buildings
  - 96 1-bedroom, 126 2-bedroom and 18 3-bedroom dwellings
  - 1 clubhouse / pool / recreation area complex

Alternative 5

Proposed Concept Plan Amendment
Alternate 5

- Implements and furthers existing Comprehensive Plan Objectives
- Reflects prevailing market forces and meets critical Loveland need by providing for significant M-F residential component
- Concept Plan characteristics
  - Mix of office and retail occupancies within the western portion of the site
  - Exclusively residential occupancy in the northern area of the eastern portion of the site
  - Mix of office and light industrial occupancies in the southern area of eastern portion of the site

Alternative 6

Proposed Concept Plan Amendment
Alternate 6

- Addresses potential market demand for increased consumer retail facilities
- Reflects a trade-off of reduced residential for expanded retail
- Concept Plan characteristics
  - Retail occupancies throughout the entire western portion of the site
  - Reduced residential occupancy and inclusion of office / light industrial occupancies in the northern area of the eastern portion of the site,
  - Mix of office and light industrial occupancies in the southern area of eastern portion of the site
  - Continues to fulfill requirement for provision of facilities for Primary Workplace occupancies.

Proposed Project
(Minimal Changes)

					Existing Parcel	Annexation Parcel
Total Gross Site Area			58.8 Acres		17.4 Acres	41.4 Acres
Total Area Dedicated to R.O.W.			2.1 Acres		.5 Acres	1.6 Acres
New Site Development Area:			56.7 Acres		16.9 Acres	39.8 Acres

	Concept Plan Designation	Existing Parcel		Annexation Parcel		Project Total
Comprehensive Plan Designation		Corridor Commercial		Employment		
Allowable Zoning (excluding PUD)		B-Business MAC		B-Business E-Employment I-Industrial		MAC
Required Primary Workplace Uses	Office, Employment or Light Industrial			60%	23.9 Acres	23.9 Acres
Allowable Non-Primary Workplace Uses	Retail Restaurant MF Residential	100%	16.9 Acres	40%	15.9 Acres	32.8 Acres
Site Area		16.9 Acres		39.8 Acres		56.7 Acres
Open Space	Open Space	10%	1.7 Acres	20%	8.0 Acres	9.7 Acres

Notes:

1. Site areas presented represent a complilation of individual land use designations that are merged and re-distributed throughout the site in the concept Plan.
2. Open space excludes the Highway 34 corridor setback area on the Eastern Parcel pursuant to Section 18.30.040 of the Loveland Municipal Code. Highway 34 Corridor setbacks are included in open space calculations on the Western Parcel as allowed in Section 18.29 of the Loveland Municipal Code.
3. Open space excludes landscaped islands within parking lots.
4. Primary and Non-Primary Workplace Use areas will incorporate a minimum of 9.7 acres of open space throughout the Project site.

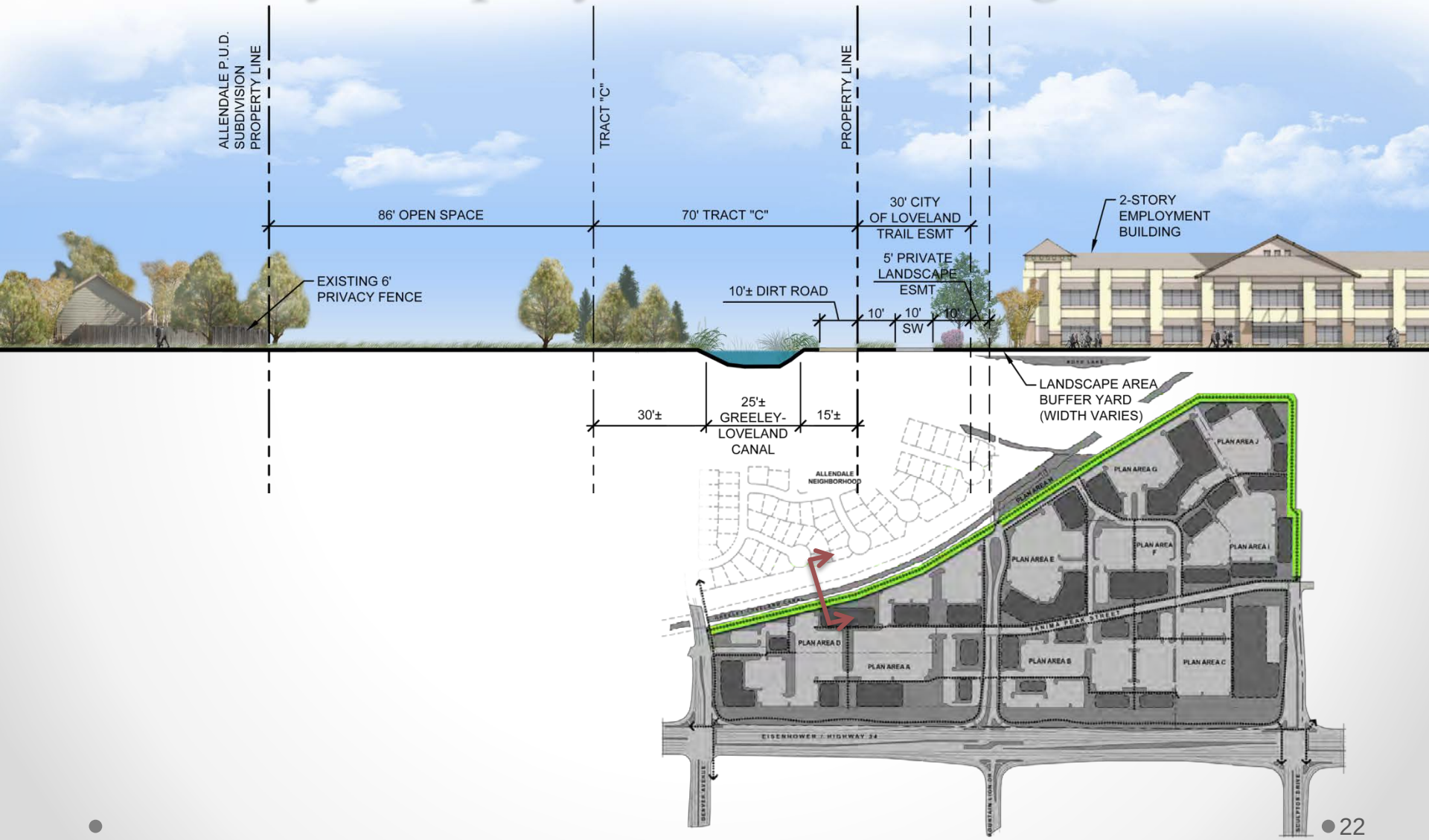
Denver Ave North Traffic

- Project generated traffic impacts studied extensively in 2010 and updated to assess apartment options in February 2014.
- Study findings and conclusions:
  - Intentional omission of a direct traffic connection from Mountain Lion Drive to Denver Avenue will reduce traffic flow to/from Denver Ave. north.
  - Both apartment alternatives (Alt. 5 and Alt. 6) will generate less daily, AM peak hour, and PM peak hour traffic volumes than the approved Concept Plan.
  - Only a nominal percentage of the site generated traffic is anticipated to use Denver Ave., north of the project, (primarily residents of the neighborhood traveling to and from the site.)
  - The proposed substitution of apartments for commercial / industrial uses on up to 23.4 acres of the site will result in a broader distribution of traffic activity throughout the day, leading to more efficient and less congested access points and reduced impacts to adjacent streets.

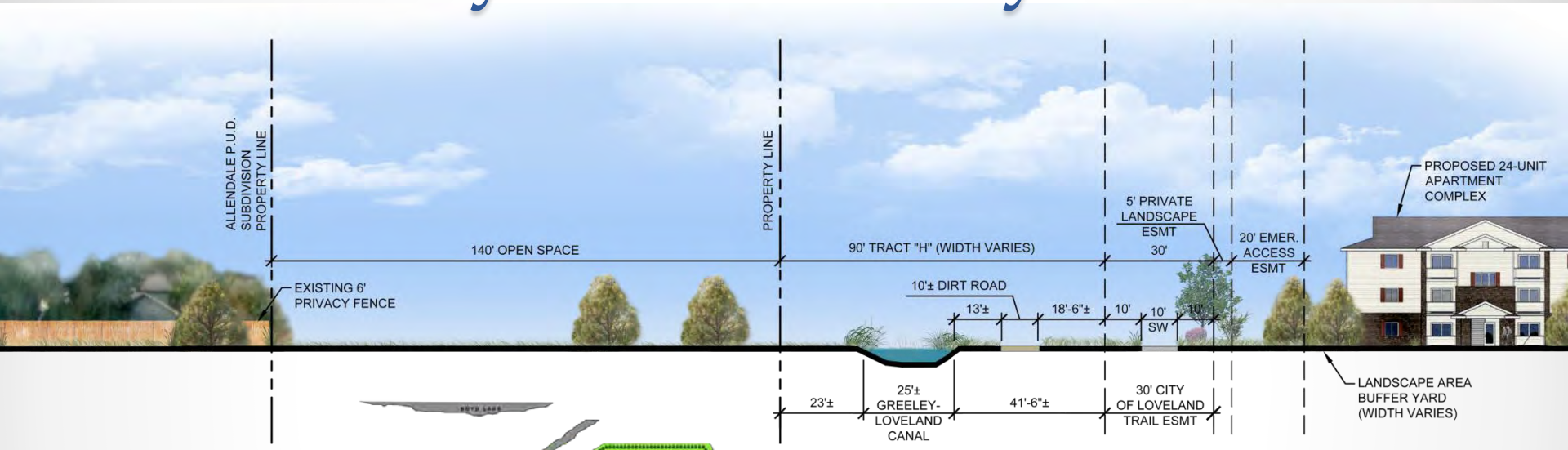
Development Compatibility

- Design standards for architecture and landscape are preserved in the Amendment to ensure that the overall style, appearance, feel and quality of the project is maintained
- Residential component will have minimal impact on adjacent neighborhoods
  - Residential buildings will be exclusively in the eastern portion of the site
  - Commercial development immediately south of the existing residential neighborhood will be essentially as depicted in the approved Concept Plan
  - Total traffic volumes will be the same or lower than predicted for the development depicted in the approved Concept Plan
- Mixed-use development, with public and private open spaces facilitates “live-work-play” community

Existing Neighborhood- 2-Story Employment Building Section



Existing Neighborhood- 3- Story Multi-Family Section



Character

Perspective Vantage Points

3 Figure 3. Mountain Lion Drive Looking North to Focal Point

1 Figure 1. Retail Plaza South of Tanima Peak Street

4 Figure 4. Highway 34 Looking into Site

2 Figure 2. Plaza Between Office Buildings

5 Figure 5. Tanima Peak Street West of Sculptor Drive

Staff Report Key Issues

- Amount of land devoted to multi-family
  - Maximum gross residential density of 16 du/ac does not diminish land area and floor area devoted to “Primary Workplace Uses”.
  - Preliminary land-use estimate of 23.4 ac (Alt. 5) or 15.0 ac (Alt. 6).
  - Number of M-F units ranges from 13% less than to 33% more than the 276-unit development approved in 2003.
- Proportion of primary / non-primary workplace uses
  - Area devoted to primary workplace uses meets or exceeds required 60% of the easterly 40 acres of the site annexed in 2010.
  - Amendment does not reduce commitment to “Primary Workplace Uses”.
- Multi-family location, orientation and connection appropriate
  - In northeast portion of site adjacent to Boyd Lake and recreational trail.
  - West and southeast portions of site are anticipated to be for business uses desiring visibility from Eisenhower Blvd.
  - Similar development plan to others in the area.
- Necessary utility and street improvements will be adequate
  - Substantial Eisenhower Blvd., Denver Ave. and Sculptor Dr. improvements.
  - Over $13 million in infrastructure expansion and improvements.

Issues Raised at Planning Commission

- Gate at north end of Mountain Lion Drive
  - The Greeley-Loveland Irrigation Company (GLIC) may install a gate at the south end of the existing bridge over the canal.
- Recreation Facilities Included in Apartment Development
  - At least one, and possibly two recreation complexes will be included as part of the proposed apartment development, including a clubhouse, pool, tot lot, play structure, sports area, and open space
- Pedestrian Access to Local Schools
  - Pedestrian access to Mountain View High School is available via the signalized intersection at Sculptor Dr. and an existing sidewalk eastward along the south side of Eisenhower Blvd. to the school
  - Private transportation likely required for students attending Mary Blair Elementary or Winona Elementary schools or Conrad Ball Middle School.
- Status of Planning Area "H"
  - This area remains part of the site, and will be open space
  - Covered by easement allowing access by GLIC to channel weir

Issues Raised at Planning Commission

- Noise Levels Due to Traffic Improvements on Eisenhower Blvd.
  - Traffic noise at existing Allendale homes expected to be reduced, due to buffering by proposed buildings and landscaping.
- Cut-Through Traffic from Denver Ave. to Boise Ave.
  - Potential for cut-through traffic is possible, but not convenient
  - Improvements to Eisenhower Blvd., but abutting and west of the development site, will make it more attractive to stay on Eisenhower Blvd. and Boise Ave.
  - Recent improvements to the Madison Ave. / Eisenhower Blvd. intersection have likely drawn traffic away from Boise Ave., resulting in less congestion at the Boise Ave. / Eisenhower Blvd. intersection, thus reducing the motivation to cut through Allendale Subd. to Denver Ave.
  - The majority of any increased traffic on Denver Ave. and 18th St. expected be residents of the neighborhood travelling to and from the new development.

Conclusions

- Addresses Loveland's critical need for affordable apartments.
- Well-located rental housing benefits City
  - Helps attract new employers to the area
- Could jump start site development
  - Property has been unproductive in the community for 14 years (17 acres) and 6 years (40 acres) under current ownership
  - Apartment development will contribute substantially to infrastructure costs
    - Creates market confidence
    - Provides impetus to the other potential occupants
- Apartment construction alone will inject $40 million, plus create jobs and additional economic opportunity
- "Shovel ready" for "Primary Workplace" development

Approved Concept Plan (2010)

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: **14**
MEETING DATE: 8/19/2014
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Greg George, Development Services Director

TITLE:
A Resolution Amending Resolution #R-81-2012 Adopting the 2013 Schedule of Capital Expansion Fees for Fire and Rescue, Law Enforcement and General Government and Resolution #R-97-2012 Adopting the 2013 Schedule of Street Capital Expansion Fees to Include New Capital Expansion Fees for Oil and Gas Facilities Pursuant to Section Chapter 16.38 of the Loveland Municipal Code

RECOMMENDED CITY COUNCIL ACTION:
Adopt the resolution as presented.

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 item is an administrative action to adopt a resolution establishing capital expansions fees (CEFs) for oil and gas development within the city limits of the City of Loveland. This resolution amends the "2013 Schedule of Capital Expansion Fees for Fire and Rescue, Law Enforcement and General Government" and the "2013 Schedule of Street Capital Expansion Fees," both of which establish CEFs for the years 2013 – 2017. The fees for law enforcement and general government would be based on the same fee rate as currently applied to other types of industrial development within the City. The streets CEFs would also be based on the same rate currently being charged for other new development, which is $238.21 per trip end. The fee rate for fire protection would be higher than for other types of industrial development to reflect the likelihood that there may be a greater demand for emergency response and capital needs for fire protection. In order to collect CEFs, the subject resolution must be legally effective prior to the City accepting its first application for oil and gas development. City staff anticipates receiving our first application in the very near future.

BUDGET IMPACT:
☐ Positive

☐ Negative
☒ Neutral or negligible

BACKGROUND:
Currently, the rates for fire protection, law enforcement and general government CEFs are applied to new building square footage. Since permanent buildings are not constructed as part of an oil and gas facility, the proposal is to apply the existing rates for law enforcement and general government, and a new rate for fire protection, to the land area identified on the application submitted to the Colorado Oil and Gas Conservation Commission (COGCC) as the size of the disturbed area after interim reclamation. This area is the size of the site after it is under production and is normally considerably less than the size of the site during development.

The current CEF rate per square foot for general government of $0.04 and for law enforcement of $0.05 would be applied to the size of the disturbed area after interim reclamation.

The current CEF rate for fire protection is $0.03 per square foot. Based on research of the Colorado Code and the Fort Collins Municipal Code for assessing fees for capital improvements and expansion, Randy Mirowski, Fire Chief, Loveland Fire Rescue Authority, is recommending a fee rate of $0.075 per square foot to be consistent with research indicating that fire protection fees should be approximately 50% higher than law enforcement fees for oil and gas facilities (see Attachment 2).

Current applications pending review by the COGCC indicate that the size of the disturbed area after interim reclamation typically ranges from 3 to 5 acres, meaning that for general government, law enforcement and fire CEFs combined the amount would be in the range of $21,562 to $35,937.

The current rate for streets CEFs is $238.21 per trip end. City staff estimates that 4 trip ends per day per wellhead would result from vehicles accessing the site to either remove oil and gas, for routine inspections or for ordinary maintenance and repair. At this rate the streets CEFs would be $952.84 per wellhead ($238.21/trip end x 4 trip ends/wellhead). A typical oil and gas facility having from 4-10 wellheads would result in a street CEF of $3,811.36 to $9,528.40. There are some much larger facilities pending review by the COGCC that include as many as 67 wellheads. The street CEF for such a facility would be $63,840.28.

Attachment 3 illustrates the total CEFs that would be due for an oil and gas facility containing 4 well heads on a three area disturbed area after reclamation.

Attachment 4 shows the changes to Exhibit A to establish the Street CEFs for oil and gas development and Attachment 5 shows the changes to Exhibit A to establish the Law Enforcement, General Government and Fire Protection CEFs for oil and gas development.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:

1. Resolution with Exhibits A & B
2. Memo from Randy Mirowski concerning fire protection CEFs
3. CEF Summary Table
4. Attachment 4- Redlined Streets CEFs
5. Attachment 5- Redlined CEF

RESOLUTION # R-59-2014

A RESOLUTION AMENDING RESOLUTION #R-81-2012 ADOPTING THE 2013 SCHEDULE OF CAPITAL EXPANSION FEES FOR FIRE AND RESCUE, LAW ENFORCEMENT AND GENERAL GOVERNMENT AND RESOLUTION #R-97-2012 ADOPTING THE 2013 SCHEDULE OF STREET CAPITAL EXPANSION FEES TO INCLUDE NEW CAPITAL EXPANSION FEES FOR OIL AND GAS FACILITIES PURSUANT TO SECTION CHAPTER 16.38 OF THE LOVELAND MUNICIPAL CODE

WHEREAS, on November 20, 2012, the Loveland City Council ("Council") adopted Resolution #R-81-2012 (the "2013 CEF Resolution") adopting a new schedule of capital expansion fees for calendar years 2013-2017, pursuant to Loveland Municipal Code (the "Code") Chapter 16.38; and

WHEREAS, on December 18, 2012, Council adopted Resolution #R-97-2012 (the "2013 Streets CEF Resolution") adopting a new schedule of streets capital expansion fees for calendar years 2013-2017, pursuant to Code Chapter 16.38; and

WHEREAS, on December 18, 2013, after adoption of the 2013 CEF Resolution and the 2013 Streets CEF Resolution, the City adopted Ordinance #5753 regulating oil and gas facilities within the City of Loveland and authorized Council to adopt capital expansion fees for oil and gas facilities by resolution, pursuant to Code Section 18.77.100; and

WHEREAS, this Resolution is intended amend the 2013 CEF Resolution and the 2013 Streets CEF Resolution to add new capital expansion fees related for oil and gas facilities pursuant to Code Section 18.77.100.

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

Section 1. That Exhibit A to the 2013 CEF Resolution is hereby amended by the addition of the capital expansion fees for oil and gas facilities as set forth on the "**New 2014 CEF Exhibit A,"** attached hereto and incorporated herein by this reference.

Section 2. That Exhibit A to the 2013 Streets CEF Resolution is hereby amended by the addition of the streets capital expansion fees for oil and gas facilities as set forth on the **"New 2014 Streets CEF Exhibit A,"** attached hereto and incorporated herein by this reference.

Section 3. That this Resolution amends the 2013 capital expansion fees adopted by the 2013 CEF Resolution and the 2013 streets capital expansion fees adopted by the 2013 Streets CEF Resolution, for all oil and gas facilities permit applications received on or after August 20, 2014.

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

ADOPTED this 19th day of August, 2014.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Shawn L. Otto
Assistant City Attorney

"New 2014 CEF Exhibit A "

Exhibit A Capital Expansion Fees for 2013

Residential Single Family	**Fee Level**
Per unit of housing	
Fire and Rescue	$ 888
Law Enforcement	874
General Government	1,083
Library	722
Cultural Services / Museum	602
Parks	3,528
Recreation	1,572
Trails	527
Open Lands	884
Residential Multi-family	
per unit of housing	
Fire and Rescue	$ 617
Law Enforcement	608
General Government	753
Library	502
Cultural Services / Museum	419
Parks	2,452
Recreation	1,092
Trails	366
Open Lands	614
Commercial	
Per square foot	
Fire and Rescue	$ 0.31
Law Enforcement	0.41
General Government	0.44
Industrial	
Per square foot	
Fire and Rescue	$ 0.03
Law Enforcement	0.05
General Government	0.06
Oil and Gas Facility	

Per square foot of the land area identified on the applicable application submitted to the Colorado Oil and Gas Conservation Commission as the “disturbed area” after interim reclamation

Fire and Rescue	$ 0.03
Law Enforcement	0.04
General Government	0.05

"NEW 2014 STREETS CEF EXHIBIT A"

Exhibit A

Schedule of Street Capital Expansion Fees for 2014

Land Use Category	Street CEF Amount
Residential (per dwelling unit or room)	
Single Family Detached	$ 2,279.61
Attached Single Family Dwelling	$ 1,383.97
Multi-Family Dwelling (with 4 or more units) per unit	$ 1,584.06
Assisted Living (per bed)	$ 633.62
Nursing Home (per bed)	$ 564.54
Mobile Home	$ 1,188.64
Hotel (per room)	$ 1,946.13
Commercial (per square foot)	
Retail Shopping Center*	
25,000 square foot or less	$ 11.30
50,000 square foot	$ 8.87
100,000 square foot	$ 6.96
200,000 square foot	$ 5.45
Bank with Drive Up	$ 9.53
Free-standing Discount Store	$ 6.55
Fast Food Restaurant with Drive Thru	$ 35.45
High Turnover Sit-down Restaurant	$ 10.91
Coffee/Donut Shop w/o drive-thru	$ 32.16
Coffee/Donut Shop w/ drive-thru	$ 58.49
New Car Sales	$ 6.36
Auto – Oil Change & Emissions Service per bay	$ 7,622.68
Quick Lube Vehicle Shop (per bay)	$ 7,622.53
Convenience Store/Gas Station	$ 32.22
Gas Station per pump	$ 7,226.71
Car Wash (Automated) per SF	$ 16.82
Car Wash (Self-Serve) per Wash Stall	$ 12,863.03
Supermarket	$ 8.28
Furniture Store	$ 0.24
Health Club	$ 6.27
Specialty Retail	$ 5.27

Office (per square foot)		
General Office Building*		
25,000 square feet or less	$	4.37
50,000 square feet	$	3.73
100,000 square feet	$	3.17
200,000 square feet	$	2.71
Medical/Dental Office Building	$	8.61
Hospital	$	3.93
Place of Worship	$	2.17
Industrial (per square foot)		
Manufacturing	$	0.91
Warehousing	$	0.85
General Light Industrial	$	1.66
Mini-warehouse	$	0.60
Oil and Gas Facility (per wellhead)	**$**	**952.84**

Street Capital Expansion Fees are determined by multiplying the number of weekday trips for the proposed specific use(s) as defined and reported in the current edition of the Institute of Transportation Engineers' *Trip Generation Manual* (ITE Manual) and handbook by the percentage of primary trips for that use (per current ITE Manual and handbook) and by $238.21 (cost per trip end for 2013). Please refer to the ITE Manual for specific information related to the categories listed above as well as for those not listed, as this Schedule is not intended to be all inclusive. Traffic data used for CEF calculation must be found reliable by Public Works Department Transportation Development Review Division (TDR) Staff and final CEF determination will be made only in conjunction with a complete building permit submittal. These fees are based per square foot of floor area or dwelling unit (unless otherwise noted). For purposes of calculating the Street CEF for oil and gas facilities, the number of trip ends per wellhead used is 4.0 trip ends.

* The fees listed for these uses are size-specific and are provided for reference only. The actual Street Capital Expansion Fees will be established based on the total square footage of the structure, inclusive of any additions, in conjunction with trip information from the ITE Manual, as deemed reliable by City TDR Staff.

Loveland Fire Rescue Authority

Memo

To: Greg George, Development Services Director, City of Loveland

From: Randy Mirowski, Fire Chief Loveland Fire Rescue Authority ***rm***

Date: 19 July, 2013/ Updated 06 August, 2014

Re: Gas and oil CEFs for hydraulic fracturing installations

Greg I am offering some observations and some supporting data, for a rationale charge structure for impact and capital expansion fees for oil and gas installations. I could find little in the way of empirical data to assist me for exact comparisons or information specific for the appropriate amount for fees. However, there is some information that I gathered (generic) from the Colorado Code and the Fort Collins Municipal Code for assessing fees for capital improvement and expansion. Thus, here is my take on this matter based on what I found.

The "Code" seems to suggest that when assessing such fees that ***Fire Fees*** are approximately 50% more than what ***Police Fees*** are listed. I'm certain that the rationale for this is that the expected impact will likely be greater in emergency response and in capital expansion for Fire than for Police. This projected impact is consistent with what we have heard from other Fire Chiefs and from our discussions between Chief Hecker and me.

Thus, assuming the Police numbers you listed are correct, at .050, Fire Fees would need to go to. 075 to achieve the level of what the code suggests (based on a ratio of 50% greater than what Police Fees are).

Greg, a specific assessment that I would suggest using, can be found in the City of Fort Collins Municipal Code for expansion improvement fees: Article II. They (Fort Collins) have a similar situation as us with the fire authority and police services, so it would seem reasonable that this ratio could be used with an assurance of it being comparative and accurate to Loveland.

I will provide the link for the Code below so that you can review it for yourself.
http://www.colocode.com/fcmunihtml.html

Attachment 2

Please see Section 7.5-29 and Sections 7.5-30 for the comparisons. Thanks for the opportunity to weigh in on this, Greg.

City of Loveland

Capital Expansion Fees for Oil and Gas Facility containing 4 well heads on 3 acres (130,680sq. ft.) of disturbed area after reclamation

Type of CEF	Unit Cost	Units	Basis	Cost
1) Streets	$952.84	4 Trip ends/day	Per well head	$3,811.36
2) Fire Protection	$0.075	Square feet	Area of disturbed site after reclamation	$9,801.00
3) Law Enforcement	$0.05	Square feet	Area of disturbed site after reclamation	$6,534.00
4) General Government	$0.04	Square feet	Area of disturbed site after reclamation	$5,227.00
Total CEFs				$25,373.36

"NEW 20134 STREETS CEF EXHIBIT A"

Exhibit A

Schedule of Street Capital Expansion Fees for 20134

Land Use Category	Street CEF Amount
Residential (per dwelling unit or room)	
Single Family Detached	$ 2,279.61
Attached Single Family Dwelling	$ 1,383.97
Multi-Family Dwelling (with 4 or more units) per unit	$ 1,584.06
Assisted Living (per bed)	$ 633.62
Nursing Home (per bed)	$ 564.54
Mobile Home	$ 1,188.64
Hotel (per room)	$ 1,946.13
Commercial (per square foot)	
Retail Shopping Center*	
25,000 square foot or less	$ 11.30
50,000 square foot	$ 8.87
100,000 square foot	$ 6.96
200,000 square foot	$ 5.45
Bank with Drive Up	$ 9.53
Free-standing Discount Store	$ 6.55
Fast Food Restaurant with Drive Thru	$ 35.45
High Turnover Sit-down Restaurant	$ 10.91
Coffee/Donut Shop w/o drive-thru	$ 32.16
Coffee/Donut Shop w/ drive-thru	$ 58.49
New Car Sales	$ 6.36
Auto – Oil Change & Emissions Service per bay	$ 7,622.68
Quick Lube Vehicle Shop (per bay)	$ 7,622.53
Convenience Store/Gas Station	$ 32.22
Gas Station per pump	$ 7,226.71
Car Wash (Automated) per SF	$ 16.82
Car Wash (Self-Serve) per Wash Stall	$ 12,863.03
Supermarket	$ 8.28
Furniture Store	$ 0.24
Health Club	$ 6.27
Specialty Retail	$ 5.27

Office (per square foot)		
General Office Building*		
25,000 square feet or less	$	4.37
50,000 square feet	$	3.73
100,000 square feet	$	3.17
200,000 square feet	$	2.71
Medical/Dental Office Building	$	8.61
Hospital	$	3.93
Place of Worship	$	2.17
Industrial (per square foot)		
Manufacturing	$	0.91
Warehousing	$	0.85
General Light Industrial	$	1.66
Mini-warehouse	$	0.60
Oil and Gas Facility (per wellhead)	**$**	**952.84**

Street Capital Expansion Fees are determined by multiplying the number of weekday trips for the proposed specific use(s) as defined and reported in the current edition of the Institute of Transportation Engineers' *Trip Generation Manual* (ITE Manual) and handbook by the percentage of primary trips for that use (per current ITE Manual and handbook) and by $238.21 (cost per trip end for 2013). Please refer to the ITE Manual for specific information related to the categories listed above as well as for those not listed, as this Schedule is not intended to be all inclusive. Traffic data used for CEF calculation must be found reliable by Public Works Department Transportation Development Review Division (TDR) Staff and final CEF determination will be made only in conjunction with a complete building permit submittal. These fees are based per square foot of floor area or dwelling unit (unless otherwise noted). For purposes of calculating the Street CEF for oil and gas facilities, the number of trip ends per wellhead used is 4.0 trip ends.

* The fees listed for these uses are size-specific and are provided for reference only. The actual Street Capital Expansion Fees will be established based on the total square footage of the structure, inclusive of any additions, in conjunction with trip information from the ITE Manual, as deemed reliable by City TDR Staff.

"New 20134 CEF Exhibit A "

Exhibit A Capital Expansion Fees for 2013

Residential Single Family	**Fee Level**
Per unit of housing	
Fire and Rescue	$ 888
Law Enforcement	874
General Government	1,083
Library	722
Cultural Services / Museum	602
Parks	3,528
Recreation	1,572
Trails	527
Open Lands	884
Residential Multi-family	
per unit of housing	
Fire and Rescue	$ 617
Law Enforcement	608
General Government	753
Library	502
Cultural Services / Museum	419
Parks	2,452
Recreation	1,092
Trails	366
Open Lands	614
Commercial	
Per square foot	
Fire and Rescue	$ 0.31
Law Enforcement	0.41
General Government	0.44
Industrial	
Per square foot	
Fire and Rescue	$ 0.03
Law Enforcement	0.05
General Government	0.06

Oil and Gas Facility

Per square foot of the land area identified on the applicable application submitted to the Colorado Oil and Gas Conservation Commission as the "disturbed area" after interim reclamation

Fire and Rescue	$ 0.03
Law Enforcement	0.04
General Government	0.05

~~**Note:** The review process for the street capital expansion fees are not yet completed. When the process has been completed, a revised fee schedule will be presented to Council.~~