

AGENDA
LOVELAND CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 15, 2015
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
6:30 P.M. REGULAR MEETING - City Council Chambers**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

**PROCLAMATION DECLARING SEPTEMBER 2015 AS SUICIDE AWARENESS MONTH
(Linda Maher, Alliance for Suicide Prevention)**

**PRESENTATION OF THE VETERANS' DAY NATIONAL RECOGNITION LETTER TO THE
CITY OF LOVELAND FROM THE ASSOCIATED VETERANS (Ed Aiken)**

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

A Motion to Approve the City Council Meeting Minutes for the September 1, 2015 Regular Meeting and the September 4, 2015 Special Meeting.

1. This is an administrative action to approve the City Council meeting minutes for the September 1, 2015 Regular Meeting.
2. This is an administrative action to approve the City Council meeting minutes for the September 4, 2015 Special Meeting.

2. **PUBLIC WORKS** (presenter: Chris Carlson)**SUPPLEMENTAL BUDGET AND APPROPRIATION FOR FLOOD RECOVERY****A Motion To Approve And Order Published On Second Reading Ordinance #5958
Enacting A Supplemental Budget And Appropriation To The 2015 City Of Loveland
Budget For A Temporary Flood Administrative Technician Position And For Final
Flood Reconstruction Work At The Fire Training Grounds**

This is an administrative action. The ordinance on second reading appropriates funding to continue a temporary flood recovery Administrative Technician position. This position and funding was initially approved upon second reading of an ordinance on March 4, 2014. It provided \$46,780 for a temporary position providing administrative support to the engineering teams working on flood recovery projects. This supplemental appropriation request of \$54,449 includes \$33,941 to allow the Administrative Technician position to continue through the 2015 budget cycle while still remaining within the original \$46,780 appropriation. Since flood recovery work is still ongoing, it is our intention to continue the position until April 6, 2016, which is approximately when the originally appropriated funds will have been spent. The total requested funding of \$54,449 also provides \$20,508 for the Facilities Management Division to cover final Flood reconstruction costs at the Fire Training Grounds. These funds were also included in the original Flood funding approved on March 4, 2014. On September 1, 2015, City Council unanimously approved this ordinance on first reading.

3. **WATER & POWER** (presenter: Jim Lees)**WATER AND WASTEWATER ENTERPRISE FUNDING**

1. **A Motion to Approve on Second Reading Resolution #R-55-2015 Concerning Funding for the Water Enterprise to Complete Improvements at the Water Treatment Plant and Construct More Water Storage**
2. **A Motion to Approve on Second Reading Resolution #R-56-2015 Concerning Funding for the Wastewater Enterprise to Complete Improvements at the Wastewater Treatment Plant**

This is an administrative action to adopt a resolution that provides funding mechanisms for the Water Enterprise through a series of rate increases and an external loan. This funding will be used to complete improvements at the Water Treatment Plant and for construction of more water storage. A second resolution provides funding mechanisms for the Wastewater Enterprise through a series of rate increases and an external loan. This funding will be used for improvements at the Wastewater Treatment Plant. These resolutions carry out the Council's direction from the July 28, 2015 Study Session, which was also the recommendation of both the LUC and Staff. Both resolutions maintain the rate tracks that Council gave their approval to that were developed from the previous cost-of-service rate study that was conducted in 2012. These rate tracks still provide sufficient funding to meet the projected needs of both the Water and Wastewater Utilities over the next ten years. On July 15, 2015, the Loveland Utilities Commission recommended approval. On September 1, 2015, City Council unanimously approved these resolutions on first reading.

4. **DEVELOPMENT SERVICES** (presenter: Nikki Garshelis)**PUBLIC COMMENT****SUBSTATION HISTORIC LANDMARK****A Motion To Approve And Order Published On First Reading An Ordinance Of City Council Designating As A Historic Landmark The Public Service Company Of Colorado Loveland Substation, Located At 105 E 1st Street In Loveland, Colorado**

This is a legislative action requiring a public hearing to consider adopting an ordinance on

first reading designating as a Historic Landmark the "Public Service Company of Colorado Loveland Substation," at 105 E 1st Street, per Section 15.56 of the Municipal Code dealing with Historic Preservation. The application is owner-initiated and staff has reviewed the benefits and obligations of historic designation with the property owner. The Historic Preservation Commission (HPC) recommends approval.

5. PUBLIC WORKS (presenter: Justin Stone)

PUBLIC COMMENT

SUPPLEMENTAL BUDGET AND APPROPRIATION FOR SIGNAL CABINETS

1. A Motion To Approve And Order Published On First Reading An Ordinance Enacting a Supplemental Budget and Appropriation to the 2015 City of Loveland Budget for Traffic Signal Cabinets and Related Equipment within the City of Loveland

2. A Motion to Adopt Resolution #R-59-2015 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 Traffic Equipment In The City Of Loveland

This is an administrative action. The City of Loveland (City) has received a federal grant through the Colorado Department of Transportation (CDOT) in the amount up to \$497,000 to fund traffic signal cabinets and related equipment at up to 40 locations across the City. This item consists of consideration of a resolution approving an Intergovernmental Agreement between the City and CDOT, including authorization for the City Manager, in consultation with the City Attorney, to sign the IGA, and the first reading of an ordinance to appropriate the federal funds for the project. The project is funded from federal funds in the amount of \$497,000 and City of Loveland local match funds in the amount of \$103,315, for a total project cost of \$600,315. The City funds are included within the approved 2015 budget for the Public Works Department for Transportation Capital Projects.

6. FINANCE (presenter: Brent Worthington)

ANNUAL AUDIT CONTRACT

A Motion to Adopt Resolution #R-60-2015 Appointing a Certified Public Accountant to Audit the Financial Statements of the City of Loveland, Colorado

This is an administrative action. Pursuant to section 11-7 of the City of Loveland Charter, Council shall provide for a financial audit, which shall be performed by a certified public accountant selected by Council. The audit shall be performed in accordance with the State statutes establishing the local government audit laws. Rubin Brown LLP was selected by staff for the annual financial audit for fiscal years 2015, 2016, and 2017 with the option of renewing the contract for two additional one year terms (2018, 2019). On September 9, 2015 the Citizen's Finance Advisory Commission (CFAC) recommended approval.

7. HUMAN RESOURCES (presenter: Julia Holland)

WORKERS' COMPENSATION INSURANCE COVERAGE

A Motion to Amend the City's Workers' Compensation Coverage with Pinnacol Assurance and Authorize the City Manager to enter into a contract with Pinnacol, and establish a purchase order in the Amount of \$1,240,000 with a Renewal Date of July 1

This is an administrative action to authorize the City Manager to enter into a contract with Pinnacol Assurance to amend the workers' compensation coverage renewal date to July 1 and includes continued premium costs and claims payable from prior years. The terms of the revised contract remain unchanged. Pinnacol will adjust workers' compensation claims and bill the City for the amounts paid under the \$75,000 per occurrence deductible. The 2015/16 premium \$9,579 is slightly higher than the prior quote based on increased

estimated payroll through June 30, 2016; however, the City will receive a credit of the prorated amount, estimated to be \$75,000 (pro-rated), if the LFRA separates from the City effective January 2016.

8. **CITY ATTORNEY** (presenter: Tami Yellico)

PULLIAM AGREEMENT UPDATE

A Motion Approving The Settlement Of The Pulliam Quiet Title Litigation As Set Forth In The Stipulation And Joint Motion For Entry Of Decree And Authorizing The City Attorney To Sign The Stipulation And Joint Motion For Entry Of Decree

This is an administrative action. It is recommended, if City Council desires to approve the settlement of the Pulliam quiet title litigation, that City Council approve the motion set forth above approving the Stipulation and Joint Motion for Entry of Decree ("Stipulation").

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

PUBLIC COMMENT

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

PROCEDURAL INFORMATION

Anyone in the audience will be given time to speak to any item on the Regular Agenda before the Council acts upon it. The Mayor will call for public comment following the staff report. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

9. **PUBLIC WORKS** (presenter: Leah Browder)

HIGHWAY 34 COALITION

A Motion to Adopt Resolution #R-61-2015 Of The Loveland City Council Concerning Support For The Creation Of A U.S. Highway 34 Coalition

This is an administrative action. The City of Loveland (City) has been asked to participate in the formation of a U.S. Highway 34 Coalition and to continue to participate as an ongoing member in the Coalition. Evans, Greeley, Johnstown and Windsor have all approved Resolutions, along with Weld and Larimer Counties, supporting the creation of the Coalition. This item consists of a Resolution supporting and encouraging the creation of the Coalition; pledging to have a City Council Member and a staff member in attendance at Coalition meetings; pledging that the City Council will consider matching funds for grants as part of the City's budget process should such opportunities arise; and stating that the City Council will seek to integrate its efforts with other regional transportation coalitions.

10. **ECONOMIC DEVELOPMENT** (presenter: Betsey Hale)
SOUTH CATALYST PROJECT RFP AND UPDATE
A Motion to issue Developer Request for Proposals (RFP) for the South Catalyst Project consistent with the direction provided by Council
This is an administrative item. This is a discussion on the South Catalyst project and seeking a motion to authorize the City Manager to issue a Request for Proposals (RFP) for a development partner for the South Catalyst project in Downtown Loveland.

11. **FINANCE** (presenter: Brent Worthington)
COUNCIL DIRECTED REVISIONS TO THE CITY MANAGER'S RECOMMENDED BUDGET FOR 2016
At the September 8, 2015 Study Session, City Council directed staff to make several revisions to the City Manager's 2016 Recommended Budget. Council discussion at the Study Session was incomplete and will be continued at this September 15 meeting.

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**



CITY COUNCIL

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PROCLAMATION

WHEREAS, Larimer County lost 83 individuals to suicide in 2014; and

WHEREAS, over the last ten years more than 591 people have died by suicide in Larimer County; and

WHEREAS, suicide permeates all demographic boundaries and causes extreme suffering, grieving, and pain that affects families, schools, and communities; and

WHEREAS, many of the social, demographic, biological, clinical, and behavioral risk factors for suicide are known, and many promising strategies exist to prevent suicide; and

WHEREAS, the risk for human self-destruction can be reduced through awareness, education and treatment making it necessary to regard suicide as a major health problem and to support educational programs, research projects, and services providing support and resources and support to those who lost a loved one to suicide; and

WHEREAS, The Alliance for Suicide Prevention's mission is to prevent suicide by raising awareness, educating and training youth and adults about depression and suicide and providing resources and support to those who have been impacted; and

WHEREAS, events and presentations are planned for the month of September to help educate the Thompson Valley School District students, faculty, staff parents, and others about suicide and promote awareness of available resources.

NOW, THEREFORE, we the City Council of Loveland, do hereby proclaim the month of September as

SUICIDE AWARENESS MONTH

in Loveland, Colorado, and in so doing, urge all citizens to join in a community effort to raise awareness to help to prevent suicides in our community.

Signed this 15th day of September, 2015

Cecil A. Gutierrez
Mayor



Printed on
Recycled Paper

MINUTES
LOVELAND CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 1, 2015
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

CALL TO ORDER: Mayor Gutierrez called the meeting to order at 6:33 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL: Roll was called and the following responded: Gutierrez, Clark, McKean, Farley, Trenary, Fogle, Shaffer and Krenning. Councilor Taylor was absent.

Councilor McKean read the PROCLAMATION DECLARING SEPTEMBER 2015 AS HUNGER ACTION MONTH IN LOVELAND Brittney Stephenson with the Food Bank for Larimer County received the proclamation.

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.

Mayor Gutierrez asked if anyone would like to remove anything from the Consent Agenda. Councilor Shaffer moved to approve the Consent Agenda. The motion, seconded by Councilor Farley, carried with all councilors present voting in favor thereof.

City Manager, Bill Cahill, asked to remove item #11 regarding the Urban Land Institute report from the regular agenda.

CONSENT AGENDA

1. **CITY CLERK** (presenter: Terry Andrews)

APPROVAL OF MEETING MINUTES

A Motion to Approve the City Council Meeting Minutes for the; August 3, 2015 Special Meeting, August 4, 2015 and August 18, 2015 Regular Meetings and the August 25, 2015 Study Session were approved.

1. This is an administrative action to approve the City Council meeting minutes for the August 3, 2015 Special Meeting.
2. This is an administrative action to approve the City Council meeting minutes for the August 4, 2015 Regular Meetings.

3. This is an administrative action to approve the City Council meeting minutes for the August 18, 2015 Regular Meeting.
4. This is an administrative action to approve the City Council meeting minutes for the August 25, 2015 Study Session.

2. **FINANCE** (presenter: Brent Worthington)

SUPPLEMENTAL BUDGET AND APPROPRIATION FOR PHASE I OF THE CEMETERY MAINTENANCE SHOP

A Motion to Approve and Order Published On Second Reading Ordinance #5956 Enacting A Supplemental Budget And Appropriation To The 2015 City Of Loveland Budget For Phase I Of The Cemetery Maintenance Shop was approved.

This is an administrative action. The ordinance would appropriate a total of \$118,000 to the 2015 City of Loveland Budget for the design of a replacement Cemetery Maintenance Shop/Office to address safety, ADA and customer service needs at the Loveland Burial Park and Lakeside Cemetery. On August 18, 2015, City Council unanimously approved this ordinance on first reading.

3. **ECONOMIC DEVELOPMENT** (presenter: Alan Krcmarik)

LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY (DDA) BOUNDARIES

A Motion To Approve And Order Published On Second Reading Ordinance #5957 Excluding Three Residential Properties From The Boundaries Of The Loveland Downtown Development Authority (The “DDA”) was approved.

This is a legislative action. Ordinance #5927, approved by City Council on second reading April 7, 2015, established the Loveland Downtown Development Authority (DDA) and established the legal description of the DDA boundaries. The Larimer County Assessor’s Office identified three residential parcels that were split by the DDA Boundary. As only one tax area can be assigned to a single parcel, the DDA boundary needs to be expanded to include the entire parcels or take the parcels out of the DDA legal description. The property owners of the affected parcels declined the option to include their property into the DDA boundaries. Approval of this action would exclude the three residential properties from the legal description of the DDA boundaries. On August 18, 2015, City Council unanimously approved this ordinance on first reading.

4. **PUBLIC WORKS** (presenter: Chris Carlson)

PUBLIC HEARING

SUPPLEMENTAL BUDGET AND APPROPRIATION FOR FLOOD RECOVERY

A Motion To Approve And Order Published On First Reading Ordinance #5958 Enacting A Supplemental Budget And Appropriation To The 2015 City Of Loveland Budget For A Temporary Flood Administrative Technician Position And For Final Flood Reconstruction Work At The Fire Training Grounds was approved.

This is an administrative action. The ordinance on first reading appropriates funding to continue a temporary flood recovery Administrative Technician position. This position and funding was initially approved upon second reading of an ordinance on March 4, 2014. It provided \$46,780 for a temporary position providing administrative support to the engineering teams working on flood recovery projects. This supplemental appropriation request of \$54,449 includes \$33,941 to allow the Administrative Technician position to continue through the 2015 budget cycle while still remaining within the original \$46,780 appropriation. Since flood recovery work is still ongoing, it is our intention to continue the position until April 6, 2016, which is approximately when the originally appropriated funds will have been spent. The total requested funding of \$54,449 also provides \$20,508 for the Facilities Management Division to cover final Flood reconstruction costs at the Fire Training Grounds. These funds were also included in the original Flood funding approved on March 4, 2014.

5. **PUBLIC WORKS** (presenter: Dave DeBaere)**ENCROACHMENT EASEMENT****A Motion to Adopt Resolution #R-54-2015 Granting a Nonexclusive Existing Building Encroachment Easement was approved.**

This is an administrative action. The grant of easement will allow existing building improvements at 201 East 4th Street to remain within City rights-of-way.

6. **WATER & POWER** (presenter: Jim Lees)**PUBLIC HEARING****WATER AND WASTEWATER ENTERPRISE FUNDING**

1. **A Motion to Approve on First Reading Resolution #R-55-2015 Concerning Funding for the Water Enterprise to Complete Improvements at the Water Treatment Plant and Construct More Water Storage was approved.**
2. **A Motion to Approve on First Reading Resolution #R-56-2015 Concerning Funding for the Wastewater Enterprise to Complete Improvements at the Wastewater Treatment Plant was approved.**

This is an administrative action to adopt a resolution that provides funding mechanisms for the Water Enterprise through a series of rate increases and an external loan. This funding will be used to complete improvements at the Water Treatment Plant and for construction of more water storage. A second resolution provides funding mechanisms for the Wastewater Enterprise through a series of rate increases and an external loan. This funding will be used for improvements at the Wastewater Treatment Plant. These resolutions carry out the Council's direction from the July 28, 2015 Study Session which was also the recommendation by both the LUC and Staff. Both resolutions maintain the rate tracks that Council gave their approval to that were developed from the previous cost-of-service rate study that was conducted in 2012. These rate tracks still provide sufficient funding to meet the projected needs of both the Water and Wastewater Utilities over the next ten years. On July 15, 2015, the Loveland Utilities Commission recommended approval.

7. **LOVELAND PUBLIC LIBRARY** (presenter: Marcia Lewis)**LIBRARY'S STATEMENT OF POLICY****A Motion to Adopt Resolution #R-57-2015 Approving the Statement of Policy of the Loveland Public Library was approved.**

This is an administrative action to adopt a resolution approving the recommended policies approved by the Loveland Public Library Board of Directors. A Loveland Public Library policy update historically occurs approximately once every three years. The last Loveland Public Library policy update was approved by resolution and occurred on June 5, 2012.

8. **PARKS AND RECREATION** (presenter: Brian Hayes)**COUNTY ROAD 30 OPEN LANDS IGA****A Motion to Adopt Resolution #R-58-2015 Approving And Authorizing The Execution Of An Agreement Between The City Of Loveland and the City Of Fort Collins To Purchase Property And Water Interests At 4200 E. County Road 30 And Ongoing Cooperation was approved.**

This is an administrative item to approve an Intergovernmental Agreement for the acquisition of land and water by the City of Fort Collins and the City of Loveland. The property is located at 4200 E. County Road 30 immediately north and east of the Fort Collins Loveland Airport. On August 12, 2015 the Open Lands Advisory Commission recommended approval.

9. **FINANCE** (presenter: Brent Worthington)**JULY 2015 FINANCIAL REPORT**

This is an information only item. The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures, including detailed reports on tax revenue and health claims as of July 31, 2015. Citywide Revenue (excluding internal transfers) of \$158,989,393 is 91.7% of year to date (YTD) budget or \$14,459,974 below the budget.

10. **CITY MANAGER** (presenter: Alan Krcmarik)**INVESTMENT REPORT FOR JULY 2015**

This is an information only item. The budget projection for investment earnings for 2015 is \$1,759,080. On the portfolio's 2015 beginning balance this equates to an annual interest rate of 0.84%. Based on the monthly statement, the estimated annualized yield on the securities held by USBank was steady at 1.11%. For July, earnings of \$149,613 were posted to City funds and the year to date total is \$1,062,039. U.S. short-term Treasury interest rates fell in July; the portfolio had an unrealized gain of \$13,751 compared to an unrealized loss of \$110,896 in June. The end of July portfolio market value is estimated to be \$217.3 million. The total amount of the portfolio is growing, but is still not back to the peak amount reached before the 2013 flood, when the portfolio carried an estimated market value of \$226.3 million.

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.

Jackie Marsh, downtown business owner, spoke in opposition to the Downtown Development Association.

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**11. **URBAN LAND INSTITUTE** (presenter: Chris Dunn and Christopher Smith, ULI)
ULI FINAL REPORT ON HEALTHY PLACE WORKSHOP – HIGHWAY 287
This item was removed from the agenda.12. **ECONOMIC DEVELOPMENT**
SOUTH CATALYST PROJECT

Betsey Hale, Economic Development Director, presented this administrative item to Council for a motion to direct staff to proceed with the final development of the Intergovernmental Agreement with Larimer County for their building in Downtown. Staff posed a series of questions to Council regarding the desired outcomes for the South Catalyst project and the County building that will provide direction for the RFP. Councilors would like weekly updates. Mayor Gutierrez opened Public Comment at 8:00 p.m. Michelle Rakey, Loveland resident, spoke in concern for the project. Richard Ball, Loveland resident and candidate for City Council, expressed concern for lack of vision. Patrick McFall, Loveland resident and candidate for City Council, expressed concern for no clear direction. Jackie Marsh, Loveland resident, expressed concern with the probation court being downtown. Moses Street, Loveland resident, expressed concern regarding a large building downtown. Melody Alford, Loveland resident, expressed concern with the lack of preparedness. **Councilor Shaffer moved to direct staff to negotiate an Intergovernmental Agreement with Larimer County for locating the County building in the South Catalyst Project and bring such Intergovernmental Agreement to City Council for final consideration. The motion, seconded by Councilor Farley, carried with seven councilors in favor and Councilor Krenning voting against.**

Direction for Developer Request for Proposals for the South Catalyst Project

Mike Scholl, Economic Development Manager, presented this item to Council. Mayor Gutierrez opened Public Comment at 10:13 p.m. Roger Weidemann, Loveland resident, expressed concern regarding incentives to the developer. Melody Alford, Loveland resident, expressed concern for the vacant properties and safety. Discussion ensued and Council directed staff to bring the draft of the Request for Proposals (RFP) for a development partner for the South Catalyst project in Downtown Loveland to the September 15th Council meeting.

13. CITY ATTORNEY

LITIGATION DISCUSSION AND POSSIBLE EXECUTIVE SESSION

Discussion of and possible staff direction regarding the Stacy Lynne v. Joan Shaffer lawsuit, which includes alleged claims of defamation and First Amendment violations. This agenda item includes a possible Executive Session.

Tami Yellico, City Attorney, presented this administrative item to Council. Councilor Shaffer recused herself. Tammy Tanoi, CIRSA Attorney, was available to answer questions from Council regarding the claims made in this lawsuit and defense provided by Colorado Intergovernmental Risk Sharing Agency (CIRSA), the City's insurance carrier.

BUSINESS FROM CITY COUNCIL

Krenning: Golf Course issue was resolved.

Trenary: Aims Community College, new president, in Loveland Wednesday the 2nd.

Shaffer: North I-25 meeting Wednesday, Mark Radke will attend.

Gutierrez: McWhinney office space opening. Attending Oil and Gas rule hearing.

CITY MANAGER REPORT

Cahill: Mayor Gutierrez, was nominated to represent the City in the DDA Election.

CITY ATTORNEY REPORT

Yellico: Pulliam Quiet Title Action update.

ADJOURNMENT

Having no further business to come before Council, the September 1, 2015, regular meeting was adjourned at 11:27p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

MINUTES
LOVELAND CITY COUNCIL SPECIAL MEETING
FRIDAY, SEPTEMBER 4, 2015
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

CALL TO ORDER: Mayor Gutierrez called the meeting to order at 1:54 p.m.

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

1. SPECIAL MEETING

An Emergency Ordinance Amending Ordinance No. 5951 Regarding the Ballot Submission for the Downtown Development Authority Mill Levy Increase

Tami Yellico, City Attorney, presented this item to Council. This is an action recommending the approval of the Ordinance on final reading. Approval of the Ordinance will direct the City Clerk to recertify the revised ballot submission regarding the Downtown Development Authority (DDA) mill levy increase. The ballot language can be found in Section 1 of the attached Ordinance. **Councilor Shaffer moved to approve an emergency ordinance on one reading amending Ordinance No. 5951 regarding the Ballot Submission for the Downtown Development Authority Mill Levy Increase. The motion, seconded by Councilor Farley, carried with all councilors present voting in favor thereof.**

ADJOURN

Having no further action to come before Council, Mayor Gutierrez adjourned the meeting at 2:00 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor



CITY OF LOVELAND

PUBLIC WORKS DEPARTMENT

Administration Offices • 2525 W 1st Street • Loveland, Colorado 80537

(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM:

2

MEETING DATE:

9/15/2015

TO:

City Council

FROM:

Leah Browder, Public Works Department

PRESENTER:

Chris Carlson, Civil Engineer II

TITLE:

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2015 City of Loveland Budget for a Temporary Flood Administrative Technician Position and for final Flood reconstruction work at the Fire Training Grounds

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. (The position will end)
3. Adopt a modified action.
4. Refer back to staff for further development and consideration.

SUMMARY:

This is an administrative action. The ordinance on second reading appropriates funding to continue a temporary flood recovery Administrative Technician position. This position and funding was initially approved upon second reading of an ordinance on March 4, 2014. It provided \$46,780 for a temporary position providing administrative support to the engineering teams working on flood recovery projects. This supplemental appropriation request of \$54,449 includes \$33,941 to allow the Administrative Technician position to continue through the 2015 budget cycle while still remaining within the original \$46,780 appropriation. Since flood recovery work is still ongoing, it is our intention to continue the position until April 6, 2016, which is approximately when the originally appropriated funds will have been spent. The total requested funding of \$54,449 also provides \$20,508 for the Facilities Management Division to cover final Flood reconstruction costs at the Fire Training Grounds. These funds were also included in the original Flood funding approved on March 4, 2014. On September 1, 2015, City Council unanimously approved this ordinance on first reading.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The appropriation uses existing balances within the General Fund. Because the original supplemental appropriation funding did not roll over into 2015, this supplemental appropriation

request is for a continuation of those funds originally allocated, decreasing the General Fund unassigned balance by \$54,449. The General Fund unassigned balance is currently \$5,197,711.

BACKGROUND:

Staff brought to Council an ordinance requesting funding for a round of flood recovery projects on February 18, 2014. The ordinance also appropriated funding for a temporary (1-year) Administrative Technician position to assist engineering staff with the flood recovery projects. It was initially anticipated that the position would be full time for one year. After that time, staff would assess whether the need still existed to extend the temporary position. \$46,780 was allocated from the General Fund upon second reading of the ordinance on March 4, 2014.

Once the position was filled in May 2014, it was determined that it would be most cost effective and beneficial for the position to be part-time at approximately 20 hours per week. Therefore, the original budget of \$46,780 could last for up to two years. As of December 31, 2014, only \$12,838.57 had been spent and \$33,941.43 remained from the original allocation. Because this amount could not be rolled over into the 2015 budget, it must be reallocated through a supplemental appropriation. Therefore, staff requests a supplemental appropriation of \$33,941 to continue the position through 2015.

We estimate that the original funding of \$46,780 will be spent on salary expenses by approximately April 6, 2016. Since flood recovery work is still ongoing, it is staff's desire to continue this temporary, part-time position until that time. We anticipate that another supplemental appropriation request will be made in 2016 for the remaining unspent funds. At such time, we will evaluate the need to continue the position relative to the amount of flood recovery work remaining.

The Big Thompson River restoration project just north of the Fire Training Grounds wasn't completed until early in 2015. Therefore, the final reconstruction work at Fire Training Grounds was also delayed until March, 2015. This work consisted primarily of fencing and light poles at a total cost of \$20,508. It was identified and included in the original Flood funding package, approved by Council on March 4, 2014. However, with the delay for river restoration, it was not included in the 2015 Budget Rollover process. Including the reconstruction funding of \$20,508 in this appropriation will ensure the work is funded with dollars originally approved and intended for Flood-related work in 2014.

Therefore, this supplemental appropriation request of \$54,449 includes \$33,941 from the General Fund to cover the Administrative Technician Position in 2015 and \$20,508 to fund the final Flood reconstruction at the Fire Training Grounds, completed in March of 2015.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Ordinance

FIRST READING September 1, 2015

SECOND READING September 15, 2015

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2015 CITY OF LOVELAND BUDGET FOR TEMPORARY FLOOD ADMINISTRATIVE TECHNICIAN POSITION & FINAL FLOOD RECONSTRUCTION WORK AT THE FIRE TRAINING GROUNDS

WHEREAS, a temporary flood recovery Administrative Technician position was approved and funded to provide administrative support to engineering teams working on flood recovery projects; and

WHEREAS, flood recovery projects are ongoing and continuation of the temporary Administrative Technician position is desirable; and

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the 2015 City budget for a temporary Flood Administrative Technician position and final Flood reconstruction work at the Fire Training Grounds; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2015 City budget for a temporary Flood Administrative Technician position, 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. Reserves in the amount of \$54,449 from fund balance in the General Fund are available for appropriation. Such revenues in the total amount of \$54,449 are hereby appropriated to the 2015 City budget for funding of a temporary Flood Administrative Technician position and final Flood reconstruction work at the Fire Training Grounds. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund 100**

Revenues

Fund Balance	54,449
--------------	--------

Total Revenue

54,449

Appropriations

100-23-231-0000-41012	Salaries-Non Benefitted Emp	31,345
100-23-231-0000-41544	F.I.C.A. Taxes	2,596
100-23-250-1801-43569		20,508

Total Appropriations

54,449

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

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

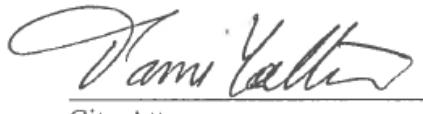
ADOPTED this ___ day of September, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney



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: 3
MEETING DATE: 9/15/2015
TO: City Council
FROM: Steve Adams, Water and Power Director
PRESENTER: Jim Lees, Utility Accounting Manager

TITLES:

1. A Resolution Concerning Funding for the Water Enterprise to Complete Improvements at the Water Treatment Plant and Construct More Water Storage
2. A Resolution Concerning Funding for the Wastewater Enterprise to Complete Improvements at the Wastewater Treatment Plant

RECOMMENDED CITY COUNCIL ACTION:

Approve the resolutions on second reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration.

SUMMARY:

This is an administrative action to adopt a resolution that provides funding mechanisms for the Water Enterprise through a series of rate increases and an external loan. This funding will be used to complete improvements at the Water Treatment Plant and for construction of more water storage. A second resolution provides funding mechanisms for the Wastewater Enterprise through a series of rate increases and an external loan. This funding will be used for improvements at the Wastewater Treatment Plant. These resolutions carry out the Council's direction from the July 28, 2015 Study Session, which was also the recommendation of both the LUC and Staff. Both resolutions maintain the rate tracks that Council gave their approval to that were developed from the previous cost-of-service rate study that was conducted in 2012. These rate tracks still provide sufficient funding to meet the projected needs of both the Water and Wastewater Utilities over the next ten years. On July 15, 2015, the Loveland Utilities Commission recommended approval. On September 1, 2015, the City Council unanimously approved these resolutions on first reading.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

Both utilities will have their revenues increased as a result of implementing the proposed rate increases. Both utilities will see an increase in expenses as a result of funding the operating and maintenance expenses as well as the capital expenditures that are included for each utility in their 10-Year Financial Plans.

BACKGROUND:

At the July 28, 2015 City Council Study Session, the results from this year's Water and Wastewater cost-of-service rate study were presented. Staff was looking for direction from the Council on some rate track and borrowing scenarios for both the Water and Wastewater Utilities. For Water, there were four scenarios presented, and the support from City Council was for Scenario 1, which was called the Baseline Scenario. This scenario maintains the rate track that Council gave their approval to on March 5, 2013 via Resolution #R-16-2013. Scenario 1 was recommended both by the Loveland Utilities Commission (LUC) and Staff. This scenario includes the following components:

- 1) Implement the following series of rate increases to provide adequate cash flow to fund the needs of the Water Utility:
 - 2016: 8.0%
 - 2017-2019: 9.0% per year
 - 2020-2022: 8.0% per year
 - 2023-2025: 3.5% per year
- 2) Pursue a 20-year external loan for a projected \$9.2 million in 2018 to help finance the City's portion of the construction of the Chimney Hollow Reservoir

For Wastewater, there were five scenarios presented, and an additional scenario (referred to at the meeting as 4a) was also considered by Council. Scenario 4a was a hybrid of Scenario 4, which moved the construction of Digester #3 forward from 2020 to 2016, and Scenario 1, which maintained the rate track that was supported by Council from the 2012 cost-of-service rate study. As a follow-up to the July 28, 2015 Study Session, the specifics of Scenario 4a were emailed to the City Council from Bill Cahill on August 4, 2015. The support from City Council at the July 28, 2015 Study Session was for Scenario 4a, and this is also the scenario that was recommended both by the LUC and Staff. This scenario includes the following components:

- 1) Implement the following series of rate increases to provide adequate cash flow to fund the needs of the Wastewater Utility:
 - 2016: 8.8%
 - 2017-2019: 11.0% per year
 - 2020-2022: 7.0% per year
 - 2023-2025: 3.5% per year
- 2) Pursue a 20-year external loan for a projected \$24.9 million in 2016 to help finance critical capital projects at the Wastewater Treatment Plant. (NOTE: Since the July 28 Study Session, Alan Krcmarik, the City's Executive Fiscal Advisor has informed us that for a loan of this size, a 25-year loan would yield more favorable terms for the City, so the resolution for Wastewater will incorporate a 25-year term for the loan).

These resolutions are intended to be the guiding documents for funding the needs of the Water and Wastewater Enterprises through 2025.

REVIEWED BY CITY MANAGER:


LIST OF ATTACHMENTS:

Resolutions (2)

FIRST READINGSeptember 1, 2015**SECOND READING**September 15, 2015**RESOLUTION #R-55-2015****A RESOLUTION CONCERNING FUNDING FOR THE WATER ENTERPRISE TO COMPLETE IMPROVEMENTS AT THE WATER TREATMENT PLANT AND CONSTRUCT MORE WATER STORAGE**

WHEREAS, for well over one hundred years, the City of Loveland Water Utility has provided the Loveland community with a safe and reliable source of potable water at some of the lowest rates in the State of Colorado; and

WHEREAS, the Water Utility is facing significant financial challenges due to escalating regulatory requirements, increasing operation and maintenance costs, aging infrastructure, water treatment plant capacity limitations and the need for additional water storage; and

WHEREAS, to meet these challenges and provide for the City's future economic growth and development, the Water Utility must improve the water treatment plant and construct more water storage; and

WHEREAS, the City Council desires to secure adequate funding for the Water Utility to meet these project needs through a combination of sources, specifically external borrowing and water rate increases, designed to equitably distribute the financial impacts between current and future Water Utility customers and the citizens of Loveland who will benefit from the City's future economic growth and development; and

WHEREAS, the Loveland Municipal Charter at section 13-2 authorizes the City Council to set rates, and the City Code at section 3.04.025 provides that all utility rates, charges, and fees shall be set by resolution, and all rates, charges and fees in chapter 13 of the Code require such fees to be by resolution adopted after two readings.

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

Section 1. That the City Council hereby directs the City Manager to secure for the City Council's future consideration and approval as the Board of the City's Water Utility Enterprise a twenty-year amortized loan from an external source (or sources) to the Water Enterprise, in the year 2018, on the most advantageous terms available as determined by the City Manager, in consultation with the City Attorney and the City's Executive Fiscal Advisor, in the principal amount necessary to pay all financing costs and establish any required reserves to achieve net loan proceeds of Nine Million Two Hundred Thousand Dollars (\$9,200,000).

Section 2. That the City Council hereby adopts the following rate increases across all

Water Utility customer classes for each of the next ten years as listed below, said rate increases to take effect beginning with billings mailed on or after January 1 of the then-current year:

2016	8% increase
2017	9% increase
2018	9% increase
2019	9% increase
2020	8% increase
2021	8% increase
2022	8% increase
2023	3.5% increase
2024	3.5% increase
2025	3.5% increase

The rate increases adopted herein shall be in addition to, and not in lieu of, any other rate increases for water service that may hereafter be adopted by the City Council to more accurately reflect the cost of providing water service to the Water Utility's customers.

Section 3. That this Resolution shall be effective as of the date of its adoption on second reading as provided in the Loveland Municipal Code.

ADOPTED this 15th day of September, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Anna Ralda
Assistant City Attorney

FIRST READING

September 1, 2015

SECOND READING

September 15, 2015

RESOLUTION #R-56-2015

**A RESOLUTION CONCERNING FUNDING FOR THE WASTEWATER
ENTERPRISE TO COMPLETE IMPROVEMENTS AT THE
WASTEWATER TREATMENT PLANT**

WHEREAS, for eighty-five years, the City of Loveland Wastewater Utility has provided the Loveland community with a safe and reliable wastewater system at very competitive rates; and

WHEREAS, the Wastewater Utility is facing significant financial challenges due to escalating regulatory requirements, increasing operation and maintenance costs, aging infrastructure and wastewater treatment plant capacity limitations; and

WHEREAS, to meet these challenges and provide for the City's future economic growth and development, the Wastewater Utility must improve the wastewater treatment plant; and

WHEREAS, the City Council desires to secure adequate funding for the Wastewater Utility to meet these project needs through a combination of sources, specifically external borrowing and wastewater rate increases, designed to equitably distribute the financial impacts between current and future Wastewater Utility customers and the citizens of Loveland who will benefit from the City's future economic growth and development; and

WHEREAS, the Loveland Municipal Charter at section 13-2 authorizes the City Council to set rates, and the City Code at section 3.04.025 provides that all utility rates, charges, and fees shall be set by resolution, and all rates, charges and fees in chapter 13 of the Code require such fees to be by resolution adopted after two readings.

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

Section 1. That the City Council hereby directs the City Manager to secure for the City Council's future consideration and approval as the Board of the City's Wastewater Utility Enterprise a twenty-five-year amortized loan from an external source (or sources) to the Wastewater Enterprise, in the year 2016, on the most advantageous terms available as determined by the City Manager, in consultation with the City Attorney and the City's Executive Fiscal Advisor, in the principal amount necessary to pay all financing costs and establish any required reserves to achieve net loan proceeds of Twenty-Four Million Nine Hundred Thousand Dollars (\$24,900,000).

Section 2. That the City Council hereby adopts the following rate increases across all

Wastewater Utility customer classes for each of the next ten years as listed below, said rate increases to take effect beginning with billings mailed on or after January 1 of the then-current year:

2016	8.8% increase
2017	11% increase
2018	11% increase
2019	11% increase
2020	7% increase
2021	7% increase
2022	7% increase
2023	3.5% increase
2024	3.5% increase
2025	3.5% increase

The rate increases adopted herein shall be in addition to, and not in lieu of, any other rate increases for wastewater service that may hereafter be adopted by the City Council to more accurately reflect the cost of providing wastewater service to the Wastewater Utility's customers.

Section 3. That this Resolution shall be effective as of the date of its adoption on second reading as provided in the Loveland Municipal Code.

ADOPTED this 15th day of September, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Sha Dalla
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: 4
MEETING DATE: 9/15/2015
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Nikki Garshelis, Development Services

TITLE:

An Ordinance of the City Council Designating as a Historic Landmark the Public Service Company of Colorado Loveland Substation, Located at 105 E 1st Street in Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

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

OPTIONS:

1. Adopt the action as recommended
2. Deny the action: The property owners would be denied their goal of having their property on the Loveland Historic Register.
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration: The application has been reviewed and processed in accordance with City standards. There are no issues to warrant sending the application back to City staff.

SUMMARY:

This is a legislative action requiring a public hearing to consider adopting an ordinance on first reading designating as a Historic Landmark the “Public Service Company of Colorado Loveland Substation,” at 105 E 1st Street, per Section 15.56 of the Municipal Code dealing with Historic Preservation. The application is owner-initiated and staff has reviewed the benefits and obligations of historic designation with the property owner. The Historic Preservation Commission (HPC) recommends approval.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

BACKGROUND:

On August 17, the Historic Preservation Commission found the Public Service Company of Colorado Loveland Substation to be eligible for designation as detailed in the attached staff report, and is forwarding this recommendation to City Council. Draft minutes from the August 17th HPC meeting, attached, include the Commission’s motion to recommend approval of the designation. It is anticipated that the minutes will be adopted at the September 21st meeting.

To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance as identified in Loveland Municipal Code 15.56.100. The Loveland Substation meets the age requirement and additional criteria required for designation. Specific criteria for nomination are contained in the staff report.

The Public Service Company of Colorado Loveland Substation is architecturally significant for its Modern Movements style. It is socially and culturally significant as it exemplifies the cultural, political, economic and social heritage of the community. The substation is geographically and environmentally significant because it enhances the sense of identity of the community and is an established and familiar natural setting and visual feature of the community.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Ordinance
2. Staff Report
3. August 17, 2015 HPC draft minutes
4. Property Owner Application
5. Slide Presentation

FIRST READING: August 15, 2015

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING AS A HISTORIC LANDMARK THE PUBLIC SERVICE COMPANY OF COLORADO LOVELAND SUBSTATION LOCATED AT 105 EAST 1ST STREET IN LOVELAND, COLORADO

WHEREAS, Chapter 15.56 of the Loveland Municipal Code (“Code”) provides that the City Council may designate as a historic landmark an individual structure, site, or other feature or an integrated group of structures and features on a single lot or site having a special historical or architectural value; and

WHEREAS, Code Section 15.56.100 further provides that landmarks must be at least fifty (50) years old and meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance; and

WHEREAS, the owner of that real property legally described as **Lots 10-14, Block 23, Ly S of Row Loveland & Greeley Irrigation & Land Co Canal, City of Loveland, County of Larimer, State of Colorado** (the “Property”), located at 105 East 1st Street, Loveland, Colorado, filed an application for and consents to the designation of the Public Service Company of Colorado Loveland substation structure located on the Property (the “Loveland Substation”) as a historic landmark under Code Chapter 15.56; and

WHEREAS, upon designation of the Loveland Substation as an historic landmark, the Property shall be subject to the provisions of Chapter 15.56 of the Code, as it may be amended from time-to-time by action of the City Council, which currently include, among other provisions, requirements for maintenance, requirements for prior approval of alteration, relocation, or demolition, and remedies for violation, which are binding upon the owner and subsequent purchasers of the Property; and

WHEREAS, on August 17, 2015, the Historic Preservation Commission (“Commission”) held a duly-noticed public hearing (“Commission Hearing”) at which it evaluated the application for designation of the Loveland Substation as an historic landmark, considered the criteria for designation required in Code Section 15.56.100, and received and duly considered any public comments and testimony; and

WHEREAS, at the conclusion of the Commission Hearing, the Commission recommended to the City Council approval of the designation of the Loveland Substation as an historic landmark; and

WHEREAS, as required by Code Section 15.56.030.D, the Commission has forwarded its written recommendation to City Council that the Loveland Substation be designated as an historic landmark; and

WHEREAS, on September 15, 2015, City Council held a duly-noticed public hearing on the designation application at which it reviewed the application for conformance with the criteria for designation in Code Chapter 15.56 and considered the written views of owners of affected property, if any.

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

Section 1. That the preceding recitals contained in this Ordinance are hereby adopted and incorporated by reference as findings of fact of the City Council.

Section 2. That the City Council finds that the Loveland Substation, located at 105 East 1st Street in Loveland, Colorado, satisfies the age requirement and meets the following significant criteria for designation as a landmark to the Loveland Historic Register:

- a. Architectural:
 - 1. Exemplifies specific elements of an architectural style or period.
- b. Social/Cultural:
 - Exemplifies the cultural, political, economic, or social heritage of the community.
- c. Geographic/Environmental:
 - 1. Enhances sense of identity of the community.
- d. Physical Integrity:
 - 1. Shows character, interest, or value as part of the development, heritage, or cultural characteristics of the community, region, state, or nation.
 - 2. Retains original design features, materials, and/or character.
 - 3. Retains its original location.

Section 3. That the Loveland Substation is hereby designated as a historic landmark to the Loveland Historic Register.

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

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

ADOPTED this _____ day of _____, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Naso Garcia

Assistant City Attorney

AN ORDINANCE DESIGNATING AS A HISTORIC LANDMARK THE PUBLIC SERVICE COMPANY OF COLORADO LOVELAND SUBSTATION LOCATED AT 105 EAST 1ST STREET IN LOVELAND, COLORADO



COMMUNITY & STRATEGIC PLANNING
 Civic Center • 500 East Third Street • Loveland, Colorado 80537
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www.cityofloveland.org

Loveland City Council
Staff Report

From: Nikki Garshelis, Development Services
 Meeting Date: City Council: September 15, 2015
 Re: Application for Historic Landmark Property Designation, 105 E 1st Street

SITE DATA

Address: 105 E 1st Street
 Loveland, CO 80537

Request: Application for Historic Landmark Property Designation

Historic Name: Loveland Substation for the Public Service Company of Colorado

Architectural Style: Modern Movements

**Current
Building Sq. Ft.:** 2502 square feet

(Source: Larimer Co. Assessor Property Information)

**Construction
Date:** Circa 1924

Legal Description:

Owner(s): *Janet Wells*

Applicant(s): *Janet Wells (Prepared by Alan Christensen)*

Attachments:
 A. Location Map
 B. Nomination Application submitted by Applicant

I. APPLICATION

Janet Wells, property owner, submitted an application for the Loveland Substation located at 105 East 1st Street, prepared by Alan Christensen, to City staff citing the criteria that the property is significant for its:

- A. Architectural style (Modern Movement) and;
- B. Social/Cultural, exemplifying the cultural, political, economic or social heritage of the community, and;
- C. Geographical/Environmental significance, enhancing the sense of identity in the community

Staff mailed a notification letter announcing the date of a public hearing to the property owner of 105 E. 1st Street as required by ordinance. The Community and Strategic Planning Division also published notice of the public hearing for consideration of designation as a landmark property in the *Loveland Reporter-Herald*. Signage was placed on the property 15 days prior to the Public Hearing.

Larimer County Assessor records identify the property by the following address: 105 E. 1st Street, Loveland, Colorado.

II. SUMMARY

Excerpts from: McWilliams, Carl. *Colorado Cultural Resources Survey, 1999*. DeHaes, John. *Partners in Power: A History of the Fort Collins Light and Power Utility Company, 1935-1985*. Fort Collins: 1985, and Fisher, Ellen Kingman. *One Hundred Years of Energy: Public Service Company of Colorado and Its Predecessors, 1869-1969*. New York: Garland Publishing Inc, 1989

History:

The property at 105 East 1st Street was constructed circa 1924 as an electric power substation, part of a regional power network operated by the Public Service Company of Colorado. Beginning in the 1920s, the Public Service Company provided electrical power to much of the north Front Range, through a main power plant located near Lafayette, and substations in Berthoud, Loveland, and Fort Collins. Electrical power systems provided vital support for the development of agriculture, industry and transportation in Loveland and its surrounding rural communities, which in turn laid the foundation for the city's continued growth.

Between 1891 and 1900, there were several attempts to provide Loveland with electrical power. All faced two stiff obstacles: the struggle between private and municipal entities for control over ownership, distribution and rates; and the high costs of infrastructure. Finally, Loveland businessman and entrepreneur Lee Kelim, owner of the Big Thompson Mill and Elevator Company (Feed & Grain), won the town's trust. Important dates associated with electrical power history:

- ✓ 1901 Loveland Light Heat & Power Company, owned by Kelim, was incorporated.
- ✓ 1904 Kelim was granted a ten-year franchise by the Loveland Town Board to provide the town with electricity.
- ✓ 1904 Kelim sold his stake in the mill and constructed a building on West 2nd Street to serve as the town's power plant.
- ✓ 1906 He sold his operations to the Northern Colorado Power Company (NCPC).
- ✓ 1907 The Denver-based Northern Colorado Power Company built an electric power generation plant by Lafayette, to serve much of northern Colorado.
- ✓ 1914 NCPC reorganized into Western Light and Power.
- ✓ 1923 Western Light and Power was consolidated, along with several other gas and electric utilities, into the Public Service Company of Colorado. The company provided all

of the electrical needs of the towns of Lafayette, Boulder, Longmont, Loveland, Berthoud, Fort Collins, Greeley, Fort Lupton, Brighton, and Cheyenne, Wyoming.

- ✓ 1924 Work was completed on Valmont Station, a 20,000-kilowatt, five-story steam-electric generating plant located near the coal fields of Northern Colorado. Valmont Station was one of the largest, most modern powdered-fuel generating stations located between the Missouri River and the Pacific Coast.
- ✓ 1924 The Public Service Company of Colorado built a series of substations to augment the electrical power from its main plant in Lafayette **including the Loveland structure** and one in Fort Collins using similar materials and with the same style, size and orientation. Substations were often located near industries with a high energy demand, and in more industrial areas of town. Loveland's substation is located next to the historic C&S rail tracks.
- ✓ 1940s The Public Service Company constructed the Cherokee Steam Electric Generating Station, a 780,500 kilowatt plant, located just north of Denver. The station was fully operational in 1968. The Cherokee Station became Colorado's largest capacity power plant.
- ✓ 1960s With construction of the Cherokee Power Station, **the electric power substations were rendered obsolete**. Loveland's electric power substation, at 105 East 1st Street, operated as a substation into the 1960s, and was then sold by the Public Service Company to the City of Loveland.
- ✓ 1983 The building was acquired by Marlene and Steven Funk in September 1983. Mrs. Funk was the manager of the Garment District, a clothing store; Mr. Funk worked as a self-employed electrician. In 1998, it was remodeled into a residence, with a two story stucco addition built on the north façade.
- ✓ 2002 to present The building is currently owned by Janet Wells, who purchased the property from the Funks in January, 2002. Today, this brick building stands as a link between Loveland's past and its future. The Fort Collins substation sat vacant for several years, and was demolished in 2010 to accommodate new development.

Architectural Description:

The original building is considered a Modern Movement style.¹

The two story building has walls made of red bricks, laid in common bond. A belt course which is a continuous row of brick set in line with window sills, helps to make the horizontal line of the sills visually more prominent. It is composed of four brick stretcher courses and one brick header course which visually separates the first and second stories, while a single projecting stretcher course forms the top of the wall. A recessed brick panel is located on the second story on the south elevation. The building is covered by a flat roof. A stained natural brown solid wood door with three vertically oriented upper sash lights enters the east elevation. This door is flanked on either side by a single light side light and is topped by a large single-light transom light. This entry is spanned by a heavy concrete lintel (a load bearing support). A painted blue wood-paneled door, with two small upper sash lights, enters the west elevation from a concrete porch. Windows are entirely single and paired 1/1 double hung sash with painted white wood frames. Windows on the first story also have heavy concrete lug sills (sills that project into the brickwork) and lintels

A two story addition is located on the north elevation. The addition's exterior walls are clad with painted grey stucco and has a flat roof. A set of paired white paneled doors, covered by a set of paired storm doors, enter the northwest corner of the addition. The addition's windows are 1/1 double hung sash.

¹The Modern Movement style of architecture represents a dramatic shift in the design of buildings, away from the traditional forms and construction techniques of the past and toward a new era of design. The style of the Modern Movement began in Europe and spread to the United States in the 1920s. European architects emphasized radically new designs in the early in 20th century, abandoning past building precedent and exploring new materials and technology in their work. Inspired by the Cubism of modern art in Europe, the boxy shapes of International style buildings embodied a new social theory of architecture as well. The new kind of architecture was designed solely to meet the needs of the common people in the Machine Age. In the period between the two world wars, European architects embraced this concept and designed not just commercial buildings, but houses in this bold, new form. In that same timeframe stateside, American architects continued to design more traditional style houses, yet experiment with new forms for skyscrapers and commercial buildings. Just before WWII, many prominent architects emigrated to the US, bringing their new architectural concepts with them. The architecture of the Modern Movement was boldly different in concept and design, continually testing the limits of form, materials, and function. Curtis, William. (1996) *Modern Architecture Since 1900*, London, Phaidon.

III. PHOTOGRAPHS



Figure 1 East Elevation



Figure 2 NW Elevation



Figure 3 South Elevation



Figure 4 SW Elevation



Figure 5 NE Elevation



Figure 6 North Elevation

Item 4b DS Hist Ldmk Staff Report 2105 East 1st Street

Findings and Analysis:

Determination of Significance and Integrity

It is the Historic Preservation Commission's charge to review nomination applications for conformance with the established criteria for designation and with the purposes of the historic preservation ordinance. The Commission must determine if a nominated property has both the significance and the integrity to be designated as a Loveland Historic Landmark.

Significance

Significance should be used as the starting point in determining eligibility for placement on a historic register. Significance has two distinct attributes – the “area of significance” which answers the question of context, or what is significant about a resource, and its “period of significance” which answers the question of when a resource was significant.

The Loveland Substation is historically significant for its association with the development of regional power systems designed and operated by the Public Service Company in northern Colorado beginning in the early 1900s. The building is eligible for local landmark designation by the City of Loveland.

Integrity

Integrity refers to the ability of a structure to convey its original design or some later period of significance through the intactness of its historic form, original or historic use of materials, setting and site. Integrity has seven (7) particular aspects: location, setting, feeling, design, materials, workmanship, and association with some attribute of historic significance.

A historic building, for example, that retains its original or historically significant setting with little or no visible modifications that diminish the ability to relate its historic association demonstrates greater integrity than a building that has lost many of physical historical elements. A building with high physical integrity retains the following original or historically significant elements: massing; architectural detail; surface treatment; and windows and doors.

Physical Integrity shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state or nation. Retains original design features, materials, and/or character and retains its original location.

This property displays a reasonably high level of physical integrity, relative to the seven aspects of integrity as defined by the National Park Service and the Colorado Historical Society - setting, location, design, materials, workmanship, feeling and association. The building's integrity was somewhat diminished when it was converted into a residence, with an addition to the north elevation, in 1998. The addition is quite well executed, however, and is to the rear of the historic building. A sense of time and place relative to this building's historic use as a substation by the Public Service Company of Colorado remains clearly in evidence.

Staff Determination

Staff determined the property at 105 East 1st Street, the Loveland Substation, exhibits both adequate integrity and significance to support its eligibility for designation as a Loveland historic landmark. This determination is based on the Colorado Historical Society's recommended framework for determining landmark eligibility.

Eligibility

To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social cultural, or geographic/environmental significance as identified in Loveland Municipal Code 15.56.090.

The Loveland Substation satisfies the age requirement and meets the following criteria for designation as a Loveland Historic Register Landmark:

Architectural

- Exemplifies specific elements of an architectural style or period.

Social/Cultural

- Exemplifies the cultural, political, economic or social heritage of the community.

Geographic/Environmental

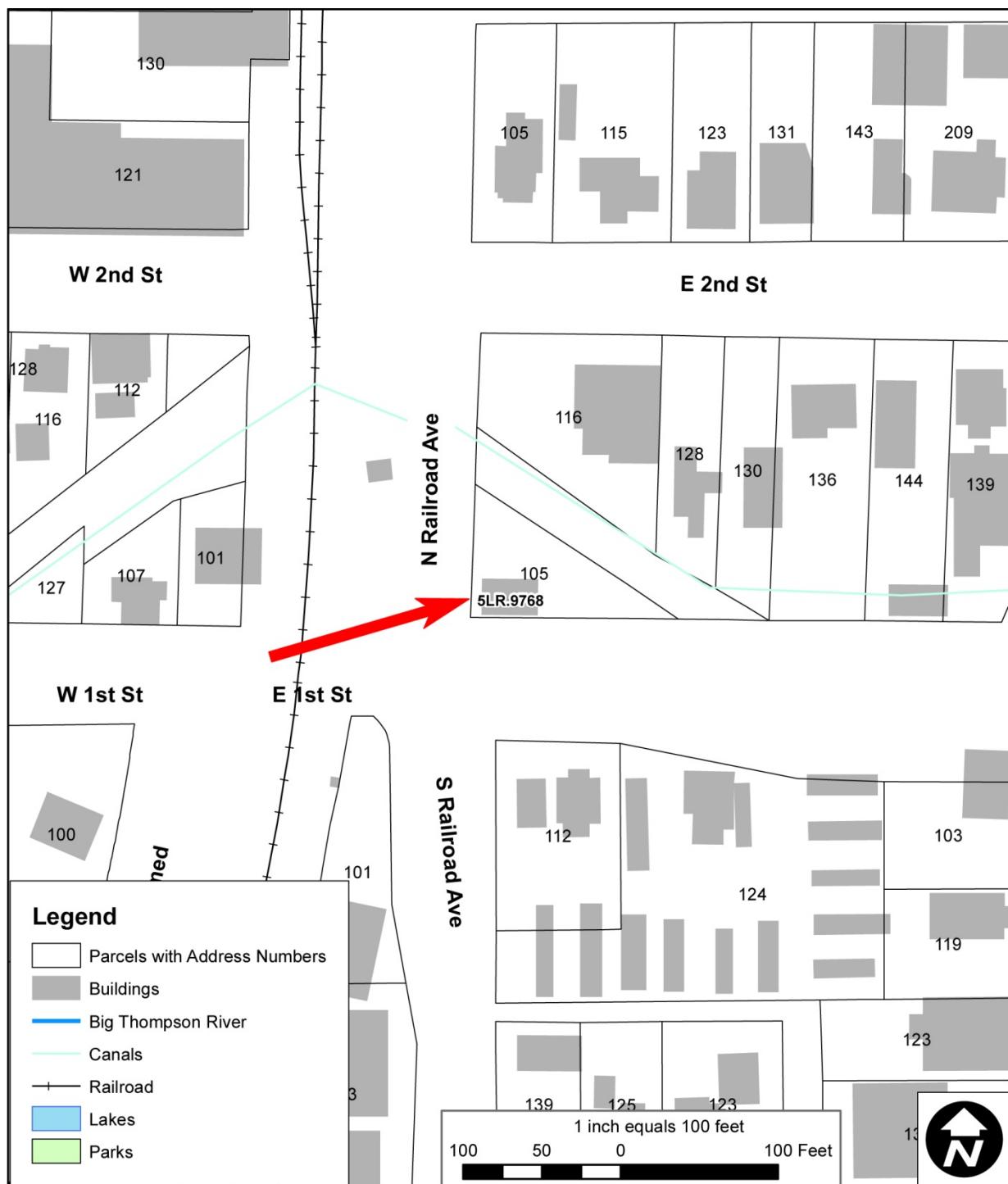
- Enhances sense of identity of the community.
- Is an established and familiar natural setting or visual feature of the community.

HPC Recommendation

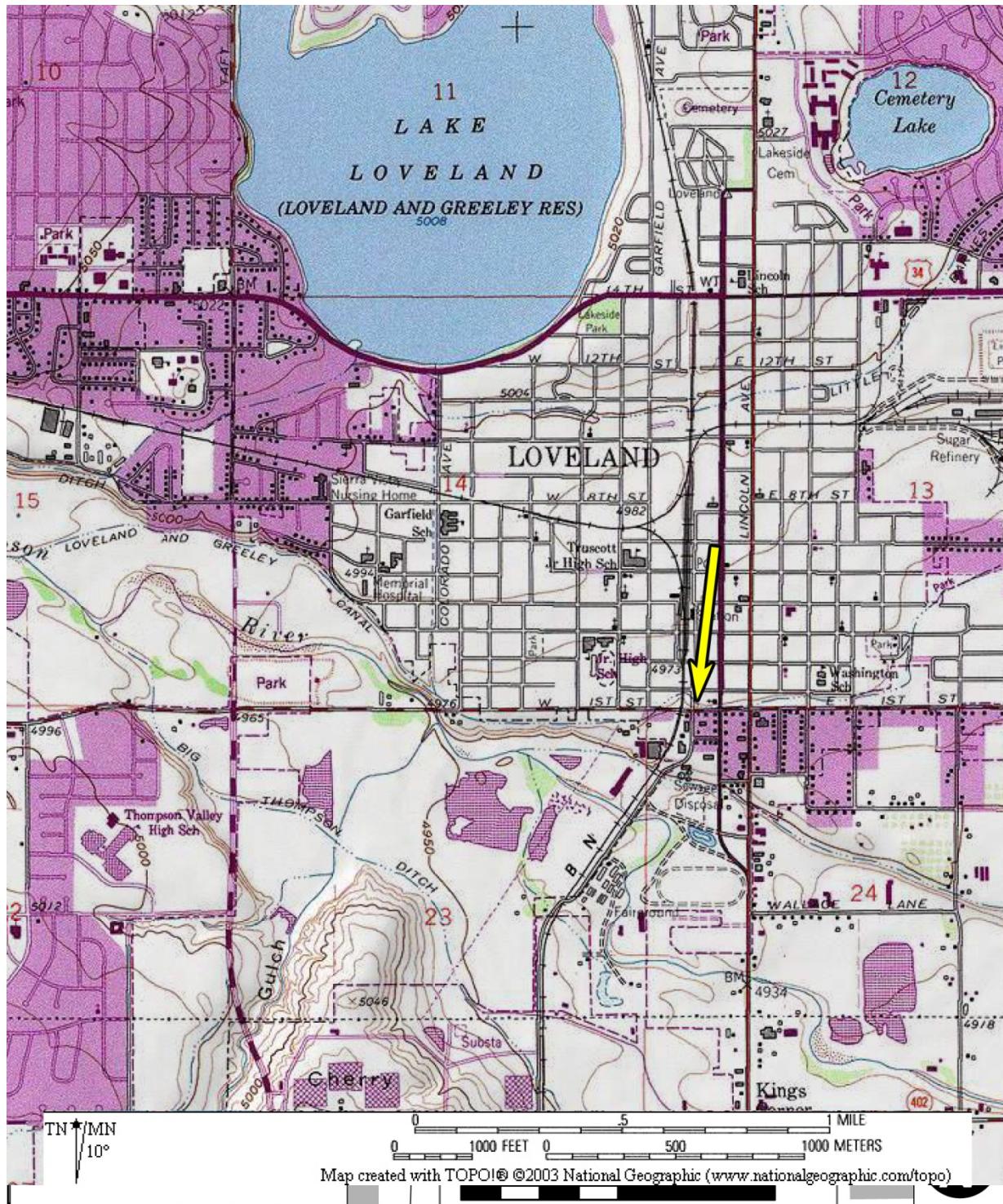
At the August 17, 2015 HPC Meeting, Commissioner Patterson moved to make the findings listed in Section IV of the Historic Preservation Commission staff report dated August 17, 2015 stating that the Loveland Substation for the Public Service Company of Colorado meets the criteria for designation and recommends approval to the City Council. Commission Chair Kersley seconded the motion and it passed unanimously.

The Historic Preservation Commission recommends that the City Council approve this request for designation of the Loveland Substation, located at 105 East 1st Street, as a Loveland Historic Register landmark property.

Attachment A



Attachment A



1 **City of Loveland**
2 **Historic Preservation Commission**
3 **Meeting Summary**
4 **August 17, 2015**

5 A meeting of the Loveland Historic Preservation Commission was held Monday, August 17, 2015 at 6:00 P.M.
6 in the City Council Chambers in the Civic Center at 500 East Third Street, Loveland, CO. Historic Preservation
7 Commissioners in attendance were: David Berglund, Stacee Kersley, Jon-Mark Patterson and Amanda Nash,
8 City Council Liaison, John Fogle and Nikki Garshelis, of Development Services were also present.
9

10 **Guests:** Jacque Wedding-Scott, Janet Wells and Dana Miller
11

12 **CALL TO ORDER**

13 *Commission Chair Kersley called the meeting to order at 6:00 p.m.*

14

15 **APPROVAL OF THE AGENDA**

16 *Commissioner Patterson made a motion to approve the agenda; the motion was seconded by Commissioner*
17 *Berglund and it passed unanimously.*

18

19 **APPROVAL OF THE MINUTES**

20 *Commissioner Patterson made a motion to approve the minutes from the July meeting, the motion was*
21 *seconded by Commissioner Berglund and it passed unanimously.*

22

23 **CITIZEN REPORTS**

24 None
25

26 **CITY COUNCIL UPDATE**

27 *Councilor Fogle said there was nothing pressing to report on City Council issues.*
28

29 **STAFF UPDATE**

30 *Nikki Garshelis reported that there will be a Downtown Walking Audit on September 29th, hosted by Cando,*
31 *with a grant from AARP. Garshelis will participate in the audit to provide information on historic buildings*
32 *and asked if any of the Commissioners can participate. Members agreed to check their schedules.*
33 *There was a discussion about the Viestenz-Smith Mountain Park research opportunity. Commission Chair*
34 *Kersley reported that she was in touch with Park staff to schedule the research. Commissioner Nash said she*
35 *would like to participate in the research process.*

36

37 **CONSIDERATION OF NEW BUSINESS**

38

39 **LDP/ DDA Update**

40 *Jacque Wedding-Scott, the Interim Executive Director, reported that she started in May of this year and just*
41 *recently moved to the downtown location at 350 N. Cleveland. The space is 2240 square feet and they will*
42 *share it with the Chamber of Commerce. She is currently working on setting the office up and getting*
43 *organized. She thanked Councilor Fogle on all his help with the office telephone system. The upcoming*
44 *election is the first priority and she is working on it with the City of Loveland, she said. Another priority is the*
45 *transfer of the Façade Program from the City to the DDA. The Arcadia Hotel is the first project and will be a*
46 *showcase for the program. A "Wall of Success" will be created in the office and the Arcadia will be featured,*
47 *added. She will also soon know who the Arcadia's tenants will be. There was a discussion about details of*
48 *the building and Wedding-Scott answered questions from the HPC.*

49

50 **Public Hearing for Landmark Nomination 105 East 1st Street**51 *Nikki Garshelis* provided a staff report on the Loveland Substation property owned by Janet Wells, the
52 applicant. Significant information she presented included:

53 • The Loveland Substation is historically significant for its association with the development of regional
54 power systems designed and operated by the Public Service Company in northern Colorado beginning in
55 the early 1900s.

56 • The property displays a reasonably high level of physical integrity, relative to the seven aspects of integrity
57 as defined by the National Park Service and the Colorado Historical Society - setting, location, design,
58 materials, workmanship, feeling and association. The building's integrity was somewhat diminished when
59 it was converted into a residence, with an addition to the north elevation, in 1998. The addition is quite
60 well executed, however, and is to the rear of the historic building. A sense of time and place relative to
61 this building's historic use as a substation by the Public Service Company of Colorado remains clearly in
62 evidence.

63 • The Loveland Substation satisfies the age requirement and meets the following criteria for designation as
64 a Loveland Historic Register Landmark:

65 **Architectural**

66 • Exemplifies specific elements of an architectural style or period. (Modern Movement)

67 **Social/Cultural**

68 • Exemplifies the cultural, political, economic or social heritage of the community.

69 **Geographic/Environmental**

70 • Enhances sense of identity of the community.
71 • Is an established and familiar natural setting or visual feature of the community.

72 The Public Hearing was opened at 6:20p.m. and it was closed at 6:30p.m. The HPC members asked Janet Wells,
73 the property owner, questions regarding the history of the building and what future plans she has for it. Ms. Wells
74 said she thinks it is an honor to have the property designated and she plans to maintain it as a residence and art
75 educational studio.

76

77 *Commissioner Patterson moved to make the findings listed in Section IV of the Historic Preservation Commission
78 staff report dated August 17, 2015 stating that the Loveland Substation for the Public Service Company of
79 Colorado meets the criteria for designation and recommends approval to the City Council. Commission Chair
80 Kersley seconded the motion and it passed unanimously.*

81

82 **Outreach Subcommittee Update**

83 *Commission Chair Kersley reported that Commissioner Wertheim contacted NOVO (art organization) to
84 partner on the art project. Her contact at NOVO is taking the information to their board meeting this week.
85 Commission Chair Kersley said she met with the art teacher at Irwin School and discussed creating a
86 curriculum. This may be a project that can be incorporated into this school year, she explained.*

87

88 *Commission Chair Kersley reported that the Mehaffey Park Grand Opening HPC booth was very successful
89 and they had a large turnout. They ran out of prizes and people were very interested in the handouts and
90 conversation about historic preservation, she said.*

91

92 There was a discussion about a youth member being on the HPC and members directed staff to bring a
93 draft of an amendment to the Ordinance allowing for one or two youth members to the next HPC meeting.

94

95

96 Nikki Garshelis asked the HPC is they would like to continue with the Tour de Pants event or cancel it and add
97 booths at other events. This idea was inspired by the large turnout at Mehaffey Park, she explained. After
98 some discussion, the Commissioners agreed they want the Tour de Pants event to continue and possibly
99 participate in two other events where they would have a booth. There was a discussion about participating
100 in the museum's Halloween Festival. Nikki will send an email out regarding the event so Commissioners can
101 check their schedules.
102

103 Commissioners also directed staff to:

- Post the Viestenz-Smith Park flyer on the facebook page.
- Obtain pricing information on coloring books and coasters

107 **NEXT MEETING'S AGENDA/ACTION ITEMS**

- Subcommittee Update
- Review of Draft Ordinance Amendment for addition of youth member(s)
- Discussion of end of year outreach event
- Prices of coloring book, coasters, menus

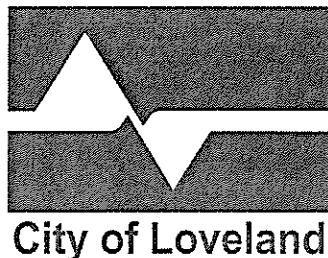
113 **Commissioner Comments**

114 *Commission Chair Kersley circulated a thank you note, a pin and a commemorative coin from Chief of
115 Police, Luke Hecker thanking the HPC for their role and support in the recent Marshal Frank Peak event.*

116
117
118 **Meeting adjourned at 7:40p.m.**

Loveland Historic Register

Nomination Packet



City of Loveland

Community & Strategic Planning
500 E. Third Street
Loveland, CO 80537
Tel. 970-962-2579

This packet includes the instructions and forms necessary to nominate a building, site, or district to the Loveland Historic Register.

City of Loveland Historic Preservation Commission

**Process and Procedures for Nomination and
Designation
of
Historic Landmarks &
Historic Districts**

The Historic Preservation Commission thanks you for becoming involved in the important process of protecting the Loveland community's historical built environment. The following steps will guide you through the nomination process and designation procedures. *If you have any questions, please call the historic preservation staff. Our staff is here to help!*

Please refer to the Loveland Municipal Code, Chapter 15.56 Historic Preservation for the formal procedures and requirements regarding the nomination and designation of historic structures, sites, or districts. If you do not have a copy of this information, staff will provide you with one.

STEP 1. Pre-Application Conference

- Schedule a time to meet with the City Staff to determine the property's significance, review the designation process, and learn how to research your historic structure, site or district. City Staff will also outline the privileges, obligations, and restrictions that apply to designated landmarks and districts.

STEP 2. Formal Application

- Complete the form *Application for Designation of a Historic Landmark* (FORM A, attached) or *Application for Designation of a Historic District* (Form B, attached)
- Forms must be completed in their entirety.
- Obtain a copy of an officially recorded document containing the legal description of the property. This could be an abstract of title, warranty deed, quit claim deed, etc. If you do not possess one of these documents, contact the Larimer County Clerk for assistance. For nominations of a District, officially recorded documents containing a legal description of all properties must be provided.
- Send or deliver all items to the Loveland Historic Preservation Commission via Loveland Development Center at the Loveland Municipal Building 500 E. Third St. Loveland, CO 80537.

STEP 3 Notification, Scheduling, and Posting

- The Commission shall hold a public hearing on the designation application not more than sixty (60) days after the filing of a complete application.
- The Community Services Department shall provide notice of the time, date and place of such public hearing, and a brief summary or explanation of the subject matter of the hearing, by at least one (1) publication in a newspaper of general circulation within the City not less than fifteen (15) days prior to the date of the hearing.
- In addition, at least fifteen (15) days prior to the hearing date, the Department shall post the property in the application so as to indicate that a landmark or historic district designation has been applied for and mail written notice of the hearing to the record owners, as reflected by the records of the county assessor, of all property included in the proposed designation. Such written notice shall be sent by both first class regular mail and certified mail return receipt requested. Failure of the property owner to sign and return the certified mail receipt shall not invalidate any proceedings in connection with the proposed designation. Failure to send notice by mail to any such property owner where the address of such owner is unknown and not a matter of public record shall not invalidate any proceedings in connection with the proposed designation.

STEP 4 Public Hearing***Historic Preservation Commission***

- The Historic Preservation Commission will provide a formal hearing to consider the *Application for Designation of a Historic Landmark Form A, or Application for Designation of a Historic District Form B* and that public hearing will follow a format that has been adopted by the Commission.
- The Historic Preservation Commission will consider the criteria at 15.56.091 when reviewing proposed landmarks for designation.
- Within thirty (30) days after the conclusion of the public hearing, but in no event more than (60) days after the hearing date first set, unless otherwise mutually agreed by the Historic Preservation Commission and applicant, the Commission shall either recommend approval, modification and approval, or disapproval of the proposal. The Commission may recommend approval conditions upon the voluntary execution of certain easements, covenants, or licenses.
- The Historic Preservation Commission will forward its recommendation, in writing, to the City Council concerning a designation and further state any recommendations as to easement, covenants, or licenses that must be met by the property owner to receive and/or maintain the designation. The Historic Preservation Commission will also notify the City Council, in writing, of any decision disapproving a designation initiated by the City Council.
- For applications for designation as a landmark that have gone to a public hearing before the Commission without the owner's consent, such consent shall be required, in writing, prior to review of the application by the City Council*. If the owner(s) do not consent to the proposed designation, the application will not move forward.

City Council

- Within thirty (30) days after the date of any referral from the Historic Preservation Commission, the City Council shall hold a public hearing on the designation application.
- The City Council will review the application for conformance with the established criteria for designation. Due consideration will also be given to the written view of owners of affected property. The Council shall approve, modify and approve, or disapprove of the proposed designation.
- When a historic landmark or district has been designated by the City Council, the City Clerk shall promptly notify the owner(s) of the property include therein and shall cause a copy of the designating ordinance to be recorded with the County Clerk and Recorder.
- Whenever the City Council disapproves a proposed designation, no person shall submit an application that is the same or substantially the same for at least one (1) year from the effective date of the final action on the denied application.

***Note:** Landmarks and Districts can be nominated without the consent of the property owner by the Historic Preservation Commission or City Council. Nominations by either of these two groups requires a majority vote of a quorum or more, of the members. Commission or Council designees will be required to file an *Application for Designation of a Historic Landmark Form A, or Application for Designation of a Historic District Form B* with the Community Services Department.

Landmark Designations

Steps 1 through 4 above shall apply to the nomination of a Landmark.

A landmark is an individual property of historical, architectural, archaeological, or cultural interest. Landmarks must be at least fifty (50) years old and meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance. A landmark could be exempt from the age standard if it is found to be exceptionally important in other significant criteria.

1. Historic sites shall meet one (1) or more of the following:

- a) Architectural.
 - (1) Exemplifies specific elements of an architectural style or period;
 - (2) Is an example of the work of an architect or builder who is recognized for expertise nationally, statewide, regionally, or locally;
 - (3) Demonstrates superior craftsmanship or high artistic value;
 - (4) Represents an innovation in construction, materials, or design;
 - (5) Represents a built environment of a group of people in an era of history;
 - (6) Exhibits a pattern or grouping of elements

representing at least one of the above criteria; or
 (7) Is a significant historic remodel.

b) Social/cultural.

- (1) Is a site of an historic event that had an effect upon society;
- (2) Exemplifies the cultural, political, economic, or social heritage of the community; or
- (3) Is associated with a notable person(s) or the work of a notable person(s).

c) Geographic/environmental.

- (1) Enhances sense of identity of the community; or
- (2) Is an established and familiar natural setting or visual feature of the community.

2. Prehistoric and historic archaeological sites shall meet one (1) or more of the following:

a) Architectural.

- (1) Exhibits distinctive characteristics of a type, period, or manner of construction; or
- (2) Is a unique example of structure.

b) Social/cultural.

- (1) Has the potential to make an important contribution to the knowledge of the area's history or prehistory;
- (2) Is associated with an important event in the area's development;
- (3) Is associated with a notable person(s) or the work of a notable person(s);
- (4) Is a typical example/association with a particular ethnic or other community group; or
- (5) Is a unique example of an event in local history.\

c) Geographic/Environmental.

- (1) Is geographically or regionally important.

3. Each property will also be evaluated based on physical integrity using the following criteria (a property need not meet all the following criteria):

- a) Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state, or nation;
- b) Retains original design features, materials, and/or character;
- c) Is the original location or same historic context if it has been moved; or
- d) Has been accurately reconstructed or restored based on documentation.

See the Loveland Municipal Code 15.56.020 for exact language dealing with the designation of historic structures, sites, or districts.

District Designations

Steps 1 through 4 above shall apply to the nomination of a District.

Definition of a Historic District

A Historic District is a geographically definable area including a concentration, linkage, or continuity of subsurface or surface sites, buildings, structures, and/or objects. The historic district is related by a pattern of either physical elements or social activities.

Determining the significance of a Historic District

The historic significance of a district is determined by applying criteria to the pattern(s) and unifying elements(s). Properties that do not contribute to the significance of the historic district may be included within the boundaries as long as the noncontributing elements do not noticeably detract from the district's sense of time, place and historical development. Noncontributing elements will be evaluated for their magnitude of impact by considering their size, scale, design, location, and/or information potential.

Historic District Boundaries

District boundaries will be defined by visual changes, historical documentation of different associations or patterns of development, or evidence of changes in site type or site density as established through testing or survey. When districts are designated, applicable design guidelines and other appropriate restrictions may be included as part of the designation.

Age Criteria

Within a district, the designated contributing sites and structures must be at least fifty (50) years old. The district could be exempt from the age standard if the resources are found to be exceptionally important in other significant criteria.

Non-Contributing Structures

Properties that do not contribute to the significance of the historic district may be included within the boundaries as long as the noncontributing elements do not noticeably detract from the district's sense of time, place and historical development. Noncontributing elements will be evaluated for their magnitude of impact by considering their size, scale, design, location and/or information potential.

Historic Districts shall meet one (1) or more of the following:

a) Architectural.

- (1) Exemplifies specific elements of an architectural style or period;
- (2) Is an example of the work of an architect or builder who is recognized for expertise nationally, statewide, regionally or locally;
- (3) Demonstrates superior craftsmanship or high artistic value;
- (4) Represents an innovation in construction, materials, or design;
- (5) Represents a built environment of a group of people in an era of history;
- (6) Is a pattern or a group of elements representing at least one of the above criteria; or
- (7) Is a significant historic remodel.

b) Social/cultural.

- (1) Is the site of an historical event that had an effect upon society;
- (2) Exemplifies cultural, political, economic or social heritage of the community; or
- (3) Is associated with a notable person(s) or the work of a notable person(s).

c) Geographic/environmental.

- (1) Enhances sense of identity of the community; or
- (2) Is an established and familiar natural setting or visual feature of the community.

d) Archaeology/subsurface.

- (1) Has the potential to make an important contribution to the area's history or prehistory;
- (2) Is associated with an important event in the area's development;
- (3) Is associated with a notable person(s) or the work of a notable person(s);
- (4) Has distinctive characteristics of a type, period or manner of construction;
- (5) Is of geographic importance;
- (6) Is a typical example/association with a particular ethnic group;
- (7) Is a typical example/association with a local cultural or economic activity; or
- (8) Is a unique example of an event or structure

See the Loveland Municipal Code 15.56.020 for exact language dealing with the designation of historic structures, sites, or districts.



City of Loveland

Page 1- Applicant and General Property Information

FORM A**Application for Designation of a Historic Landmark**

Please Type or Print Legibly

*One property only per Application Form.
If more than one Applicant, please attach additional sheet.*

APPLICANT(S) INFORMATION	
Owner of Proposed Landmark Property:	Janet Wells
Applicant:	<input checked="" type="checkbox"/> Property Owner <input type="checkbox"/> City Council (attach meeting minutes initiating action) <input type="checkbox"/> Commission Designees (pursuant to 15.56.169) <input type="checkbox"/> Historic Preservation Commission (attach meeting minutes initiating action)
<i>Please check one.</i>	
Address:	105 E. 1st St., Loveland, CO 80537
Telephone:	970.988.8788

PROPOSED LANDMARK INFORMATION	
Property Name:	loveland Substation
Address:	105 E. 1st St., Loveland, CO 80537
Historic Use:	electric Power substation
Current and Proposed Use	residential
Legal Description	Lot L10-14 BLK B23 LOV
Brief Description of Historical Qualities relating to Property	<i>Please attach additional sheets if necessary.</i> Brick + Cement Building erected in 1924 as the Loveland Substation for the Public Service Co of Colorado. See attached Architectural Inventory Form



FORM A

Application for Designation of a Historic Landmark

DETAILED PROPERTY INFORMATION	
Historic Property Name:	Loveland Substation for the Public Service Company of Colorado
Current Property Name:	Loveland Substation
Address:	105 E. 1st St., Loveland, CO 80537
Legal Description	<i>Please attach copy of officially recorded document containing a legal description.</i> lot L10-14 BLK B23 LOV
Owner Name & Address:	Janet Wells 8237 Surrey St., Greeley, CO 80634
Style:	Modern Movements
Building Materials:	Brick, Cement, Asphalt Roof
Additions to main structure(s), and year(s) built.	2 story stucco addition built on the north facade in 1998
Is the structure(s) on its original site?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, Date Moved _____
What is the historic use of the property?	Electric power substation
What is the present use of the property?	residence
What is the date of construction?	Estimated: _____ Actual: <u>1924</u> Original: _____ Source: Sanborn Insurance maps; Stitzel, Robin

**FORM A****Application for Designation of a Historic Landmark**

DETAILED PROPERTY INFORMATION continued	
Describe the condition of the property.	Good to Excellent
Who was the original architect?	unknown Source:
Who was the original Builder/Contractor?	unknown Source:
Who was the original Owner(s)?	Public Service Company of Colorado Source: Stitzel, Robin. "The Fort Collins Public Service Company Power Station."
Are there structures associated with the subject property not under the ownership of this applicant? Please describe.	No
Detailed description of the architectural characteristics of the property.	<p><i>Please attach additional sheets if necessary.</i></p> <p>2502 sq. ft. rectangular plan 2 story brick, laid in common bond supported by low concrete foundation flat roof 2 story stucco addition on the north facade</p>



City of Loveland

Page 4 – Historical Significance

FORM A**Application for Designation of a Historic Landmark**

The Historic Preservation Commission and City Council will consider the following criteria when reviewing nominations of properties for designation.

Landmarks must be at least fifty (50) years old and meet one (1) or more of the following criteria for architectural, social/cultural, or geographic/environmental significance. A landmark may be less than fifty (50) years old if it is found to be exceptionally important in other criteria.

Age of Site is: 91 yrs

1. Proposed Historic Landmarks. Please check all that apply:

For prehistoric or historic archaeological sites, please go to Form A Section 2, pg. 5.

A) Architectural:

- 1) Exemplifies specific elements of an architectural style or period.
- 2) Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, or locally.
- 3) Demonstrates superior craftsmanship, or high artistic value.
- 4) Represents innovation in construction, materials, or design.
- 5) Represents a built environment of a group of people in an era of history.
- 6) Exhibits a pattern or grouping of elements representing at least one of the above criteria.
- 7) Is a significant historic remodel.

B) Social/Cultural

- 1) Is a site of an historic event that had an effect upon society.
- 2) Exemplifies the cultural, political, economic, or social heritage of the community.
- 3) Is associated with a notable person(s) or the work of notable person(s).

C) Geographical/Environmental

- 1) Enhances sense of identity of the community.
- 2) Is an established and familiar natural setting or visual feature of the community.

**FORM A****Application for Designation of a Historic Landmark**

2. Prehistoric and historic archaeological sites shall meet one (1) or more of the following. Complete this section only if the subject property is a prehistoric or historic archaeological site. Please check all that apply.

A) Architectural

- 1) Exhibits distinctive characteristics of a type, period, or manner of construction.
- 2) Is a unique example of a structure.

B) Social/Cultural

- 1) Has the potential to make an important contribution to the knowledge of the area's history or prehistory.
- 2) Is associated with an important event in the area's development.
- 3) Is associated with a notable person(s) or the work of notable person(s).
- 4) Is a typical example/association with a particular ethnic or other community group.
- 5) Is a unique example of an event in local history.

C) Geographical/Environmental

- 1) Is geographically or regionally important.

3. Each property or site will also be evaluated based on physical integrity using the following criteria (*a property need not meet all the following criteria*):

- a)** Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state, or nation;
- b)** Retains original location or same historic context if it has been removed; or
- c)** Has been accurately reconstructed or restored based on documentation.

**FORM A****Application for Designation of a Historic Landmark**

<p>Statement of Significance</p> <p>Please provide a brief statement summarizing the applicable criteria checked on previous pages.</p>	<p><i>Please attach additional sheets if necessary.</i> See attached Architectural Inventory Form prepared by historian Carl McWilliams - Item 42:</p> <p>The building is historically significant for its association with the development of regional power systems designed and operated by the Public Service Company in Northern Colorado beginning in the early 1900s. The building was determined officially ineligible for inclusion in the National Register of Historic Places in April of 2000. The building is eligible for local landmark designation by the City of Loveland.</p>
<p>Photographs of property as it appears today</p>	<p><i>Please attach additional sheets if necessary.</i> See attached</p>
<p>Please identify all references used during the research of the property. Include titles, author, publisher, publication date, ISBN# (when applicable), and location of source such as public library, etc.</p>	<p><i>Please attach additional sheets if necessary.</i> Architectural Inventory Form, Carl McWilliams, Historic Loveland Residences' Cultural Resource Survey, Jan 10, 2010. Sources - Item 36.</p> <p>Sanborn Insurance Maps; Stitzel, Robin. "The Fort Collins Public Service Company Power Station." December 2000. Unpublished paper. Ft Collins Historic Preservation Office files.</p>



City of Loveland

FORM A

Page 7 – Signature Sheet

Application for Designation of a Historic Landmark

Please type or print legibly.

FORM A completed by:

Alair Christensen

Signature of Preparer:

Alair Christensen

Date:

Phone No.

June 26, 2015

970.308.9884

Address:

306 Sundance Cir N, Fort Collins, CO 80524

Signature of Property/Site Owner(s) if different than Preparer:

Janet R. Wells

Date:

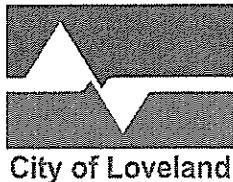
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Result Row: [◀Prev](#) 54 of 66 [Next▶](#)
Instrument # [◀Prev](#) 20140017817 [Next▶](#)

Document Type:	(QC) QUIT CLAIM DEED
Record Date :	4/10/2014 1:38:03 PM
Grantor:	BUTTON RICHARD L
Grantee:	WELLS JANET R
Book Type:	RE
# of Pages:	1
Consideration:	60,000.00
Legal:	LOT L10-14 BLK B23 LOV

Note: Empty fields are not shown
[Direct External Link to this Document](#)

205 E 6th



COMMUNITY & STRATEGIC PLANNING
Civic Center • 500 East Third Street • Loveland, Colorado 80537
(970) 962-2579 FAX (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

July 12, 2010

Greetings-

I am pleased to inform you that the fifth historic survey of Loveland's historic resources is complete!

As you'll recall in 2009, as part of an ongoing effort to preserve our community's historic character and educate the community about our history, the City of Loveland's historic preservation program identified 60 homes and buildings with high historic value to the community. Each of the sixty buildings chosen for the survey, including many of Loveland's most historic homes, has been intensively surveyed as a Colorado Cultural Resource. Included in this packet is the historic survey (architectural inventory form) of your home or property.

Historian Carl McWilliams has completed all 60 surveys which means it is time to gather to answer any questions you may have about the historic survey and what the survey has revealed about your home or property. This survey is for your information as the property owner. Homeowners have found these surveys to be educational and entertaining; they are of particular interest to those who are interested in the history of their homes or are considering designation of their property as a historic landmark.

Your home or building was chosen based on its historical and architectural significance to the community. We hope that you will find your survey of interest and that it will help make clear the connection that your home has with Loveland's roots. If you have questions about this survey or would like to discuss the possibility of designating your home or building as a landmark on the Loveland Historic Register, please attend the final meeting:

Loveland Historic Resources Survey
Final Meeting
Monday, July 26th, 6:00 PM
Loveland Museum Gallery (basement)

Historian Carl McWilliams, city staff, and a representative of the Historic Preservation Commission will be on hand to answer your questions.

If you are unable to attend the meeting, feel free to phone me at 962-2745 or email me at
barnet@ci.loveland.co.us

Sincerely,

Tangier Barnes
 Community and Strategic Planning
 (970) 962-2745

OAHP1403
Rev. 9/98

COLORADO CULTURAL RESOURCE SURVEY

Architectural Inventory Form

Official eligibility determination
(OAHP use only)

Date _____ Initials _____

- Determined Eligible- NR
- Determined Not Eligible- NR
- Determined Eligible- SR
- Determined Not Eligible- SR
- Need Data
- Contributes to eligible NR District
- Noncontributing to eligible NR District

I. IDENTIFICATION

1. Resource number:	5LR.9768	Parcel number(s):
2. Temporary resource no.:	N/A	9513350006
3. County:	Larimer	
4. City:	Loveland	
5. Historic building name:	Public Service Company of Colorado Loveland Substation	
6. Current building name:	Wells House	
7. Building address:	105 E. 1st Street	
8. Owner name and address:	Janet R. Wells and Richard L. Button 105 E. 1st Street Loveland, CO 80537	



National Register field eligibility assessment:	Not Eligible
Loveland Landmark eligibility assessment:	Eligible

II. GEOGRAPHIC INFORMATION

9. P.M. 6th Township 5N Range 69W
SE ¼ of SW ¼ of SW ¼ of SW ¼ of section 13

10. UTM reference (NAD83)
Zone 13; 493559 mE 4471367 mN

11. USGS quad name: Loveland, Colorado
Year: 1962; Photorevised 1984 Map scale: 7.5

12. Lot(s): Lots 10-14 Block: 23
Addition: Loveland Year of Addition: 1877

13. Boundary Description and Justification: This legally defined parcel encompasses, but does not exceed, the land historically associated with this property.

III. ARCHITECTURAL DESCRIPTION

14. Building plan (footprint, shape): **Rectangular Plan**

15. Dimensions in feet: square feet **2502 square feet**

16. Number of stories: **2**

17. Primary external wall material(s): **Brick**

18. Roof configuration: **Flat Roof**

19. Primary external roof material: **Asphalt Roof/Composition Roof**

20. Special features: **Porch**

21. General architectural description:
This two story building is supported by a low concrete foundation which does not extend above grade. Its walls are made of red bricks, laid in common bond. A belt course, composed of four brick stretcher courses and one brick header course visually separates the first and second stories, while a single projecting stretcher course forms the top of the wall. A recessed brick panel is located on the second story on the south elevation. The building is covered by a flat roof. A stained natural brown solid wood door with three vertically oriented upper sash lights enters the east elevation. This door is flanked on either side by a single light side light and is topped by a large single-light transom light. This entry is spanned by a heavy concrete lintel. A painted blue wood-paneled door, with two small upper sash lights, enters the west elevation from a concrete porch. Windows are entirely single and paired 1/1 double hung sash with painted white wood frames. Windows on the first story also have heavy concrete lugsills and lintels

A two story addition is located on the north elevation. The addition's exterior walls are clad with painted grey stucco and it has a flat roof. A set of paired white paneled doors, covered by a set of paired storm doors, enter the northwest corner of the addition. The addition's windows are 1/1 double hung sash.

22. Architectural style/building type: **Modern Movements**

23. Landscaping or special setting features:

This property is located at the northeast corner of 1st Street and Railroad Avenue at the southern periphery of downtown Loveland. The Loveland-Greeley irrigation canal flows behind the property to the north.

24. Associated buildings, features, or objects: **N/A**

IV. ARCHITECTURAL HISTORY

25. Date of Construction: Estimate: **1924** Actual:

Source of information: **Sanborn Insurance maps; Stitzel, Robin. "The Fort Collins Public Service Company Power Station." December 2000. Unpublished paper, Fort Collins Historic Preservation Office files.**

26. Architect: **Unknown**

Source of information: **N/A**

27. Builder/Contractor: **Unknown**

Source of information: **N/A**

28. Original owner: **Public Service Company of Colorado**

Source of information: **Stitzel, Robin. "The Fort Collins Public Service Company Power Station."**

29. Construction history (include description and dates of major additions, alterations, or demolitions):

This building was erected circa 1924 as the Loveland Substation for the Public Service Company of Colorado. In 1998, it was remodeled into a residence with a two-story stuccoed addition to the original north elevation.

30. Original Location: Yes Date of move(s): **N/A**

V. HISTORICAL ASSOCIATIONS

31. Original use(s): **Industry/Processing/Extraction / Energy Facility**

32. Intermediate use(s): **Industry/Processing/Extraction / Energy Facility**

33. Current use(s): **Domestic/Single Dwelling**

34. Site type(s): **Single Family Residence / Former Public Service Company Substation**

35. Historical background:

The property at 105 East 1st Street was constructed in the 1920s as an electric power substation, part of a regional power network operated by the Public Service Company. Beginning in the 1920s, the Public Service Company provided electrical power to much of the north Front Range, through a main power plant located near Lafayette, and substations in Berthoud, Loveland, and Fort Collins. Electrical power systems provided vital support for the development of agriculture, industry and transportation in Loveland and its surrounding rural communities, which in turn laid the foundation for the city's continued growth.

Between 1891 and 1900, there were several attempts to provide Loveland with electrical power. All faced two stiff obstacles: the struggle between private and municipal entities for control over ownership, distribution and rates; and the high costs of infrastructure. In 1900, Loveland businessman and entrepreneur Lee Kelim finally took matters into his own hands. Kelim owned the Big Thompson Mill and Elevator Company. In late 1900, Kelim hooked a dynamo to the mill's 85-horsepower steam engine, and strung electrical wire throughout the mill. On the evening of December 22, 1900, he demonstrated his success to the townspeople. Within days, Kelim had extended electric lines to his 4th Street home and several nearby businesses, and, on January 1, 1901, the Loveland Town Board granted Kelim a ten-year franchise to provide the town with electricity. Two weeks later, on January 17, 1901, Kelim's Loveland Light Heat & Power Company was incorporated.

In the beginning, the power plant operated only at night, furnishing a few homes and several businesses with after-dark lighting. It was not long, however, before the true potential of electric generated power was grasped, and demand quickly rose. In 1904, Kelim sold his stake in his mill company, and constructed a building on West 2nd Street to serve as the town's power plant. Unfortunately, Kelim neglected to warn the community about a one-week power outage that would occur as the steam engine and dynamo were moved to the new building. By this time, Loveland's citizens had grown dependent on electricity, and citizens were aghast when the unexpected outage caused much of the town's commerce and manufacturing to cease, and darkened the night skies. Kelim's troubles continued when, despite installing a second steam engine and dynamo, he could not keep up with demand. According to an article in *Exploring Loveland's Hidden Past*, "The town simply consumed more electricity than Kelim could provide." On November 1, 1906, Kelim sold his operations to the Northern Colorado Power Company. In 1907, the Denver-based Northern Colorado Power Company built an electric power generation plant by Lafayette, to serve much of northern Colorado. Kelim's steam power plant was abandoned, and Loveland's electricity was instead provided from the power company's Lafayette station. In 1914, the Northern Colorado Power Company reorganized into Western Light and Power, and in 1923, Western Light and Power was consolidated, along with several other gas and electric utilities, into the Public Service Company of Colorado.

In 1923, the company provided all of the electrical needs of the towns of Lafayette, Boulder, Longmont, Loveland, Berthoud, Fort Collins, Greeley, Fort Lupton, Brighton, and Cheyenne, Wyoming. In

November 1924, work was completed on Valmont Station, a 20,000-kilowatt, five-story steam-electric generating plant located near the coal fields of northern Colorado. When it went on line in 1924, Valmont Station was one of the largest, most modern powdered-fuel generating stations located between the Missouri River and the Pacific Coast.

About this time, the Public Service Company built a series of substations to augment the electrical power from its main plant in Lafayette. Two of these substations still exist: Loveland's example, and its sister substation in Fort Collins. Substations were often located near industries with a high energy demand, and in more industrial areas of town. Fort Collins' substation, located at 128 West Prospect Road, was built near the Colorado Agricultural College (now Colorado State University) campus, and adjacent to the Colorado and Southern (C&S) Railroad line. Loveland's substation is similarly located next to the historic C&S rail tracks. Each substation was constructed using a standard building plan chosen by the Public Service Company, with each building constructed of similar materials, and with the same size, style, and orientation.

In the 1940s, challenged by a booming Colorado economy and the demand for even more electricity, Public Service Company constructed the Arapahoe Station in Denver, and added units to Valmont Station and to the former Lacombe Electric's Zuni Station. The company's biggest project, however, was the Cherokee Steam Electric Generating Station, a 780,500 kilowatt plant located just north of Denver. The first of the plants' four generators went into service in 1957, and the station was fully operational in 1968. With the last unit, the Cherokee Station became Colorado's largest capacity power plant.

Unfortunately, with construction of the Cherokee Power Station, the electric power substations were rendered obsolete. The Fort Collins substation sat vacant for several years, and is slated for demolition in 2010 to accommodate new development. Loveland's electric power substation, at 105 East 1st Street, has met a better fate. It operated as a substation into the 1960s, and was then sold by the Public Service Company to the City of Loveland. In September 1983, it was acquired by Marlene and Steven Funk. In 1998, it was remodeled into a residence, with a two story stucco addition built on the north façade. Some of the building's brick recesses were replaced with windows, and the brick was sandblasted to remove paint. The building is currently owned by Janet Wells and Richard Button, who purchased the property from the Funks in January, 2002. Today, this brick building stands as a link between Loveland's past and its future.

36. Sources of information:

Building permit files, on file with the City of Loveland Building Division.

DeHaes, John. *Partners in Power: A History of the Fort Collins Light and Power Utility Company, 1935-1985*. Fort Collins: 1985

Fisher, Ellen Kingman. *One Hundred Years of Energy: Public Service Company of Colorado and Its Predecessors, 1869-1969*. New York: Garland Publishing Inc, 1989

<http://www.fundinguniverse.com/company-histories/PUBLIC-SERVICE-COMPANY-OF-COLORADO-Company-History.html>

Larimer County Assessor's Records. <http://www.larimer.org/assessor/>

Larimer County Assessor records.

Larimer County Assessor: Residential Property Appraisal Card.

Loveland city directories.

Public Service Company of Colorado: Providing Energy for More Than a Century.

<http://www.fundinguniverse.com/company-histories/PUBLIC-SERVICE-COMPANY-OF-COLORADO-Company-History.html>

Stitzel, Robin. "The Fort Collins Public Service Company Power Station." December 2000.

Unpublished paper, Fort Collins Historic Preservation Office files.

Sanborn Insurance maps.

VI. SIGNIFICANCE

37. Local landmark designation: No Date of designation: N/A

Designating authority: N/A

38. Applicable National Register Criteria:

A. Associated with events that have made a significant contribution to the broad pattern of our history;

B. Associated with the lives of persons significant in our past;

C. Embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or that possess high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; or

D. Has yielded, or may be likely to yield, information important in history or prehistory.

Qualifies under Criteria Considerations A through G (see Manual)

xx Does not meet any of the above National Register criteria

Loveland Standards for Designation:

<input checked="" type="checkbox"/> Architectural	Exemplifies specific elements of an architectural style or period
Architectural	Is an example of the work of an architect or builder who is recognized for expertise nationally, statewide, regionally, or locally
Architectural	Demonstrates superior craftsmanship or high artistic value
Architectural	Represents an innovation in construction, materials, or design
Architectural	Represents a built environment of a group of people in an era of history
Architectural	Exhibits a pattern or grouping of elements representing at least one of the above criteria
Architectural	Is a significant historic remodel
Social/cultural	Is a site of an historic event that had an effect upon society
<input checked="" type="checkbox"/> Social/cultural	Exemplifies the cultural, political, economic, or social heritage of the community
Social/cultural	Is associated with a notable person(s) or the work of a notable person(s)
<input checked="" type="checkbox"/> Geographic/environmental	Enhances sense of identity of the community
<input checked="" type="checkbox"/> Geographic/environmental	Is an established and familiar natural setting or visual feature of the community

39. Area(s) of significance: N/A

40. Period of significance: N/A

41. Level of significance: Local

42. Statement of significance:

This building is historically significant for its association with the development of regional power systems designed and operated by the Public Service Company in northern Colorado beginning in the early 1900s. The building was determined officially ineligible for inclusion in the National Register of Historic Places in April of 2000. The building is eligible for local landmark designation by the City of Loveland.

43. Assessment of historic physical integrity related to significance:

This property displays a reasonably high level of physical integrity, relative to the seven aspects of integrity as defined by the National Park Service and the Colorado Historical Society - setting, location, design, materials, workmanship, feeling and association. The building's integrity was somewhat diminished when it was converted into a residence, with an addition to the north elevation, in 1998. The addition is quite well executed, however, and is to the rear of the historic building. A sense of time and place relative to this building's historic use as a substation by the Public Service Company of Colorado remains clearly in evidence.

VII. NATIONAL REGISTER ELIGIBILITY ASSESSMENT

44. National Register eligibility field assessment: Not Eligible

Local Landmark eligibility field assessment: Eligible

45. Is there National Register district potential? No

Discuss: This building is located at the southern edge of downtown Loveland in a mixed residential and commercial neighborhood, with more industrial-use properties across 1st Street to the south. Historic buildings in this specific area do not appear collectively to possess sufficient significance and integrity to comprise a National Register district.

If there is N.R. district potential, is this building contributing or noncontributing? N/A

46. If the building is in an existing N.R. district, is it contributing or noncontributing? N/A

VIII. RECORDING INFORMATION

47. Photograph numbers: CD #2; Images 1-4

CD filed at: City of Loveland, Community and Strategic Planning Department, 500 E. 3rd Street, Loveland, CO 80537

48. Report title: Historic Loveland Residences Cultural Resource Survey

49. Date(s): January 20, 2010

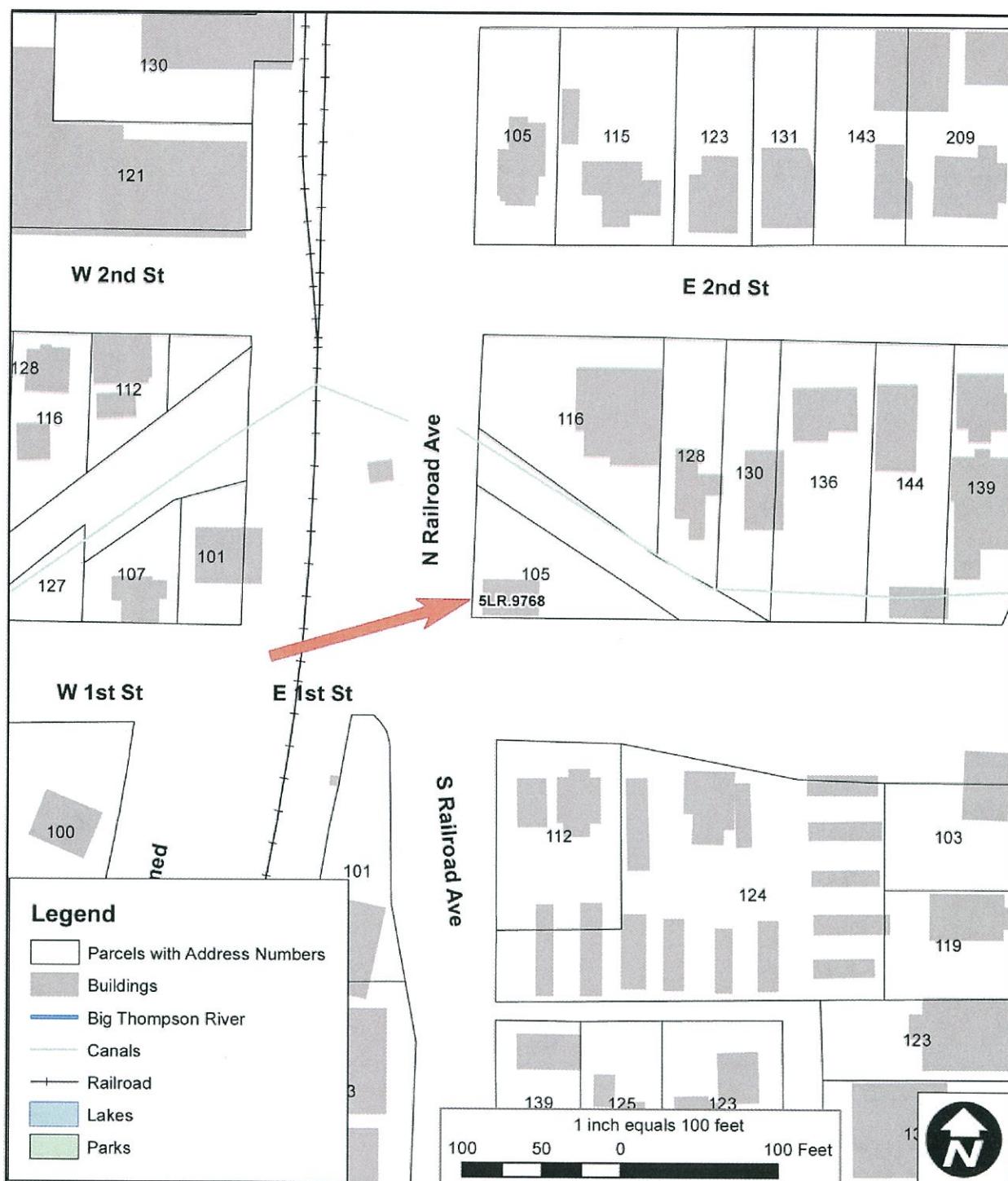
50. Recorder(s): Carl McWilliams, Karen McWilliams, Timothy Wilder

51. Organization: Cultural Resource Historians

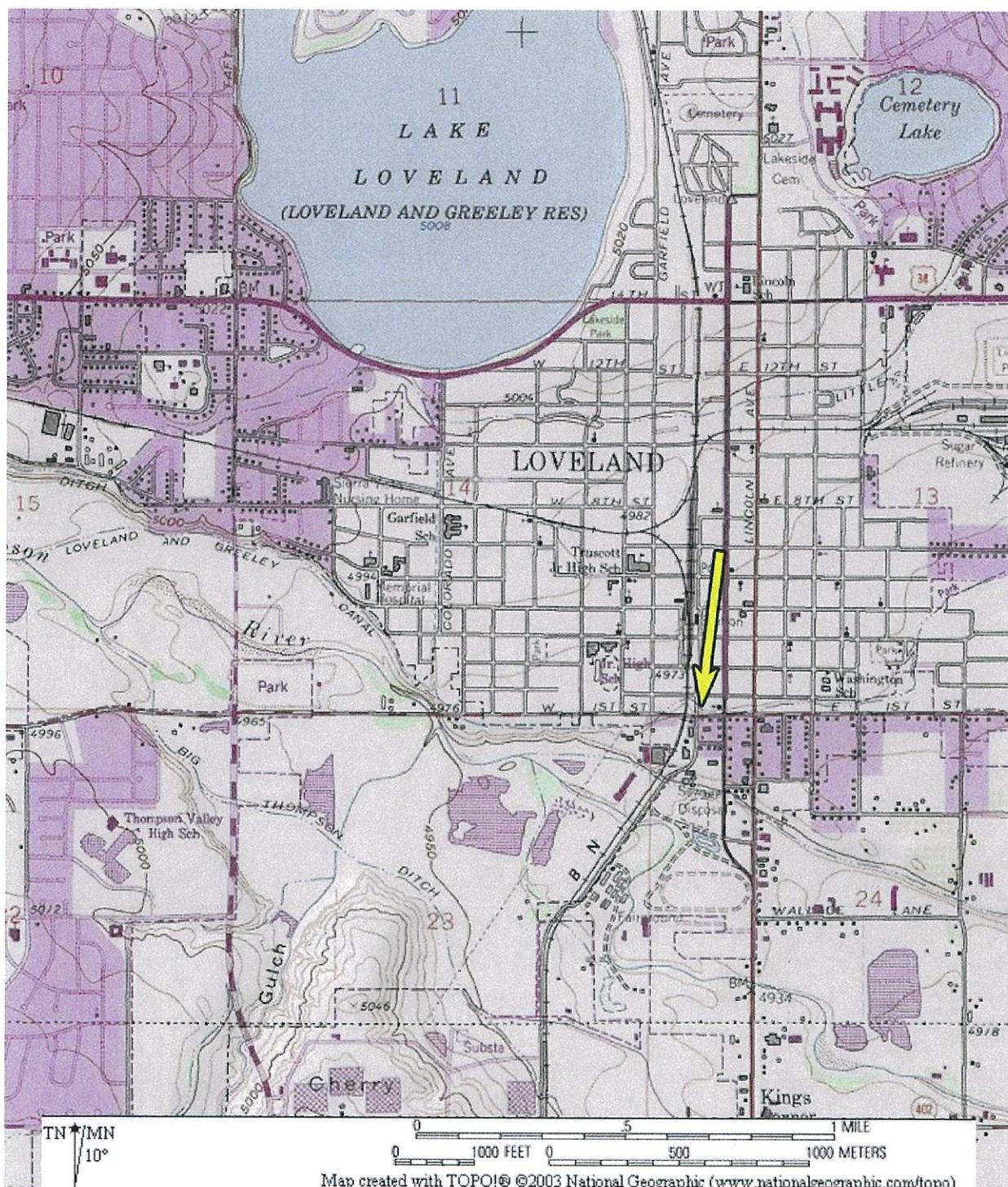
52. Address: 1607 Dogwood Court, Fort Collins, CO 80525

53. Phone number(s): (970) 493-5270

Sketch Map



Location Map



Public Service Company of Colorado Loveland Substation

105 East 1st Street

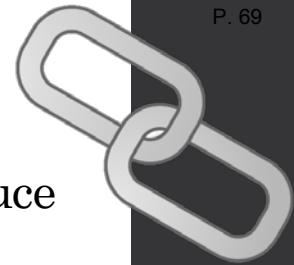


Applicant for the Historic Landmark designation:

Janet Wells, Property Owner



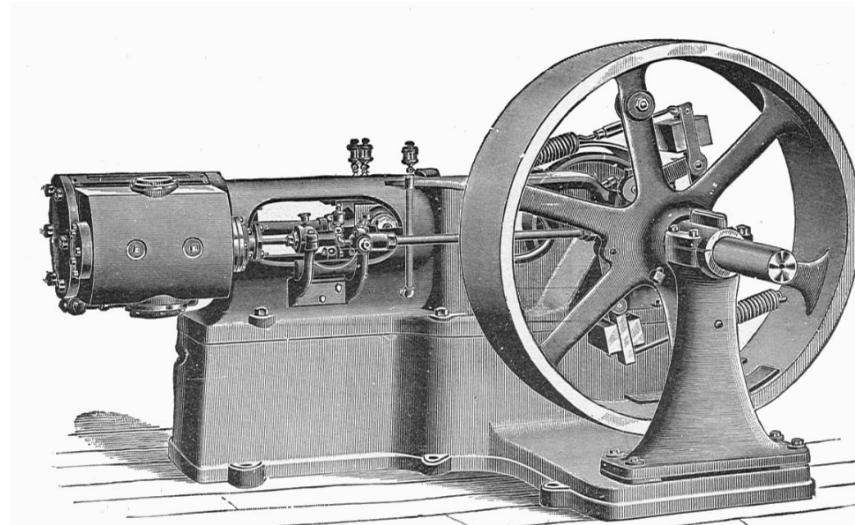
Applicant



Lee J. Kelim purchased the Farmers Milling and Elevator in 1893, and changed its name to the Big Thompson Milling & Elevator Company (now the Loveland Feed & Grain). Kelim installed equipment to produce electricity for the mill.

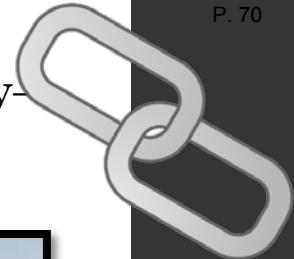


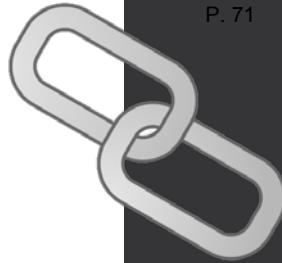
Edison Dynamo; (c) 1880



Typical steam engine

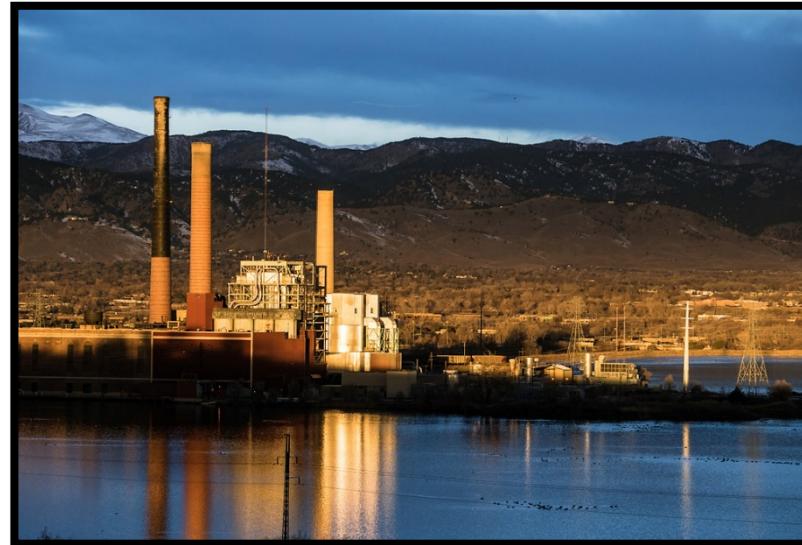
In 1904-1905, Kelim sold the mill and constructed the Loveland Light, Heat & Power Company—with its ornate exterior—just south of the mill.

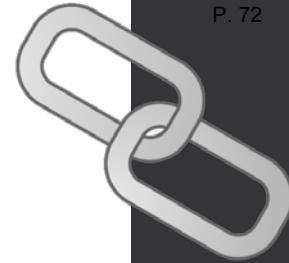




- ✓ 1907 The Northern Colorado Power Company built an electric power plant generation plant near Lafayette to service most of Northern Colorado.
- ✓ 1914 NCPC became Western Light and Power
- ✓ 1923 Western Light and Power was consolidated with several other gas and electric utilities, into the Public Service Company of Colorado
- ✓ 1924 Valmont Station was completed, a 20,000-kilowatt, five-story steam-electric generating plant located near the coal fields in Boulder County.

Valmont





✓ **1924** The Public Service Company of Colorado built a series of substations to augment the electrical power from its main plant in Lafayette **including the Loveland structure** and one in Fort Collins using similar materials and with the same style, size and orientation.

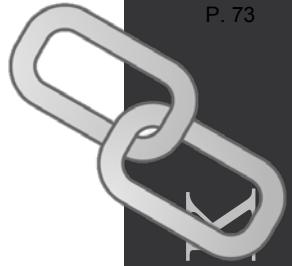
✓ **1960s** The Cherokee Steam Electric Generating Power Station, a 780,500 kilowatt plant, located just north of Denver, was constructed and **the electric power substations were rendered obsolete**.

✓ **1983** The **Loveland substation** was acquired by Marlene and Steven Funk in September 1983.

✓ **2002** to present Janet Wells purchased the property from the Funks in January, 2002 and still owns it today.

Cherokee





Modern Movement Style of Architecture

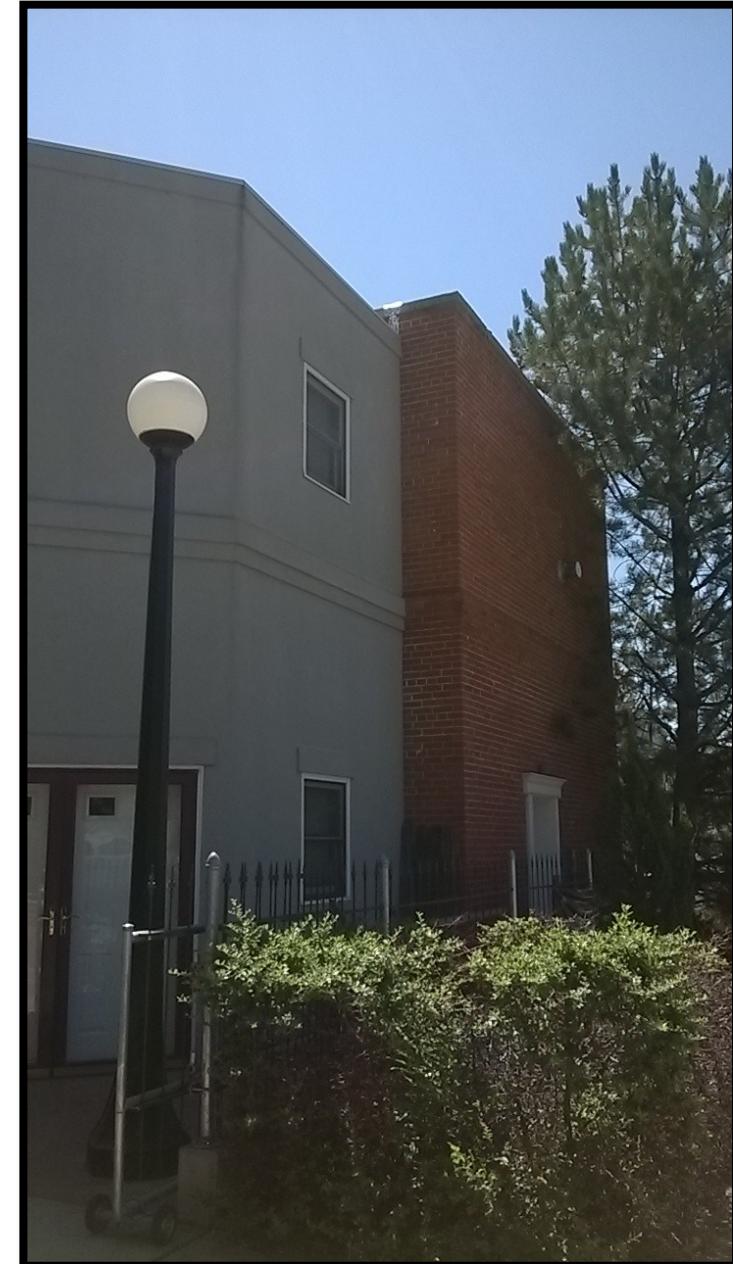


ARCHITECTURAL FEATURES





1998 A two story stucco addition was built on the north façade.



The Historic Preservation Commission has determined the property has both the significance and the integrity to be designated as a Loveland Historic Landmark.



**Historically Significant
Physical Integrity**

The Loveland Substation satisfies the age requirement (1924) and meets the following criteria for designation as a Loveland Historic Register Landmark:

**Architectural
Social/Cultural
Geographic/Environmental**

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and move to adopt the ordinance on first reading.

The Historic Preservation Commission (HPC) recommends approval





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:

9/15/2015

TO:

City Council

FROM:

Leah Browder, Public Works Director

PRESENTER:

Justin Stone, Traffic Civil Engineer

TITLE:

1. 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 Traffic Signal Controllers and Related Equipment within the City of Loveland
2. An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2015 City of Loveland Budget for Traffic Signal Controllers and Related Equipment within the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the Ordinance on first reading.

OPTIONS:

1. Adopt the action as recommended, which will keep the project moving.
2. Deny the action, which would stop the project and leave outdated equipment at a number of traffic signals across the City, and turn down \$497,000 in grant money.
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration

SUMMARY:

This is an administrative action. The City of Loveland (City) has received a federal grant through the Colorado Department of Transportation (CDOT) in the amount up to \$497,000 to fund traffic signal controllers and related equipment at up to 40 locations across the City. This item consists of consideration of a resolution approving an Intergovernmental Agreement between the City and CDOT, including authorization for the City Manager, in consultation with the City Attorney, to sign the IGA, and the first reading of an ordinance to appropriate the federal funds for the project.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The project is funded from federal funds in the amount of \$497,000 and City of Loveland local match funds in the amount of \$103,315, for a total project cost of \$600,315. The City funds are included within the approved 2015 budget for the Public Works Department for Transportation Capital Projects.

BACKGROUND:

A number of traffic signal locations across the City have outdated signal controllers and lack other equipment that allow them to continue working in case of a power outage. The City, in coordination and cooperation with CDOT, believe it will be beneficial to purchase and install updated equipment, including backup battery systems and power service disconnects, to keep traffic signals and the related Intelligent Traffic System (ITS) equipment operational during a power outage. It is anticipated that the City will be able to purchase and install approximately 40 pieces of equipment, working within the available budget, to make improvements on US 34 west of US 287, SH 402, 14th Street SW, Wilson Avenue and various other locations (depending on the budget).

The equipment purchase is expected to be completed in the Fall and Winter of 2015, with installation to be completed by the end of 2017.

Funding Summary:

Federal Funds	\$497,000
Local Agency Match Funds - City*	\$103,315
Local Over-Matching Funds**	\$ 0
Subtotal Local Funds	\$103,315
TOTAL PROJECT FUNDS:	<u>\$103,315</u> \$600,315

* Local Agency Match Funds – City: Defined as funding required to be provided by a local entity as part of the Federal process.

** Local Over-Matching Funds: Defined as funding provided by a local entity above the required amount, if necessary, 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.

A resolution is required to approve the agreement and authorize the City Manager, in consultation with the City Attorney, to execute the IGA. An ordinance is required to appropriate the Federal Funds as the award of this project occurred after the 2015 Budget was adopted.

REVIEWED BY CITY MANAGER:


LIST OF ATTACHMENTS:

1. Resolution
2. Ordinance

FIRST READING September 15, 2015

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2015 CITY OF LOVELAND BUDGET FOR TRAFFIC SIGNAL CABINETS & RELATED EQUIPMENT WITHIN THE CITY OF LOVELAND

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the 2015 City budget for traffic signal cabinets & related equipment; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2015 City budget for traffic signal cabinets & related equipment, 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 \$497,000 from a federal grant in the Transportation Fund are available for appropriation. Revenues in the total amount of \$497,000 are hereby appropriated for the 2015 City budget for traffic signal cabinets and related equipment. 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	TS1501	Federal Grants	497,000
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Total Revenue	497,000
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Appropriations

211-23-232-1701-49360	TS1501	497,000
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Total Appropriations	497,000
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Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

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

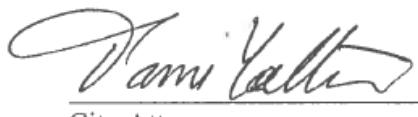
ADOPTED this ____ day of _____, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Tami Yeller

City Attorney

RESOLUTION #R-59-2015

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 TRAFFIC EQUIPMENT IN THE CITY OF LOVELAND

WHEREAS, the City of Loveland desires to purchase and install updated traffic signal cabinets and related equipment within the City of Loveland on U.S. Highway 34 West of U.S. Highway 287, State Highway 402, 14th Street Southwest, Wilson Avenue, and other locations as allowed by the budget in order to allow such equipment to continue working in case of a power outage (the “Project”);

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 \$600,315, of which the FHWA will provide \$497,000 on the condition that the City provide local match funds of \$103,315; 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.

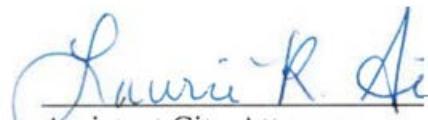
ADOPTED this 15th day of September, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Lauri R. Ai
Assistant City Attorney

(FMLAWRK)

Project: Loveland Traffic Signal Controls (AQC M830-079)

Region: 04 (RH)

Rev. 7/8/09

Routing #: 16-HA4-ZH-00031

SAP ID #: 471000780 /

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:

- 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.F.R. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
 - (b) An alternative to the 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.

i. Obligations and Rights

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

ii. Payments

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

iii. Damages and Withholding

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

B. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

C. Remedies Not Involving Termination

The State, 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: 04
Michael Schuch
Project Manager
1420 2nd Street
Greeley, CO 80631
970-350-2211

B. If to the Local Agency:

CITY OF LOVELAND
Justin
Stone
500 EAST THIRD STREET STE 320
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 effect 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.

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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 PAGEAgreement Routing Number: **16-HA4-ZH-00031****THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

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

<p>THE LOCAL AGENCY CITY OF LOVELAND</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p>STATE OF COLORADO John W. Hickenlooper, GOVERNOR</p> <p>Colorado Department of Transportation Shailen Bhatt, Executive Director</p> <p>By: Joshua Laippy, P.E., Chief Engineer</p> <p>Date: _____</p>
<p>2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p>LEGAL REVIEW Cynthia H. Coffman, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Colorado Department of Transportation</p> <p>Date: _____</p>

28. EXHIBIT A – SCOPE OF WORK

The Colorado Department of Transportation (“CDOT”) will oversee the City of Loveland when the City of Loveland purchases and installs signal cabinet systems, backup battery systems, and power service disconnects (Hereinafter referred to as “these items”). CDOT and the City of Loveland believe it will be beneficial to purchase and install these items to keep traffic signals and ITS equipment operational during power outages. It is anticipated the City of Loveland will purchase and install approximately 40 of these items; however, the exact number of these items that will be purchased and installed depends on budgetary and project impact restrictions. As of the execution of this agreement, the following locations instillation sites are anticipated:

- US 34 West of US 287
- State Highway 402
- 14th Street SW
- Wilson Avenue
- Various others

The purchase of the equipment will in the fall of 2015 and the installation will begin shortly thereafter.

The purchase and installation of these items shall be complete by the City of Loveland by the end of 2017.

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 (82.79% of Participating Costs)	\$497,000.00
b. Local Agency Matching Funds (17.21% of Participating Costs)	\$103,315.00
TOTAL BUDGETED FUNDS	\$600,315.00
2 ESTIMATED CDOT-INCURRED COSTS	
a. Federal Share (0% of Participating Costs)	\$0.00
b. Local Share Local Agency Share of Participating Costs Local Agency Share of Non-Participating Costs	\$0.00 \$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)	\$497,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)	\$0.00
c. State Funds Budgeted (1c)	\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	\$497,000.00
FOR CDOT ENCUMBRANCE PURPOSES	
<p><i>*Note - \$600,315.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment.</i></p>	
Net to be encumbered as follows:	\$600,315.00
WBS Element 20150.10.50 Misc. 3404	\$600,315.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20 2050) to 17.21% Local Agency and State funds, it being understood that such ratio applies only to the \$600,315.00 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 \$600,315.00 and additional federal funds are made available for the Work, the Local Agency shall pay 20.00% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$600,315.00, then the amounts of State and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$497,000.00 (For CDOT accounting purposes, the federal funds of \$497,000.00, State funds of \$0.00, Local Agency matching funds of \$103,315.00, and Local Agency Overmatch funds of \$0.00 will be encumbered for a total encumbrance of \$600,315.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ***** Note - \$600,315.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment ***** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

All state and local government and non-profit organization Sub-The Local Agency's receiving more than \$750,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to Sub-The Local Agency's receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Sub-The Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure exceeding than \$750,000-Highway Funds Only

If the Sub-The Local Agency expends more than \$750,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure exceeding than \$750,000-Multiple Funding Sources

If the Sub-The Local Agency expends more than \$750,000 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 #
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 labeled as follows: C-2, C-3, C-4, etc.).

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

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

made using an formal amendment)..

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

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

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

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

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

APPROVALS:

State of Colorado:

John W. Hickenlooper, Governor

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

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

**State Controller
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. AQC M830-079	STIP No. SNF5173.048	Project Code 20150	Region 04
Project Location Loveland Signal Controls	Date 2/10/2015		
Project Description Signal Control project			
Local Agency City of Loveland	Local Agency Project Manager Justin Stone		
CDOT Resident Engineer Long Nguyen	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 <i>CDOT Local Agency Manual</i> . 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. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT. The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.			
NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2-1	Review Project to ensure consistency with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5-1	Prepare Design Data - CDOT Form 463		X
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct Consultant Selection/Execute Consultant Agreement	NA	
5-4	Conduct Design Scoping Review meeting	X	X
5-5	Conduct Public Involvement	X	
5-6	Conduct Field Inspection Review (FIR)	X	
5-7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	X
5-8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5-9	Obtain Utility and Railroad Agreements	X	
5-10	Conduct Final Office Review (FOR)	X	
5-11	Justify Force Account Work by the Local Agency	X	#
5-12	Justify Proprietary, Sole Source, or Local Agency Furnished items	X	#
5-13	Document Design Exceptions - CDOT Form 464	X	#
5-14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5-15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE		
6-1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)	NA
6-2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> 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 CDOT Resident Engineer(Signature on File) 2/10/2015 Date	NA
6-3	Set On-the-Job Training Goals.	NA
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)	NA
ADVERTISE, BID AND AWARD		
7-1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X #
7-2	Advertise for Bids	X
7-3	Distribute "Advertisement Set" of Plans and Specifications	NA
7-4	Review Worksite and Plan Details with Prospective Bidders While Project is Under Advertisement	NA
7-5	Open Bids	X
7-6	Process Bids for Compliance	X
	Check CDOT Form 1415 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals	NA
	Evaluate CDOT Form 1416 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals	NA
	Submit required documentation for CDOT award concurrence	X
7-7	Concurrence from CDOT to Award	X
7-8	Approve Rejection of Low Bidder	X 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	NA
8-2	Project Safety	X
8-3	Conduct Conferences: Pre-construction Conference (Appendix B)	NA
	Presurvey • Construction staking • Monumentation	NA NA
	Partnering (Optional)	X
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	NA
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	NA
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	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."	X
	_____ Justin Stone Local Agency Professional Engineer or CDOT Resident Engineer	970-962-2647 Phone number

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	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	X	
8-10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. _____ Justin Stone 970-962-2647 Local Agency Representative Phone number	X	
8-11	Prepare and Approve Interim and Final Utility/Railroad Billings	X	
8-12	Prepare Local Agency Reimbursement Requests	X	
8-13	Prepare and Authorize Change Orders	X	#
8-14	Approve All Change Orders		X
8-15	Monitor Project Financial Status	X	
8-16	Prepare and Submit Monthly Progress Reports	NA	
8-17	Resolve Contractor Claims and Disputes	X	
8-18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. _____ Long Nguyen 970-350-2126 CDOT Resident Engineer Phone number		X
MATERIALS			
9-1	Discuss Materials at Preconstruction Meeting -Buy America documentation prior to installation of steel	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	NA NA	NA
9-3	Perform Project Acceptance Samples and Tests	NA	
9-4	Perform Laboratory Verification Tests	NA	
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 NA NA NA	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	NA NA	NA
9-8	Approve Mix Designs • Concrete • Hot Mix Asphalt	NA NA	
9-9	Check Final Materials Documentation	NA	
9-10	Complete and Distribute Final Materials Documentation	NA	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10-1	Fulfill Project Bulletin Board and Pre-construction Packet Requirements	NA	
10-2	Process CDOT Form 205b - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	NA	
10-3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	NA	
10-4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" requirements	NA	
10-5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	NA	
10-6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	NA	
10-7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	NA	
FINALS			
11-1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)	X	X
11-2	Write Final Project Acceptance Letter	X	
11-3	Advertise for Final Settlement	NA	
11-4	Prepare and Distribute Final As-Constructed Plans	X	
11-5	Prepare EEO Certification	NA	
11-6	Check Final Quantities, Plans and Pay Estimate; Check Project Documentation; and submit Final Certifications	NA	
11-7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	NA	
11-8	Obtain CDOT Form 1419 - Contractor DBE Payment Certification from the Contactor and submit to the Resident Engineer (Quarterly)	NA	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		NA
11-10	Process Final Payment	X	
11-11	Complete and Submit CDOT Form 950 - Project Closure		X
11-12	Retain Project Records for Six Years from Date of Project Closure	X	X
11-13	Retain Final Version of Local Agency Contract Administration Checklist	X	X

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

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

No Federal appropriated funds have been paid or will be paid, by or on behalf 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 1E 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 preceding 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
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/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 contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

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

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

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
 - a. To the extent that qualified persons regularly residing in the area are not available.
 - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
 - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.
5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

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

37. EXHIBIT J – FEDERAL REQUIREMENTS

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

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

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/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 Agency's and their contractors or the Local Agency's).

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 Agency's and the Local Agency's 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.

38. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to**

**The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1. Grants;
- 1.1.2. Contracts;
- 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4. Loans;
- 1.1.5. Loan Guarantees;
- 1.1.6. Subsidies;
- 1.1.7. Insurance;
- 1.1.8. Food commodities;
- 1.1.9. Direct appropriations;
- 1.1.10. Assessed and voluntary contributions; and
- 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award **does not** include:

- 1.1.12. Technical assistance, which provides services in lieu of money;
- 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14. Any award classified for security purposes; or
- 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in **§1.1.1** through **1.1.11** above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.

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

- 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2. A foreign public entity;
- 1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17. **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and

is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any 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.



CITY OF LOVELAND
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2318 • FAX (970) 962-2918 • TDD (970) 962-2620

AGENDA ITEM: 6
MEETING DATE: 9/15/2015
TO: City Council
FROM: Brent Worthington, Finance Director
PRESENTER: Brent Worthington, Finance Director

TITLE:

A Resolution Appointing a Certified Public Accountant to Audit the Financial Statements of the City of Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Adopt as recommended an action to award a contract to Rubin Brown LLP for the annual financial audit for fiscal years 2015, 2016, and 2017 with the option of renewing the contract for two additional one year terms (2018, 2019).

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration, which may result in annual financial audit being delayed. The annual financial audit is required by Colorado State statute and the City of Loveland Charter.

SUMMARY:

This is an administrative action. Pursuant to section 11-7 of the City of Loveland Charter, Council shall provide for a financial audit, which shall be performed by a certified public accountant selected by Council. The audit shall be performed in accordance with the State statutes establishing the local government audit laws. Copies of the audit shall be made available for public inspection. On September 9, 2015 the Citizen's Finance Advisory Commission (CFAC) recommended approval.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

Funds shall be appropriated yearly for this service.

BACKGROUND:

The Finance Department conducted a formal Request for Proposal (RFP) process to select a certified public accounting firm to conduct the annual financial audit. Seven qualified firms

submitted proposals that were read and evaluated by Finance staff. The two firms receiving the top ratings were interviewed in person. Rubin Brown was selected by staff. The cost of the audit will be \$92,500 for 2015, \$95,000 for 2016, \$97,500 for 2017, \$100,000 for 2018, and \$102,500 for 2019. There shall be a provision in the contract pricing for additional single audits that may need to be performed at \$5,500 each.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Resolution
2. Contract
3. Proposals

RESOLUTION #R-2015**A RESOLUTION APPOINTING A CERTIFIED PUBLIC ACCOUNTANT
TO AUDIT THE FINANCIAL STATEMENTS OF THE CITY OF
LOVELAND, COLORADO**

WHEREAS, pursuant to Section 11-7 of the City of Loveland Charter, the City Council for the City of Loveland, Colorado desires to appoint the certified public accounting firm of Rubin Brown LLP to audit the financial statements of the City of Loveland, Colorado, and to establish the terms and conditions for such appointment.

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

Section 1. That Rubin Brown LLP is hereby appointed to perform an annual audit of the City of Loveland, Colorado's financial statements for fiscal years 2015, 2016 and 2017, with the option to renew for two additional one-year periods (2018 and 2019) pursuant to the terms and conditions of the Services Contract, attached hereto as Exhibit A and incorporated herein by reference ("Contract").

Section 2. That the City Manager and the City Clerk are hereby authorized and directed to execute the Contract 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 of the Contract, provided that such changes do not impair the intended purposes of this Resolution.

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

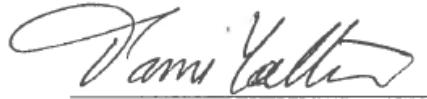
ADOPTED this 15th day of September, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Tammy Yalter
City Attorney



RubinBrown LLP
Certified Public Accountants
& Business Consultants

1900 Sixteenth Street
Suite 300
Denver, CO 80202

T 303.698.1883
F 303.777.4458

W rubinbrown.com
E info@rubinbrown.com

August 18, 2015

Mr. Brent Worthington
Mr. William D. Cahill
City of Loveland, 500 East 3rd Street
Loveland, Colorado 80537

Dear Brent:

We appreciate the opportunity to be of service to City of Loveland ("Client"). This letter ("Letter") sets forth the services that RubinBrown LLP ("RubinBrown") will provide for you. In order to better understand each party's obligations, the terms "we," "us," and "our" refer to RubinBrown and the terms "you," "your" and "management" refer to City of Loveland. Your engagement of RubinBrown will be governed by the terms of this Letter and the attached RubinBrown LLP Engagement Terms.

Scope of Services

We are pleased to confirm our understanding of the services we are to provide City of Loveland for the year ended December 31, 2015. We will audit the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements which collectively comprise the basic financial statements of City of Loveland as of and for the year ended December 31, 2015. Accounting standards generally accepted in the United States of America (GAAP) provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement City of Loveland's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to City of Loveland's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- Management's discussion and analysis
- General fund budgetary comparison schedule
- Major special revenue funds budgetary comparison schedules
- Schedules of funding progress
- Pension disclosures as required by GASB 68

We have also been engaged to report on supplementary information other than RSI that accompanies City of Loveland's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

- Schedule of expenditures of federal awards
- Combining statements and schedules
- Individual nonmajor fund financial statements and schedules
- Local Highway Finance Report

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that other information.

- Introductory section
- Statistical section

As part of the engagement, we will also audit the financial statements of the Fort Collins-Loveland Municipal Airport (the Airport) as of and for the year ended December 31, 2015 and the related notes to the financial statements, which collectively comprise the Airport's basic financial statements. Also we will perform an audit of the Airport's Passenger Facility Charge Program and issue the following reports:

- Report On Internal Control Over Financial Reporting and On Compliance and Other Matters Based On An Audit of Financial Statements Performed In Accordance With Governmental Auditing Standards
- Report On Compliance With Requirements Applicable To The Passenger Facility Charge Program And On Internal Control Over Compliance

Audit Objective

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principles and to report on the fairness of the supplementary information referred to above when considered in relation to the financial statements as a whole. The objective also includes reporting on—

- Internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with Government Auditing Standards.
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and the OMB Uniform Grant Guidance.

The reports on internal control and compliance will each include a paragraph that states that the purpose of the report is solely to describe (1) the scope of testing of internal control over financial reporting and compliance and the result of that testing and not to provide an opinion on the effectiveness of internal control over financial reporting or on compliance, (2) the scope of testing internal control over compliance for major programs and major program compliance and the result of that testing and to provide an opinion on compliance but not to provide an opinion on the effectiveness of internal control over compliance, and (3) that the report is an integral part of an audit performed in accordance with Government Auditing Standards in considering internal control over financial reporting and compliance and the OMB Uniform Grant Guidance in considering internal control over compliance and major program compliance. The paragraph will also state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the OMB Uniform Grant Guidance, and will include tests of the accounting records, a determination of major program(s) in accordance with the OMB Uniform Grant Guidance, and other procedures we consider necessary to enable us to express such opinions and to render the required reports. We will issue written reports upon completion of our audit of your Financial Statements and our Single Audit. Our reports will be addressed to those responsible for corporate governance of City of Loveland. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s). If our opinions on the financial statements or the Single Audit compliance opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report or we may withdraw from this engagement.

Audit Procedures — General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, Government Auditing Standards do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and Government Auditing Standards.

In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any, or violations of laws or government regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories (if applicable), and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Cheryl Wallace will serve as the partner responsible for the overall supervision of the audit engagement and for authorizing the Firm's signature on the audit report letter.

Audit Procedures - Internal Control

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to Government Auditing Standards.

As required by the OMB Uniform Grant Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the OMB Uniform Grant Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, Government Auditing Standards, and the OMB Uniform Grant Guidance.

Audit Procedures — Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of City of Loveland's compliance with the provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

The OMB Uniform Grant Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the OMB Uniform Grant Guidance Compliance Supplement for the types of compliance requirements that could have a direct and material effect on each of City of Loveland's major programs. The purpose of these procedures will be to express an opinion on City of Loveland's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the OMB Uniform Grant Guidance.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. Management is also responsible for identifying government award programs and understanding and complying with the compliance requirements, and for preparation of the schedule of expenditures of federal awards in accordance with the requirements of the OMB Uniform Grant Guidance. If you have so requested, as part of the audit, we will assist with preparation of your financial statements and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements, schedule of expenditures of federal awards, and related notes and for accepting full responsibility for such decisions. If you have requested our assistance with the preparation of the financial statements and related notes, you will be required to acknowledge in a written representation letter our assistance with such preparation and that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee our assistance with the preparation of your financial statements and related notes (if applicable) and any other nonaudit services we provide; and for evaluating the adequacy and results of those services and accepting responsibility for them. These nonaudit services do not constitute an audit under Government Auditing Standards, and such services will not be conducted in accordance with Government Auditing Standards.

Management is responsible for establishing and maintaining effective internal controls, including internal controls over compliance and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met and that there is reasonable assurance that government programs are administered in compliance with compliance requirements. Management is responsible for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Loveland and the respective changes in financial position and where applicable, cash flows, in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in a written representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report. Additionally, as required by the OMB Uniform Grant Guidance, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. The summary schedule of prior audit findings should be available for our review on the first day of our interim fieldwork.

You are responsible for preparation of the schedule of expenditures of federal awards in conformity with the OMB Uniform Grant Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon or make the audited financial statements readily available to intended users of the schedule of expenditures of federal awards no later than the date the schedule of expenditures of federal awards is issued with our report thereon. Your responsibilities include acknowledging to us in a written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with THE OMB Uniform Grant Guidance; (2) that you believe the schedule of expenditures of federal awards, including its form and content, is fairly presented in accordance with THE OMB Uniform Grant Guidance; (3) that the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

You are responsible for the preparation of the supplementary information in conformity with accounting principles generally accepted in the United States of America. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon or make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. Your responsibilities include acknowledging to us in a written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) that you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) that the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

Engagement Administration, Timing and Fees

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. If applicable, we will provide copies of our report for you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period.

The audit documentation for this engagement is the property of RubinBrown LLP and constitutes confidential information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to a cognizant or oversight agencies or its designee, a federal agency providing direct or indirect funding, or the U.S.

Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of RubinBrown LLP personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of seven years after the report release or for any additional period requested by cognizant or oversight agencies or pass-through entities. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

In accordance with Government Auditing Standards our most recent peer review report accompanies this Letter.

Our fee for the Attest Services will be \$92,500 plus out-of-pocket, technology and administrative expenses. The fees are based upon anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the engagement. If significant additional fees are necessary, we will discuss them with you and agree to a new fee estimate before additional fees are incurred. We will keep you informed of our progress and work closely with you to structure our work to ensure that it is completed in a cost-effective manner.

Engagement Terms

Attached is an additional statement of terms regarding our engagement titled, RubinBrown LLP Engagement Terms (hereinafter "RubinBrown Engagement Terms"). The RubinBrown Engagement Terms are hereby incorporated by reference and the contents of this Letter should be construed in accordance with the terms set forth therein, unless expressly stated otherwise in this Letter. When construing or interpreting the contents of this Letter or the terms of our engagement, the RubinBrown Engagement Terms will govern. To the extent any apparent or actual contradiction may exist, the RubinBrown Engagement Terms will be deemed controlling and will supersede any such statement contained herein, unless expressly stated otherwise in the provision or portion of this Letter at issue.

Conclusion

We appreciate the opportunity to be of service to you. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this Letter and the RubinBrown Engagement Terms, please sign the enclosed copy and return it to us. By signing the enclosed copy of this Letter, you acknowledge that you have read, understood and agreed to the terms as set forth in this Letter and in the RubinBrown Engagement Terms.

Mr. Brent Worthington & Mr. William D. Cahill
City of Loveland

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THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

Sincerely,

RubinBrown LLP



Cheryl Wallace, CPA
Partner
Direct Dial Number: 303.952.1288
Email: cheryl.wallace@rubinbrown.com

Attachment(s):
Exhibit A - RubinBrown LLP Engagement Terms

By signing below, the signatory further represents and warrants that she/he is authorized to approve the terms of this engagement on behalf of City of Loveland.

Approved By: _____ Date: _____
Mr. Brent Worthington, Finance Director

Approved By: _____ Date: _____
Mr. William D. Cahill, City Manager

EXHIBIT A - RUBINBROWN LLP ENGAGEMENT TERMS

These Engagement Terms (the "Terms") and the engagement letter (the "Letter") incorporating the Terms (the Terms and Letter are hereinafter collectively referred to as the Agreement), entered into by and between RubinBrown LLP (RubinBrown) and Client, set forth the terms and conditions of RubinBrown's engagement with Client (the "Engagement"). These Terms shall also apply to any additional work that Client requests RubinBrown to perform unless a separate engagement letter is entered into by and between RubinBrown and Client for such additional work.

1. Agreed Upon Scope of Work. RubinBrown shall be obligated only for the services, work product and deliverables specified in the Letter, and only for changes in such scope that are set forth in writing and duly executed by the parties hereto. Unless expressly provided for in the Letter, RubinBrown's services do not include giving testimony, appearing or participating in discovery proceedings, administrative hearings, court, or other legal or regulatory inquiries or proceedings and, in the event RubinBrown later agrees to perform such services, RubinBrown will charge and Client shall pay RubinBrown's customary fee for such services.

2. Period Covered. This engagement letter covers the period beginning on the date the described services begin and ending on the date all such services have been completed. Except where a separate engagement letter is used, the terms of the Letter and these Terms will apply to any such additional work we are asked to perform.

3. Billing Terms. Invoices will be rendered monthly and presented to you for services performed in the prior month and are due and payable within 30 days of the date of the billing statement. We reserve the right to suspend or terminate further services until payment is received on all invoices that are not paid in full within 30 days of the date of the billing statement. In the event that we suspend or terminate this engagement as a result of non-payment, you agree that we will not be responsible for your failure to meet government or other filing deadlines, or for penalties or interest that may be assessed against you resulting from your failure to meet said deadlines. A 1½% per month service charge will be added to balances remaining unpaid 60 days or more after the invoice date.

4. Cooperation and Participation. While RubinBrown may from time to time suggest various options that may be available to Client and further give its professional evaluation of each of these options, Client must make the ultimate decision as to which, if any, of these options to implement. Client shall be solely responsible for applying independent business judgment with respect to RubinBrown's services, work product and/or deliverables (including decisions regarding implementation or other further course(s) of action) and shall be solely and exclusively responsible for such decisions. RubinBrown shall be entitled to rely on all decisions and approvals of Client (and its counsel). Except as specifically provided in the Letter, RubinBrown shall be entitled to rely on the accuracy and completeness of all information provided by Client, and RubinBrown has no duty to verify the accuracy or completeness of information provided by Client.

5. Access to Resources and Information. Unless specified herein as the responsibility of RubinBrown to provide, Client shall obtain for RubinBrown, on a timely basis, any internal and third-party permissions, licenses or approvals that are required for RubinBrown to perform the services contemplated hereunder (including the use of any necessary software or data). Client shall also provide RubinBrown with such information, signoffs and assistance as may be necessary for RubinBrown to perform the Engagement or as RubinBrown may reasonably request.

6. Record Retention. Pursuant to RubinBrown's record retention policy, at the conclusion of this Engagement, RubinBrown may retain copies of the records supplied to RubinBrown by Client and RubinBrown will return all such original records to the Client. The records and files retained by RubinBrown are RubinBrown's property and are not a substitute for the Client's own records. Client shall be responsible for retaining and maintaining records of its operations and records required to backup and support the Client's financial reports and tax returns. RubinBrown will destroy Client files and all pertinent work papers after a retention period of seven years, after which time these items will no longer be available. In addition, catastrophic events or physical deterioration may result in RubinBrown's records being unavailable.

EXHIBIT A - RUBINBROWN LLP ENGAGEMENT TERMS

7. **Confidentiality.** RubinBrown shall maintain the confidentiality of Client information, which is of a confidential nature, using the same degree of care it uses in maintaining its own confidential information. Nothing herein shall preclude RubinBrown from disclosing confidential Client information in response to a validly issued and enforceable subpoena or as otherwise required by law, or from disclosing confidential Client information to RubinBrown's attorneys, advisors, insurers, or agents who agree to maintain the confidentiality of such information, with or without notice to Client.

In the course of providing professional services to Client in connection with this engagement, RubinBrown may require the assistance of third party professional service providers with specialized capabilities or expertise. RubinBrown enters into confidentiality agreements with such third party professional service providers to ensure that confidential information of its clients is fully protected from loss or misuse. In the event RubinBrown is unable to secure an appropriate confidentiality agreement, Client will be asked to provide its consent prior to the sharing of its confidential information with the third-party professional service provider.

Except as otherwise specifically provided herein or as required by law, including the Colorado Open Records Act, Client shall at no time disclose any of RubinBrown's services, fees, work product, deliverables and other confidential material, including but not limited to internally developed financial models, or RubinBrown's role in the Engagement, to any third party (except to a government agency, to the extent such filing is an agreed objective of the Agreement, or as otherwise legally compelled) without RubinBrown's prior written consent in each case. Client's use of RubinBrown's services, work product or deliverables hereunder (except for copies of filed tax returns) shall in any event be restricted to the stated purpose, if any, in the Letter and otherwise to Client's internal business use only. Client and RubinBrown each retains the right in any event to use the ideas, concepts, techniques, industry data and know-how used or developed in the course of the Engagement. Except as instructed otherwise in writing, each party may assume that the other approves of properly addressed fax, email (including email exchanged via Internet media) and voicemail communication of both sensitive and non-sensitive documents and other communications concerning the Engagement, as well as other means of communication used or accepted by the other.

Notwithstanding anything herein to the contrary, (i) no term of the Agreement is intended to be, and shall not be construed to be, a condition of confidentiality as such term is used in Sections 6011, 6111 and 6112 of the Internal Revenue Code of 1986, as amended ("IRC"), the regulations thereunder and/or Section 10.35 of Treasury Department Circular 230 ("Circular 230"), (ii) Client is hereby authorized to disclose to any and all persons, without any limitation of any kind, any aspect of any entity, plan, arrangement or transaction RubinBrown introduces, addresses or recommends, or with respect to which RubinBrown provides advice, consultation or services pursuant to the Agreement, it being Client's duty to ascertain whether any additional authorization from any other person or entity is necessary or desirable, and (iii) there is no limitation imposed herein on any person or entity on disclosure of the tax treatment, tax structure or tax strategy of any transaction that is the subject of written advice (as defined in Circular 230) provided by RubinBrown pursuant to the Agreement.

RubinBrown is required to comply with certain peer review requirements in order to maintain its professional licensing. In complying with these peer review requirements certain confidential information may be disclosed to the reviewer. These peer reviews are only conducted by other qualified professionals who are subject to maintaining the confidentiality of information disclosed in the course of the review. Client acknowledges that these confidential disclosures by RubinBrown are not a violation of RubinBrown's obligation to maintain the confidentiality of information.

EXHIBIT A - RUBINBROWN LLP ENGAGEMENT TERMS

8. **Subpoenas for Client's Records and Information.** At any time during or after our Engagement, should RubinBrown receive a subpoena from a Third Party seeking production of Client's records or confidential information, or testimony relating to RubinBrown's Engagement, RubinBrown will, to the extent permitted by law, notify Client using the last contact information for Client known to RubinBrown. Upon such notification, should Client wish to take action to protect its records and /or its information from production in compliance with the subpoena, it shall be Client's obligation to do so in compliance with applicable law, at Client's expense, using counsel of Client's choice. Irrespective of Client's decision regarding what action, if any, it intends to take to protect its records and information, RubinBrown shall have the right to engage its own counsel to assist and advise RubinBrown in coordinating with Client and/or Client's counsel in this regard, and/or in responding to the subpoena. Client shall reimburse RubinBrown, upon receipt of an appropriate invoice, for all of RubinBrown's internal and external costs and expenses in responding to any subpoena for Client's records, and/or providing testimony pursuant to such subpoena, including RubinBrown's reasonable and customary fees for such services, as well as its internal costs (employee time and expenses), external costs (copy services or other vendors), and reasonable attorneys' fees.

9. **Taxpayer Confidentiality Privileges: Use of Counsel.** The parties acknowledge that certain documents and other communications involving and/or disclosed to or by RubinBrown may be subject to one or more claims of privilege by or on behalf of Client (e.g., the attorney-client privilege, the IRC SEC 7525 tax advisory privilege, etc.). Although Client is solely responsible for managing the recognition, establishment and maintenance (e.g., possible waiver) of these possible protections (and for involving legal counsel as it deems necessary), RubinBrown shall cooperate with Client's reasonable written instructions regarding such privileges.

10. **Management Dishonesty.** While RubinBrown will advise Client if RubinBrown discovers errors or irregularities, Client understands and agrees that Client cannot rely on RubinBrown to detect employee or management dishonesty, including, without limitation, embezzlement, unless specifically set forth in the Letter.

11. **External Factors; Standards of Performance.** Client acknowledges that the Engagement will involve analysis, judgment and other performance from time to time in a context where the participation of Client or others is necessary, where answers are often uncertain or unverifiable in advance and where facts and available information change with time. Accordingly, evaluation of RubinBrown's performance of its obligations shall be based solely on its substantial conformance with any standards or specifications expressly set forth in the Agreement and all applicable professional standards, any such nonconformance (and applicability) to be clearly and convincingly shown. If there are any changes in the relevant laws, regulations, industry, market conditions or other circumstances, including in the Client's own business practices, RubinBrown has no responsibility to advise Client of any such changes and Client acknowledges the need for it to re-evaluate RubinBrown's preceding services, work product and deliverables. RubinBrown reserves the right, in whole or in part, to decline to perform certain tasks or withdraw from the Engagement entirely if information comes to RubinBrown's attention indicating that performing such tasks could cause RubinBrown to be in violation of any applicable law, regulations or standards, to be in a conflict of interest or to suffer reputational damage.

12. **Affiliates.** If the Letter provides that RubinBrown's services, work product or deliverables may pertain not only to Client but also to a parent, subsidiaries, affiliates, advisors, contractors, family members, related trusts, partnerships, partners, estates or foundations, such Affiliates shall be bound by the terms of the Agreement. Client shall, as may be requested by RubinBrown from time to time (including subsequent to completion of the Engagement), obtain written confirmation of their agreement to the terms of the Agreement.

EXHIBIT A - RUBINBROWN LLP ENGAGEMENT TERMS

13. Limitation of Liability. The liability of RubinBrown (including its partners, employees, agents and affiliated companies) to Client (and any purported third-party beneficiaries, including Affiliates) for any claim or damages (including but not limited to incidental, special, exemplary, punitive or consequential), whether in contract, strict liability, tort (including but not limited to RubinBrown's NEGLIGENCE or FAULT, except that this provision does not purport to limit liability for RubinBrown's intentional/willful torts or for any other liabilities for which a limitation of liability is prohibited by Colorado law), or otherwise, arising out of, connected with, or resulting from RubinBrown's services, work product or deliverables or the Engagement generally, shall not exceed all fees related to the Engagement paid by Client to RubinBrown, even if RubinBrown has been advised of the possibility of such claims or damages.

14. Baker Tilly International. RubinBrown is an independent member of Baker Tilly International. Baker Tilly International Limited is an English Company. Baker Tilly International provides no professional services to clients. Each of the member firm is a separate and independent legal entity and each describes itself as such. RubinBrown is not Baker Tilly International's agent and does not have authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, RubinBrown or any of the other independent member firms of Baker Tilly International has any liability for each other's acts or omissions. In addition, neither Baker Tilly International nor any other member has a right to exercise management control over any other member firm. RubinBrown shall in no event be held liable for any work or conduct (whether negligent, intentional, fraudulent, or otherwise) done by Baker Tilly International or any other member firm.

15. Release for Client Misrepresentation. Client releases RubinBrown, its partners, officers, managers, personnel, agents, employees, affiliated companies successors from any liability and costs, including attorneys' fees, resulting from knowing misrepresentations by management of Client.

16. Independent Contractor Status. Each party is an independent contractor with respect to the other and shall not be construed as having an employment, partnership, trustee or fiduciary relationship.

17. Assignments and Successors. Neither party may assign any of its rights or benefits under the Agreement without the prior written consent of the other party. Subject to the preceding sentence, the Agreement will apply to, be binding in all respects upon, and inure to the benefit of the permitted successors, assigns, heirs, estates, and legal representatives of the parties. Notwithstanding the foregoing, RubinBrown may authorize and allow its affiliates and contractors to assist in performing the Engagement and to share in RubinBrown's rights hereunder, provided any such party shall commit (as applicable) to be bound by the restrictions set forth in the Agreement.

18. No Third Party Rights. Unless specifically set forth in the Letter, nothing expressed or referred to in the Agreement will be construed to give any person, other than the parties to the Agreement, any legal or equitable right, remedy, claim, benefit, priority or interest under or with respect to the Agreement or any provision of the Agreement. Except as specifically provided in the Letter, the Agreement and any services, work product or other deliverables hereunder are for the sole and exclusive benefit of the Client and its permitted successors and assigns, and neither Client nor RubinBrown intends for RubinBrown's services to be used by or to provide any benefit or guidance to any other persons. The work product or services provided hereunder shall not be disclosed or disseminated to third parties or used for any purpose, other than as specifically set forth in the Letter, without RubinBrown's prior written consent.

EXHIBIT A - RUBINBROWN LLP ENGAGEMENT TERMS

19. **Mediation.** If Client (including any purported third-party beneficiaries, including Affiliates) is dissatisfied with the quality or timeliness of RubinBrown's services, or believes such services were in any way negligently performed, Client agrees to promptly notify RubinBrown in writing of its dissatisfaction and specifically set forth its complaints. If the parties are unable to resolve their differences within thirty (30) days after RubinBrown's receipt of Client's written notice, it is agreed that either party may invoke the services of an impartial mediator under the auspices of the commercial mediation rules of the American Arbitration Association, United States Arbitration and Mediation Service, or any other national neutral mediation service, at the election of the party who first requests mediation. It is agreed that no claim pertaining to the quality or timeliness and/or alleged negligence of RubinBrown's provided services shall be litigated unless the foregoing procedures have first been followed and the mediator fails to settle the claim within thirty (30) days after the mediation process has concluded.

20. **Governing Law.** The Agreement, including its formation, the parties' respective rights and duties and all disputes that might arise from or in connection with the Agreement or its subject matter, shall be governed by and construed in accordance with the laws of Colorado, without giving effect to conflicts of laws rules.

21. **Attorneys' Fees and Costs.** In connection with any legal action, arbitration or litigation arising from or in connection with the Agreement or its subject matter, the prevailing party shall be entitled to recover, subject to the damage limitations set forth in the Agreement, all costs incurred by such party in furtherance of such legal action, arbitration or litigation, including reasonable attorney's fees.

22. **Construction.** To the extent any apparent or actual contradiction may exist when construing or interpreting the contents of the Letter and the Terms, the Terms shall control and supersede any statement contained in the Letter, unless expressly stated otherwise in the provision or portion of the Letter or Terms at issue.

23. **Waivers.** Neither the failure nor any delay by any party in exercising any right, power or privilege under the Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

24. **Severability.** If any arbitrator or court of competent jurisdiction holds any provision of the Agreement invalid or unenforceable, the other provisions of the Agreement will remain in full force and effect. Any provision of the Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

25. **Headings.** The headings of paragraphs contained in the Agreement are provided for convenience only. They form no part of the Agreement and shall not affect its construction or interpretation.



CITY OF LOVELAND
FINANCE DEPARTMENT
 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2695 • FAX (970) 962-2994 • TDD (970) 962-2620

TO: **City Council**
FROM: **Brent Worthington, Finance Director**
DATE: **September 15, 2015**
RE: **Auditor Selection Process**

Audit RFP selection process

The Request for Proposal (RFP) for Auditing Services was posted to Rocky Mountain E-Purchasing on June 11, 2015; responses were due July 11.

Seven firms responded with technical proposals and sealed price bids. Accounting Division staff reviewed the technical proposals, independent of the price quotes, and rated the individual elements on a scale of 1 to 5. Rubin Brown and CliftonLarsonAllen (CLA) were the two firms who scored the highest on their technical proposals, with Rubin Brown scoring 94 and CLA scoring 93.

Sealed price bids were then opened to compare these two firms. They were very close in score and price, so Accounting Division staff decided to conduct interviews.

Accounting decided to recommend Rubin Brown, for the following reasons:

- Their technical score was higher
- Their overall hourly rate was lower
- They had already been consulted on several projects in process

The Table sets forth the rankings for each firm. It should be noted that, while Rubin Brown's total cost was slightly higher than CLA, the difference is due to the estimated number of hours to perform the audit. Rubin Brown has ample experience with the City's audit, so their estimated hours are realistic.

Firm	Year	Total Price	Hours	Average Hourly Rate	Technical Proposal Rating
Rubin Brown	2015	92,500	983	94.10	94
CliftonLarsonAllen	2015	88,775	890	99.75	93
McGladrey LLP	2015	88,900	750	118.53	85
Anton Collins Mitchell LLP	2015	103,000	915	112.57	84
EideBailly	2015	115,900	1175	98.64	84
Haynie & Company	2015	93,600	736	127.17	72
Swanson & Company LLC	2015	95,000	995	95.48	71



CITY OF LOVELAND
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2695 • FAX (970) 962-2994 • TDD (970) 962-2620

TO: **City Council**
FROM: **Brent Worthington, Finance Director**
DATE: **September 15, 2015**
RE: **Recommendation from CFAC regarding Auditor Selection**

At the September 9, 2015 meeting of the Citizen's Financial Advisory Commission (CFAC), Finance Department staff presented and reviewed the process undertaken for the selection and recommendation of Rubin Brown LLC to City Council.

After review and discussion, CFAC unanimously passed a motion endorsing the recommendation of staff to execute a new contract with Rubin Brown LLC to continue serving as the City's Auditors.



CITY OF LOVELAND
HUMAN RESOURCES DEPARTMENT
 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2371 • FAX (970) 962-2919 • TDD (970) 962-2620

AGENDA ITEM: 7
MEETING DATE: 9/15/2015
TO: City Council
FROM: Julia Holland, Human Resources Department
PRESENTER: Bettie Greenberg, Risk Manager

TITLE:

Adopt a motion to amend the City's Workers' Compensation Coverage with Pinnacol Assurance and Authorize the City Manager to enter into a contract with Pinnacol, and establish a purchase order in the Amount of \$1,240,000 with a renewal date of July 1

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion amending the City's workers' compensation coverage.

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

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

This contract is within the budget already approved for 2015 and proposed 2016 budget.

SUMMARY:

This is an administrative action to authorize the City Manager to enter into a contract with Pinnacol Assurance to amend the workers' compensation coverage renewal date to July 1 and includes continued premium costs and claims payable from prior years.

BACKGROUND:

The City has renewed its workers' compensation coverage on January 1 of each year. Each year, the insurance rates for each workers compensation job classification must be approved by the State. Historically, the State has not provided the rate approvals until late November. The result has been that employers do not receive insurance quotations until December.

To provide staff and council a more timely and efficient renewal process, the City is proposing an amendment to its contract with Pinnacol to move the renewal date to July 1. The City has budgeted \$1,364,560 for workers' compensation in 2016, compared to \$1,240,000 in 2015. This includes the premium of \$485,875, the loss fund payment of \$25,000, and claims payable under the City's deductible for 2015 and from previous years.

The terms of the revised contract remain unchanged. Pinnacol will adjust workers' compensation claims and bill the City for the amounts paid under the \$75,000 per occurrence deductible. The 2015/16 premium \$9,579 is slightly higher than the prior quote based on increased estimated payroll through June 30, 2016; however, the City will receive a credit of the prorated amount, estimated to be \$75,000 (pro-rated), if the LFRA separates from the City effective January 2016.

The contract continues to require collateral of \$1,000,000 per year. Pinnacol will also continue to provide loss control services to the City, including but not limited to, industrial hygiene and training programs.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Renewal Agreement including 2015/16 Pinnacol Quote and Security Information

RENEWAL AGREEMENT

This Renewal Agreement is effective this 1st day of July, 2015, by and between the City of Loveland, Colorado (herein referred to as "**Debtor**") and Pinnacol Assurance (herein referred to as "**Secured Party**").

Whereas, the parties entered into a contract for workers' compensation insurance coverage effective on January 1, 2015 through December 31, 2015, comprised of all the documents attached hereto and incorporated herein as Exhibit 1 (the "January 1, 2015 Contract");

Whereas, pursuant to the January 1, 2015 Contract, the Debtor granted a perfected first security interest in certain Collateral (as defined in the Security Agreement contained within Exhibit 1) to secure all obligations of the Debtor including those under the January 1, 2015 Contract;

Whereas, the parties have agreed to certain changes to the January 1, 2015 Contract contained in Exhibits 2, 3 and 4, attached hereto and incorporated herein (as amended, the "Amended Contract"), which generally change the prospective workers' compensation insurance coverage to an annual period of July 1, 2015 through June 30, 2016; and

Whereas, the Debtor additionally agrees to grant a perfected first security interest in the Collateral to also secure all obligations of the Debtor under the Amended Contract.

Now, therefore, in consideration of the above recitals and the mutual covenants and agreements set forth herein, the adequacy and sufficiency of which is hereby mutually acknowledged, the parties agree as follows:

1. The workers' compensation insurance coverage under the Amended Contract shall be effective July 1, 2015 through June 30, 2016, absent sooner termination provided for in the Amended Contract or by law.

2. The Amended Contract amends the parties' respective obligations which accrue on and after July 1, 2015, but is not intended to and shall not alter or diminish their obligations arising or accruing prior to July 1, 2015 under the Contract or otherwise.

3. The Debtor amends the Security Agreement contained in the January 1, 2015 Contract (in Exhibit 1) to grant a perfected first security interest in the Collateral to also secure all obligations of the Debtor under the Amended Contract. In furtherance thereof, Debtor agrees to amend such Security Agreement, as follows:

- a. Exhibit 1 to the Security Agreement shall additionally include the documents comprising Exhibits 2, 3 and 4 to this Renewal Agreement.
- b. The Indebtedness (as defined in the Security Agreement) shall additionally include all the obligations of the Debtor under the Amended Contract.

4. Execution of this Renewal Agreement shall be deemed to and constitute the Debtor's agreement to and execution of Exhibit 4 (July 1, 2015 Mid-Size Policy Deductible

Endorsement).

5. This Renewal Agreement may be executed in a number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. This Renewal Agreement may also be scanned and stored in digital format, the terms of which it is agreed, may be enforced in the same manner as the hardcopy counterpart(s) and it is further agreed, that the parties waive any requirement that the hardcopy counterpart(s) be produced to prove authentication for any purpose. This Renewal Agreement may not be amended other than by a written instrument executed by the parties hereto.

6. This Renewal Agreement may be executed by electronic signature in accordance with C.R.S. § 24-71.3-101, *et seq.*

DEBTOR: CITY OF LOVELAND, COLORADO

By: _____

Title: _____

STATE OF _____)
COUNTY OF _____)
) SS.

The foregoing Renewal Agreement was acknowledged before me this _____ day of _____, 2015, by _____
(insert name of individual signing on behalf of Debtor)

Notary Public

Expiration date:

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

SECURED PARTY: PINNACOL ASSURANCE

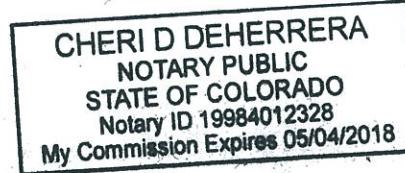
By: Amit ChaudhuriTitle: AVPSTATE OF Colorado

)

COUNTY OF Denver

)

)

The foregoing Renewal Agreement was acknowledged before me this 2nd day of
July, 2015, by Amit Chaudhuri
(insert name of individual signing on behalf of Secured Party)Cheri D. Deherrera
Notary PublicExpiration date: 5-41-2018

Exhibits

Exhibit 1 – January 1, 2015 Contract

Exhibit 2 – July 1, 2015 Policy Information

Exhibit 3 – June 18, 2015 Collateral Requirement Letter

Exhibit 4 – July 1, 2015 Mid-Size Policy Deductible Endorsement

Exhibit 1

RENEWAL
Services Contract

This Renewal is entered into this 28 day of January, 2015, *nunc pro tunc* December 31, 2014, by and between the City of Loveland, Colorado ("City") and Pinnacol Assurance ("Contractor").

Whereas, the parties entered into a contract for Workers' Compensation Insurance Coverage dated February 1, 2011 ("Contract"); and

Whereas, the Contract expires on December 31, 2014 pursuant to a Renewal dated January 1, 2014; and

Whereas, the parties desire to renew the Contract for an additional one-year term.

Now, therefore, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. The Contract is hereby renewed for a one-year term effective **January 1, 2015** to **December 31, 2015**.

2. The Contract price for this renewal term shall be an amount determined by the estimated renewal premium of **\$476,206** developed on a guaranteed cost basis with a \$75,000 per claim mid-sized deductible with no aggregate. Said premium shall be subject to final audit adjustment.

2. Exhibit A shall remain the same unless an amended Exhibit A is attached to this Renewal. Any such attachments shall be incorporated into the Contract as if fully set forth therein.

3. All other terms and conditions of the Contract shall remain in full force and effect according to the provisions thereof.

4. This Renewal may be executed by electronic signature in accordance with C.R.S. § 24-71.3-101 *et seq.*

Signed by the parties on the date written above.

City of Loveland, Colorado

By:

W. Michael Conroy

Title:

City Manager



ATTEST:

Jannie M. Weaver
 City Clerk Deputy

APPROVED AS TO FORM:

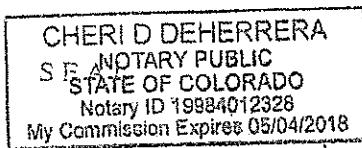
Shawn Clegg
 Assistant City Attorney

Contractor: Pinnacol Assurance

By: Alvaro ChavarriaTitle: Associate Vice President

STATE OF Colorado)
 COUNTY OF Denver)
)
) ss.

The foregoing Renewal Contract was acknowledged before me this 13rd day of
January, 2015 by Amit Chaudhury.
 (Insert name of individual signing on behalf of Contractor)



Cheri D. Deherrera
 Notary's official signature

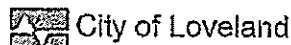
05-04-2018
 Commission expiration date

Exhibit A

See the following attached documents that are incorporated herein by reference:

1. Pinnacol Assurance Workers' Compensation presentation summary for City of Loveland for policy period 01/01/2015 – 01/01/2016; includes Workers Compensation Analysis and Workers Compensation Comparison (5 pages).
2. Worker's Compensation and Employers Liability Insurance Mid-Size Policy Deductible Endorsement for policy number 4110349 for policy period 01/01/2015 to 01/01/2016 (2 pages).
3. Letter from Pinnacol Assurance to City of Loveland dated December 2, 2014 regarding policy number 4110349, Review of the Collateral Amount for the Large Deductible Policy Years and Mid-size Deductible Policy Years (3 pages).
4. Letter from Pinnacol Assurance to City of Loveland dated January 2, 2015 regarding policy number 4110349 (4 pages).
5. Security Agreement; includes Exhibit 1, "Collateral Request Letter Agreement," and Exhibit 2, "Collateral" (9 pages).
6. Acknowledgment of Possession of Treasury Note (5 pages).

Exhibit A – Attachment 1



WORKERS' COMPENSATION

INSURER: PINNACOL ASSURANCE COMPANY

Coverage & Limits

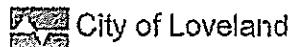
Workers' Compensation	Statutory
Employers' Liability --	
Bodily Injury by Accident - Each Accident	\$2,000,000
Bodily Injury by Disease - Each Employee	\$2,000,000
Bodily Injury by Disease - Policy Limit	\$2,000,000

States

COLORADO ONLY

Comment(s)

- a. Anyone excluded from this policy should review alternative benefits.
- b. Subcontractors: Most Workers' Compensation laws provide that you are responsible for injury to employees of your subcontractors who are not otherwise covered by Workers' Compensation insurance. In addition, your insurance company may charge additional premium for them as employees.
To avoid this situation, we recommend you require all subcontractors to provide Certificates of Insurance evidencing proper coverage, and these be maintained in your files.
- c. Rates for certain states are subject to pending rate change.
- d. If you commence operations in states other than those listed above, we must be notified or there will be no coverage in those states.
- e. Higher limits may be available. Please contact us if you are interested in pursuing them.
- f. The premium shown is auditable, and is based on the following payroll estimates:



Mid Size Deductible Program – Per Claim, No Aggregate

- ✓ Deductible \$75,000 (Per Claim, No Aggregate)
- ✓ Aggregate - None
- ✓ No loss handling charges
- ✓ Collateral Required; \$750,000
- ✓ \$25,000 Deductible Fund Required
- ✓ Paid claims will be billed monthly, with payment due in twenty days
- ✓ Policies subject to audit
- ✓ Rights reserved to request immediate reimbursement of any single claim payment exceeding half the loss fund amount

City of Loveland will be eligible for any general dividends issued by Pinnacol per policy year.

City of Loveland has received the following dividends from Pinnacol:

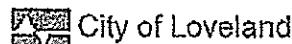
2009	\$47,491
2010	\$37,368
2011	\$45,828
2012	\$34,836

WORKERS COMPENSATION ANALYSIS

Rating Tier	2010-2011		2011-2012		2012-2013		2013-2014		2014-2015		2015-2016	
	Preferred Tier	Superior Tier	Estimated	No Tier								
Payrolls												
Firefighter Load Payrolls	\$46,499,919	\$48,143,964	\$48,256,060	\$51,003,579	\$52,882,699	\$55,923,615						
	\$4,742,679	\$4,982,657	\$4,923,349	\$5,407,394	\$5,587,578	\$5,775,175						
Manual Premium	\$852,759	\$788,696	\$832,691	\$921,493	\$1,195,206	\$1,376,466						
	(Audited)	(Audited)	(Audited)	(Audited)	(Unaudited)	(Unaudited)						
Deductible	\$200,000	\$200,000	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	
Deductible Premium	(5276,171)	(6240,868)	(5364,719)	(5403,614)	(5479,278)	(5608,398)						
Non-Deductible Prem-Terrorism	\$9,300	\$9,628	\$9,652	\$10,200	\$10,576	\$11,184						
Non-Deductible Prem-Policy Fee	\$165	\$165	\$165	\$195	\$195	\$195	\$195	\$195	\$195	\$195	\$195	
Non-Deductible Prem-Firefighters	\$45,502	\$40,061	\$41,356	\$45,206	\$46,606	\$47,458						
Total	\$347,050	\$318,221	\$329,433	\$364,656	\$402,981	\$476,206						
Broker Fee	\$25,000	\$25,000	None	None	None	None						
Total	\$372,050	\$343,221	\$329,433	\$364,656	\$402,981	\$476,206						
Collateral Requirement	\$950,597	\$857,943	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	
Claim Payment Fund	\$30,000	\$30,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	
Number of Claims	121	118	98	118	75	75						
Average Days to Report	7.35	5.16	5.46	3.66	3.68	3.68						
Incurred Claims	\$316,828	\$419,336	\$309,800	\$567,119	\$404,497	\$404,497						
Claims Over \$200,000	0	0	0	0	0	0						
Claims Over \$75,000	0	2	0	1	1	1						
Claims Over \$50,000	1	2	2	3	2	0						
Experience Mortifier	0.9	0.87	0.72	0.75	0.7	0.78						

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions.
 We recommend you read your insurance policies for specific and complete information.

1/1/2015- 1/1/2016



WORKERS COMPENSATION COMPARISON

	Preferred Tier	No Tier		
	2014/2015	2015/2016	Difference	Percent
Exposures				
Class 100810 Firefighters	\$ 5,487,578	\$ 5,695,175	\$ 207,597	4%
Rate	1.1204	1.2373	0.1169	10%
Class 100811 Firefighters	\$ 100,000	\$ 80,000	\$ (20,000)	-20%
Rate	1.1204	1.2373	0.1169	10%
Class 550605 Street/Road Construction	\$ 1,105,220	\$ 1,211,834	\$ 106,614	10%
Rate	5.6020	5.9976	0.3956	7%
Class 6325 Cable Laying	\$ 565,137	\$ 602,266	\$ 37,129	7%
Rate	3.1940	3.5400	0.3460	11%
Class 8810 Exclusively Office	\$ 16,193,307	\$ 17,425,224	\$ 1,231,917	8%
Rate	0.2057	0.2016	-0.0041	-2%
Class 9015 Building	\$ 1,267,276	\$ 1,488,814	\$ 221,538	17%
Rate	4,4770	4,9140	0.4370	10%
Class 7380 Drivers	\$ 468,275	\$ 489,078	\$ 20,803	4%
Rate	5.3603	5.6574	0.2971	6%
Class 7382 Bus Co; All other	\$ 407,215	\$ 458,916	\$ 51,701	13%
Rate	5.4208	5.7960	0.3752	7%
Class 7710 Firefighters	\$ 5,487,578	\$ 5,695,175	\$ 207,597	4%
Rate	4.4818	4.9493	0.4675	10%
Class 7720 Police Officers	\$ 8,504,283	\$ 8,872,972	\$ 368,689	4%
Rate	3.7147	4.0824	0.3677	10%
Class 8380 Auto Service	\$ 774,857	\$ 799,838	\$ 24,981	3%
Rate	2.8193	3.0744	0.2551	9%
Class 8869 Child Care Centers	\$ 94,948	\$ 101,530	\$ 6,582	7%
Rate	1.5730	1.8018	0.2288	15%
Class 9102 Parks NOC	\$ 1,471,249	\$ 1,617,900	\$ 146,651	10%
Rate	3.8960	4.4982	0.6022	15%
Class 9402 Street Cleaning	\$ 276,000	\$ 381,943	\$ 105,943	38%
Rate	4.0414	4.9644	0.9230	23%
Class 9410 Muicipal/Town	\$ 2,034,530	\$ 2,291,527	\$ 256,997	13%
Rate	1.5851	1.6254	0.0403	3%
Class 8811 Non-Salaried BD	\$ 3,120,000	\$ 3,120,000	\$ -	0%
Rate	0.0484	0.0504	0.0020	4%
Class 8811 Non-Salaried BD	\$ 143,910	\$ 140,400	\$ (3,510)	-2%
Rate	0.0484	0.0504	0.0020	4%
Class 92200 Cemetery Operations	\$ 170,829	\$ 129,990	\$ (40,839)	-24%
Rate	6.6066	7.8372	1.2306	19%
Class 9403 Garbage/Ashes/Refuse	\$ 1,294,530	\$ 1,301,471	\$ 6,941	1%
Rate	6.9938	7.5348	0.5410	8%
Class 7520 Waterworks Operations	\$ 1,572,389	\$ 1,833,116	\$ 260,727	17%
Rate	3.0250	3.1878	0.1628	5%
Class 7539 Electrical Light/Power	\$ 2,329,842	\$ 2,521,872	\$ 192,030	8%

 City of Loveland

Rate	1,6335	1,9152	0,2817	17%
Class 7580 Sewage Disposal Plant	\$ 1,593,371	\$ 1,291,303	\$ (302,068)	-19%
Rate	2,8919	3,2130	0,3211	11%
Class 7711 Firefighters (Volunteer)	\$ 26,400	\$ 21,260	\$ (5,140)	-19%
Rate	4,4818	4,9493	0,4674	10%
Class 8820 Attorneys	\$ 661,894	\$ 685,060	\$ 23,166	3%
Rate	0,2057	0,2268	0,0211	10%
Class 9060 Clubs-Country/Golf	\$ 1,248,895	\$ 1,220,130	\$ (28,765)	-2%
Rate	1,9118	2,0916	0,1798	9%
Class 9063 Health Clubs	\$ 2,070,764	\$ 2,221,996	\$ 151,232	7%
Rate	1,4762	1,5372	0,0610	4%
TOTAL	\$ 58,470,277	\$ 61,698,790	\$ 3,228,513	6%
 Ratable Manual Premium	 \$ 1,195,206	 \$ 1,376,466	 \$ 181,260	 15%
 Premium Debits/Credits	 	 	 	
Increased Limits	1,0140	1,0140	0,0000	0%
Deductible Discount (\$75,000)	0,5990	0,5580	-0,0410	-7%
Experience Modification	0,7000	0,7800	0,0800	11%
Experience Modification (\$)	\$ (219,798)	\$ (173,215)	\$ 46,583	-21%
Schedule Rating & Designated Provider	0,7500	0,7500	0,0000	0%
Cost Containment Credit	0,9500	0,9500	0,0000	0%
Premium Discount	0,9020	0,8990	-0,0030	0%
Annual Policy Fee	\$ 195	\$ 195	\$ -	0%
Terrorism Surcharge	\$ 5,288	\$ 5,592	\$ 304	6%
DTEC-Catastrophic Loss	\$ 5,288	\$ 5,592	\$ 304	6%
Firefighters Cancer Disease Load	\$ 62,606	\$ 71,458	\$ 8,852	14%
Estimate Annual Premium	\$ 402,981	\$ 476,206	\$ 73,225	18%

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions.
8
We recommend you read your insurance policies for specific and complete information.

1/1/2015-1/1/2016

Exhibit A – Attachment 2

Policy Number: 4110349

Policy Period: 01/01/2015 to 01/01/2016

Name of Insured: City of Loveland

endorsement effective: 01/01/2015 12:01 A.M. standard time

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE
MID-SIZE POLICY DEDUCTIBLE ENDORSEMENT
State of Colorado**

In consideration of the Estimated Deductible Premium, We agree with you that:

1. This agreement is between you and us. It does not change the rights of others under this Policy.
2. We will pay and You will reimburse Us for all payments we make on your behalf as benefits under Part One, Workers Compensation Insurance, of this Policy or as Damages under Part Two, Employers Liability Insurance, of this Policy, or the Limited Other States Coverage Endorsement, up to the amount of the Deductible as shown below:

A Per Claim Deductible of \$75,000 in benefits or damages because of bodily injury by accident or disease to any one employee.

3. We shall provide investigation, administration, adjustment, and settlement services, and shall provide for the defense of claims or "suits."
4. You will also pay all expenses, costs, and interest incurred in connection with the investigation, administration, adjustment, settlement, or defense of any claim or "suit", up to the deductible limit.
5. Under Part Two, Employers Liability Insurance, the terms of this Policy, including those with respect to (a) our right and duty with respect to the defense of those suits and (b) your duties in the event of an injury, apply irrespective of the application of any Deductible amount. The applicable limits of liability shall be reduced by the amount of any damages within any Deductible amount.
6. When used in this Endorsement

"Deductible Per Claim" shall mean the amount of benefits or damages because of bodily injury or bodily injury by disease to any one employee to which this insurance applies and which you have a duty to pay under this Policy.

"Aggregate Deductible" shall mean, the amount shown in the schedule of deductibles below as aggregate is the most you must reimburse us for the amounts as set forth in paragraphs two (2.) and four (4.) because of bodily injury for each policy period, limited to the amount of the aggregate.

You are obligated to reimburse us for losses and expenses equal to the full amount of the aggregate even if,

- (a) this endorsement is issued for a term of less than one (1) year or
- (b) the policy, or this endorsement, is cancelled for any reason by you or by us before the end of the policy period.

SCHEDULE OF DEDUCTIBLES

<u>Coverage</u>	<u>Deductible Amount</u>	<u>Basis</u>
Bodily Injury by Accident or Disease:	\$ 75,000	Each Claim
All Covered Bodily Injury Aggregate:	No Aggregate Stop	No Aggregate stop

7. Deductible Credit Factor: .558
8. All claims for benefits or damages because of bodily injury by the same accident to any one person will be considered as one claim when determining how the deductible amounts apply.

Recovery from Others:

We have your rights and the rights of persons entitled to the benefits of this insurance to recover all advances and payments, including those within the deductible amount, from anyone liable for the injury.

It is imperative that you do everything necessary to protect those rights for us and to help us enforce them.

If we recover any advances or payments made under this policy from anyone liable for the injury, the amount we recover, less expenses to recover against third parties, will first be applied to any payments made by us in excess of the deductible amount; then the remainder of that recovery, if any will be applied to reduce the deductible amount paid by you.

9. Cancellation:

If you fail to comply with the terms of this endorsement, we will apply the same cancellation terms of this policy as apply to non-payment of the policy premium.

If we cancel in accordance with the prior paragraph, your obligation to reimburse us as required by other terms of this endorsement is not waived, and we retain our right to enforce such deductible if necessary.

10. Your Duties:

- a. The first Named Insured shown in the Declarations agrees and is obligated on behalf of all Named Insureds to reimburse us for any deductible amounts that we expend.
- b. Each Named Insured is jointly and severally liable for all deductible amounts under this policy.

11. Deductible Calculations:

After three years from the expiration of the policy period we will complete a calculation based on incurred reserves on all open claims. You and we may agree that a bill based on the difference between paid and incurred on those claims is a final deductible calculation. If we agree, we will bill the difference between paid and incurred on those claims, and no other calculation will be made unless there is a clerical error in this final calculation. If we disagree, you will continue to pay monthly deductible bills as defined in the endorsement.

After four years from expiration of the policy period we will complete a calculation based on incurred reserves on all open claims. We will bill the difference between paid and incurred on those claims, and this adjustment will be the final adjustment. No other calculation will be made unless there is a clerical error in this final calculation.

You will pay losses monthly. We will determine the monthly loss payment using the following formula: Monthly payment = paid losses for immediately preceding month.

Payments will be due twenty days after the date of monthly billing. Cumulative payments will be subject to the maximum Aggregate limitation that would otherwise apply.

You will maintain a separate deposit with us in amount equal to the highest anticipated monthly payment. We will refund this deposit to you upon complete and final payment.

We may secure our interest in the amount of premium that is deferred under this payment plan, by means of an instrument that is acceptable to you and us.

12. All terms, conditions, and limitations of this Policy not inconsistent with this Endorsement continue to apply.

All terms, conditions, and limitations of this Policy not inconsistent with this Endorsement continue to apply.

I hereby declare that I have read, understand, and agree with all the terms, conditions and obligations of this, Mid-size deductible Endorsement, attached to and made a part of this policy.

Name of the Insured: City of Loveland, Colorado
 By: William P. Lovell Title: City Manager Date: 1-20-15

Exhibit A – Attachment 3

7501 E. Lowry Blvd.
Denver, CO 80230



www.pinnacol.com

December 2, 2014

City of Loveland
500 East Third St.
Loveland, CO 80537

RE: City of Loveland
Policy # 4110349

Review of the collateral amount for the large deductible policy years and mid-size deductible policy years.

01/01/2009 to 01/01/2010	Large Deductible Year	
Standard Premium		\$680,309
Deductible Factor		47.8%
Deductible Premium		\$325,187
Non-Subject premium		\$56,036
Aggregate claims factor		187%
Aggregate (claims only)		\$1,272,178
Loss Fund		\$30,000
Incurred Losses		\$480,857
Paid Losses		\$480,857
LCF		1.00
Converted Paid Losses		\$480,857
Financial Collateral Requirement (all claims closed)		\$0

01/01/2010 to 01/01/2011	Large Deductible Year	
Standard Premium		\$568,254
Deductible Factor		51.4%
Deductible Premium		\$292,083
Non-Subject premium		\$54,967
Aggregate claims factor		222%
Aggregate (claims only)		\$1,301,483
Loss Fund		\$30,000
Incurred Losses		\$321,400
Paid Losses		\$321,400
LCF		1.00
Converted Paid Losses		\$321,400
Financial Collateral Requirement (all claims closed)		\$0

01/01/2011 to 01/01/2012	Large Deductible Year	
Standard Premium		\$509,235
Deductible Factor		52.7%
Deductible Premium		\$268,367
Non-Subject premium		\$49,854

Page 2

Aggregate claims factor	255%
Aggregate (claims only)	\$1,318,916
Loss Fund	\$30,000
Incurred Losses	\$446,308
Paid Losses	\$446,308
LCF	1.00
Converted Paid Losses	\$446,308
Financial Collateral Requirement (all claims closed)	\$0

01/01/2012 to 01/01/2013 Mid-size Deductible Year

Manual Premium	\$832,691
Aggregate (No aggregate stop)	Unlimited
Incurred Losses	\$315,740
Paid Losses	\$284,884
Maximum Per Claim Liability	\$75,000
Collateral Requirement	\$75,000

01/01/2013 to 01/01/2014 Mid-size Deductible Year

Manual Premium	\$921,493
Aggregate (No aggregate stop)	Unlimited
Incurred Losses	\$573,729
Paid Losses	\$544,680
Maximum Per Claim Liability	\$75,000
Collateral Requirement	\$75,000

01/01/2014 to 01/01/2015 Mid-size Deductible Year

Manual Premium	\$1,195,206
Aggregate (No aggregate stop)	Unlimited
Incurred Losses	\$473,572
Paid Losses	\$246,571
Maximum Per Claim Liability	\$75,000
Collateral Requirement	\$300,000

01/01/2015 to 01/01/2016 Mid-size Deductible Year

Manual Premium	\$1,376,466
Aggregate (No aggregate stop)	Unlimited
Incurred Losses	\$
Paid Losses	\$
Maximum Per Claim Liability	\$75,000
Collateral Requirement	\$Unlimited

The collateral requirement for the policy period is indicated below. We will be using the following for the security requirement, with the attached agreement letter allowing for an increase in collateral security if required by losses.

	Indicated	Required
Policy Period 01/01/2009 to 01/01/2010	\$0	\$0
Policy Period 01/01/2010 to 01/01/2011	\$0	\$0
Policy Period 01/01/2011 to 01/01/2012	\$0	\$0
Policy Period 01/01/2012 to 01/01/2013	\$Unlimited	\$75,000
Policy Period 01/01/2013 to 01/01/2014	\$Unlimited	\$75,000
Policy Period 01/01/2014 to 01/01/2015	\$Unlimited	\$300,000
Policy Period 01/01/2015 to 01/01/2016	\$Unlimited	\$1,376,466

Page 3

Total Collateral Requirements	\$Unlimited	\$1,826,466
2015 Required Collateral	\$750,000	

Failure to provide the collateral as indicated will result in cancellation of the policy with notice for non-compliance. Security must be received in our office by 01/01/2015.

If you sign the attached escalation letter, stating that you will agree to increase the amount of the collateral when certain conditions exist, we will accept the "required" amount indicated above in the 2015 Required Collateral exhibit. Pinnacol Assurance is requesting the issuance of a Letter of Credit with regard to the collateralization of the Mid-Size Deductible renewal program for 01/01/2015

The Letter of Credit must be clean, irrevocable, drawn on a NAIC approved bank acceptable to Pinnacol, and contain an "evergreen" clause. The LOC amount is subject to review at twelve months, and at least annually thereafter, and according to statutory requirements may be adjusted if indicated.

Thank you for your attention to this important matter. If you have any questions please contact Kristin Trujillo 303-361-4325.

Sincerely,

Kristen Trujillo
Underwriter

Cc: Sarah Bensman, Business Director, Pinnacol Assurance
James Sumner, Finance Dept., Pinnacol Assurance

Exhibit A – Attachment 4



7501 E Lowry Blvd
Denver, CO 80230-7006
303-361-4000 / 800-873-7242
www.pinnacol.com

January 2, 2015
Policy #: 4110349

City of Loveland
200 N Wilson
Loveland, CO 80537

Flood & Peterson/ Ft Collins
P.O. Box 578
Greeley, CO 80632
(970) 266-8710

RE:Policy # 4110349

Dear Policyholder,

Thank you for choosing Pinnacol Assurance as your workers' compensation insurance provider and entrusting us with your business for another year. For your renewal, I have enclosed the following information about your policy and key services we can offer you:

- ❖ Your Policy Information Page is for the renewal period of 01/01/2015 through 01/01/2016. It provides an overview of the coverage and premium information reflected in your policy as of January 2, 2015. If there are changes to your company's information, please notify me immediately.
- ❖ The policy information page is not a substitute for a certificate of workers' compensation insurance. If you need a certificate of insurance, please call me directly or contact your agent.
- ❖ The Contact Information Page provides direct e-mail addresses and telephone numbers to connect with your dedicated service team members, who are anxious to serve you.
- ❖ The Billing and Payment Options Page reviews information on various payment plans. Choose the plan that is right for your company's financial needs.
- ❖ The Innovative Online Services information provides an overview of our Web services.

As Colorado's largest workers' compensation carrier, we are dedicated to delivering a variety of expert services and partnering with you to ensure the safety of your employees. Please contact your agent or a member of your Pinnacol Assurance service team at any time for assistance.

Again, thank you for choosing Pinnacol Assurance. I look forward to working with you.

Sincerely,

Kristin Trujillo, Underwriter
Phone (303) 361-4300 / (877) 361-4300
Fax (303) 361-5300 / (888) 329-2208



7501 E Lowry Blvd
Denver, CO 80230-7006
303-361-4000 / 800-873-7242
www.pinnacol.com

January 2, 2015
Policy #: 4110349

ITEM 1. INSURED

City of Loveland
200 N Wilson
Loveland, CO 80537

Flood & Peterson/ Ft Collins
P.O. Box 578
Greeley, CO 80632
(970) 266-8710

Affinity/10.00

ITEM 2. POLICY PERIOD: FROM: 01/01/2015 TO 01/01/2016
12:01 A.M. MOUNTAIN STANDARD TIME

ITEM 3. A. Workers' Compensation Insurance: Part One of the policy applies to the workers' compensation law of the states listed here:

COLORADO

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in Item 3 A. The limits of our liability under part two are:

BODILY INJURY BY ACCIDENT	\$2,000,000	EACH ACCIDENT
BODILY INJURY BY DISEASE	\$2,000,000	EACH EMPLOYEE
BODILY INJURY BY DISEASE	\$2,000,000	POLICY LIMIT

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:

NONE

(Please contact Pinnacol Assurance for information on coverage outside the state of Colorado)

D. This policy includes the attached endorsements and schedules:

349	Include/Change/Restore Increased Limits Of Liability
412	Debit/Credit Contingent/ Exp. Mod. Factor
510	Include Deductible Endorsement
511	Other State Endorsement
CAT09	Catastrophe (Other than Certified Acts of Terrorism)
TER09	Terrorism Risk Insurance Program Reauthorization Act

ITEM 4. We will determine the premium for this policy by our manuals of rules, classifications, rates and rating plans. All information required below is subject to verification and change by audit. The statements of estimated advanced premium are also a part of this policy.

Coverage Information for 4110349

ESTIMATED PREMIUM

Location: City of Loveland
200 N Wilson
Loveland, CO 80537

Period: 01/01/2015 - 01/01/2016

Class	RT	Description	Emp	Payroll	Rate	Prem Charge
100810	EM	FIREFIGHTERS CA	78.00	\$5,695,175	1.237320	\$70,468
100811	FIRE	FIREFIGHTERS CA	20.00	\$80,000	1.237320	\$990
550605	EM	STREET/ROAD CON	45.00	\$1,211,834	5.997600	\$72,681
632505	EM	CABLE LAYING-CO	16.00	\$602,266	3.540600	\$21,324
738005	EM	DRIVERS	11.00	\$489,078	5.657400	\$27,669
738205	EM	BUS CO; ALL OTH	17.00	\$458,916	5.796000	\$26,599
752005	EM	WATERWORKS OPER	31.00	\$1,833,116	3.187800	\$58,436
753905	EM	ELEC LIGHT/PWR	28.00	\$2,521,872	1.915200	\$48,299
758005	EM	SEWAGE DISPOS P	26.00	\$1,291,303	3.213000	\$41,490
771005	EM	FIREFIGHTERS &	78.00	\$5,695,175	4.949280	\$281,870
771105	VF	FIREFIGHTERS &	20.00	\$21,260	4.949280	\$1,052
772005	EM	POLICE OFFICERS	97.00	\$8,872,972	4.082400	\$362,230
838005	EM	AUTO SERVICE OR	14.00	\$799,838	3.074400	\$24,590
881005	EM	EXCLUSIVELY OFF	329.00	\$17,425,224	.201600	\$35,129
881105	BD	NON-SALARIED BD	200.00	\$3,120,000	.050400	\$1,572
881105	EO	NON-SALARIED BD	9.00	\$140,400	.050400	\$71
882005	EM	ATTORNEYS-ALL E	8.00	\$685,060	.226800	\$1,554
886905	EM	CHILD CARE CENT	23.00	\$101,530	1.801800	\$1,829
901505	EM	BUILDING OR PRO	30.00	\$1,488,814	4.914000	\$73,160
906005	EM	CLUBS-CNTRY, GO	101.00	\$1,220,130	2.091600	\$25,520
906316	EM	HEALTH CLUBS-AL	428.00	\$2,221,996	1.537200	\$34,157
910205	EM	PARKS N.O.C.-AL	55.00	\$1,617,900	4.498200	\$72,776
922005	EM	CEMETERY OPERAT	6.00	\$129,990	7.837200	\$10,188
940205	EM	STREET CLEANING	5.00	\$381,943	4.964400	\$18,961
940305	EM	GARBAGE/ASHES/R	30.00	\$1,301,471	7.534800	\$98,063
941005	EM	MUNICIPAL/TOWN/	34.00	\$2,291,527	1.625400	\$37,246
Total for City of Loveland				\$51,698,790		\$1,447,924

Description	Period	Adjustment	Amount
Ratable Manual Premium	01/01/2015 - 01/01/2016		\$1,376,466
Increased Limits (2,000,000/2,000,000/2,000,000)	01/01/2015 - 01/01/2016	.014	\$19,271
Deductible Discount (\$75000 Ded)	01/01/2015 - 01/01/2016	.558	\$608,398-
Experience Modification	01/01/2015 - 01/01/2016	.780	\$173,215-
Schedule Rating & Designated Provider	01/01/2015 - 01/01/2016	.750	\$153,531-
Cost Containment Credit	01/01/2015 - 01/01/2016	.950	\$23,030-
Premium Discount	01/01/2015 - 01/01/2016	.899	\$44,194-
Annual Policy Fee	01/01/2015 - 01/01/2016		\$195
Terrorism Insurance Coverage	01/01/2015 - 01/01/2016		\$5,592
Catastrophe Insurance Coverage	01/01/2015 - 01/01/2016		\$5,592
Firefighters Cancer Disease Load	01/01/2015 - 01/01/2016		\$71,458
Net Estimated Annual Premium	01/01/2015 - 01/01/2016		\$476,206

(continued on next page)

Policyholder Disclosure Notice of Terrorism and Catastrophe Insurance Coverage

Coverage for acts of terrorism is included in your policy. Under your existing coverage, any losses resulting from certified acts of terrorism would be partially reimbursed by the United States government. The United States government would pay 85% of our insured losses that exceed our insurer deductible.

Premium for terrorism is calculated on the basis of total payroll. The total Colorado payroll is divided by \$100 and multiplied by the approved terrorism rate, \$0.01 per \$100 of payroll. The calculation is expressed as (Colorado payroll / \$100 X Approved Terrorism Rate = Premium). This premium is not subject to any other modification including, but not limited to, premium discount, experience rating, schedule rating, or retrospective rating.

Additionally, all workers' compensation carriers are required to charge premium to cover large losses. Premium for Catastrophe (other than Certified Acts of Terrorism) is calculated on the basis of total payroll. The total Colorado payroll is divided by \$100 and multiplied by the approved Catastrophe (other than Certified Acts of Terrorism) rate, \$0.01 per \$100 of payroll. The calculation is expressed as (Colorado payroll/ \$100 X Catastrophe (other than Certified Acts of Terrorism) Value = Premium). This premium is not subject to any other modifications including, but not limited to, premium discount, experience rating, schedule rating, or retrospective rating.

This Policy Information Page reflects coverage, premium and payroll information as of the date of issuance.

Exhibit A – Attachment 5

SECURITY AGREEMENT

In consideration of the financial accommodations given, to be given, and continuing to be given, to the City of Loveland, a Colorado municipal corporation organized as a home rule city pursuant to Article 20 of the Colorado state constitution, whose address is 500 East Third Street, Loveland, Colorado 80537 ("Debtor"), by Pinnacol Assurance, whose address is 7501 E. Lowry Blvd., Denver, CO 80230, ("Secured Party") including without limitation the Secured Party's agreement to issue, maintain and/or renew as may be agreed by Secured Party, workers compensation insurance Policy #4110349, as amended by endorsements agreed to by the parties hereto, copies of which together with the parties' Collateral Requirement letter agreement, are attached hereto as Exhibit 1 and incorporated herein by reference and as may be hereafter amended (collectively, together with any other agreements reached by the parties, the "Insurance Contract"), and as collateral security for the payment of all debts, obligations, liabilities or charges now or hereafter existing, absolute or contingent, of the Debtor to Secured Party in any manner related to the Insurance Contract ("Indebtedness"), Debtor, pursuant to the provisions of the Uniform Commercial Code, hereby grants Secured Party a security interest in the U.S. Treasury Note described in Exhibit 2 ("Collateral"), attached hereto and incorporated herein by this reference. This Security Agreement ("Agreement") shall apply to all Indebtedness regardless of how the same accrues or is evidenced, and without the necessity of making any reference to this Agreement therein. Notwithstanding anything to the contrary contained herein of otherwise, Debtor agrees that this Agreement shall continue in full force and effect until such time that the Secured Party determines that all Indebtedness has unconditionally been fully and forever paid and satisfied.

Debtor hereby warrants, covenants, acknowledges and agrees that:

1. The security interest to Secured Party by Debtor shall apply to the Collateral whether or not title thereto or to any part thereof shall have passed or shall be deemed to have passed to Debtor. Debtor is the owner of the Collateral free from any adverse lien, security interest or encumbrance and Debtor will defend the Collateral against all claims and demands of all other persons at any time claiming the same or interest therein.
2. U.S. Bank National Association (the "Bank") is holding the Collateral as an agent for Secured Party for purposes of the transaction contemplated by this Agreement and that Secured Party either has or will obtain from Bank an authenticated record acknowledging that it holds possession of the Collateral for Secured Party's benefit thus perfecting Secured Party's security interest through possession of the Collateral in accordance with the Uniform Commercial Code. Further, Debtor shall execute the same, and that Secured Party will also record a UCC Financing Statement to additionally (and alternatively) perfect Secured Party's security interest in the Collateral.

3. The Collateral will be kept at the Bank:

U.S. Bank National Association
Institutional Trust & Custody
P.O. Box 5168, Mail Code DN-CO-TST
Denver, CO 80217

Debtor agrees not to move, sell, transfer, impair, encumber in any manner or take any action regarding the Collateral without Secured Party's prior written consent, which may be withheld in its sole discretion.

4. At the request of the Secured Party, Debtor will join with Secured Party in executing one or more financing statements, amendments, continuation and termination statements related to the Collateral and pursuant to the Uniform Commercial Code of the state in which the Debtor is conducting business in a form reasonably satisfactory to Secured Party.
5. Debtor agrees that upon any event of default defined herein, in addition to and without limitation of any other rights and remedies available to the Secured Party, the Secured Party shall be authorized and permitted to immediately obtain the original Collateral from Bank and to request that Bank immediately deliver to Secured Party the original Collateral, all without any further consent, agreement, or approval of the Debtor. Debtor hereby authorizes and agrees and hereby irrevocably appoints Secured Party and the Bank as its attorneys-in fact for purposes of providing any necessary endorsements to the Collateral Indebtedness of Debtor owed to Secured Party in accordance with the provisions of the Uniform Commercial Code. Debtor agrees and hereby instructs the Bank to deliver the original Collateral to Secured Party and endorse the original Collateral as requested by Secured Party upon any written request signed by an agent of Secured Party in which a default is claimed therein.
6. Debtor will keep the Collateral free from any adverse lien, security interest or encumbrance and in good order and repair and will not waste or destroy the Collateral or any part thereof. Secured Party may examine and inspect the Collateral at any reasonable time wherever located.
7. Debtor will pay promptly when due all taxes and assessments upon the Collateral or for its use and operation as well as all fees, charges and payments related to the Collateral. At its option, Secured Party may discharge taxes, liens, security interests, or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral or take any other action that is or may be necessary to preserve, access and realize upon the Collateral and/or any document necessary to enforce the Secured Party's right to the Collateral and/or the proceeds of or substitutions for the Collateral. Debtor agrees to reimburse Secured Party on demand for any payment made or any expense, fee or charge incurred by Secured Party pursuant to the foregoing authorization. Any and all sums so advanced or incurred by Secured Party with respect to the Collateral shall bear interest at

the rate of twelve percent (12%) per annum from the date such sums are advanced or incurred and said sums shall be secured by the Collateral.

8. Debtor shall be in default under this Agreement upon the happening of any of the following events or conditions:

a. Failure or refusal to pay or perform any obligation, agreement, covenant, or liability contained or referred to this Agreement or in the Insurance Contract, or in any invoice, statement, book account, account stated, note, or other evidence of the Indebtedness of Debtor to Secured Party including without limitation, any failure to pay any premiums or deductibles when due;

b. Any warranty, representation, statement or description made or furnished to Secured Party by or on behalf of Debtor which proves to have been false in any material respect;

c. Loss, theft, damage or destruction (unless adequate insurance has been maintained and proceeds applied pursuant to the terms of this Agreement), sale (except as herein expressly provided), or encumbrance to or of any of the Collateral, or the making of any levy, seizure or attachment thereto or thereon;

d. Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver on behalf of Debtor of any part of the property, assignment for the benefit of creditors by or the commencement of any proceeding under any bankruptcy or insolvency laws by or against debtor or any guarantor or surety of Debtor;

e. Any default or breach of any provision of the Insurance Contract; or

f. Any default or breach of any provision of this Agreement.

Upon such default and at any time thereafter, Secured Party may in its sole discretion and determination and without any further consent, agreement, approval or action of any nature whatsoever from the Debtor, pursue all remedies available at law or in equity to collect, enforce or satisfy the Indebtedness then owing including, without limitation, declare all Indebtedness immediately due and payable and take any other action that is or may be necessary to access and realize upon the Collateral and/or any document necessary to enforce the Secured Party's right to the Collateral and/or the proceeds or substitutions for the Collateral, and shall have the remedies of a secured party under the Uniform Commercial Code and as provided herein. Secured Party may require Debtor to assemble the Collateral and make it available to the Secured Party at a place to be designated by Secured Party, which is reasonably convenient to both parties. If applicable, Secured Party will give Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of the Debtor shown at the conclusion of this Agreement at least five (5) days before the time of sale or disposition. Debtor shall pay all collection and enforcement fees, including reasonable attorneys' fees, and any and all other reasonable

expenses, fees and costs incurred by Secured Party in enforcing this Agreement, the Insurance Contract or otherwise collecting any amount owed by Debtor or in liquidating or otherwise realizing upon the Collateral. Said amounts of fees, expenses and costs, including reasonable attorneys' fees shall be added to the unpaid balance of Debtor's Indebtedness and shall be due and owing from Debtor to Secured Party.

9. The Indebtedness is an independent obligation upon which Debtor's interest can be foreclosed upon an event of default. Debtor shall have no right of set-off or recoupment against the Indebtedness.
10. The parties agree that they will take whatever action or actions as are deemed by counsel for Secured Party to be reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Agreement, and to that end, the parties agree that they will execute, acknowledge, seal, and deliver any further instruments or documents which may be necessary to give force and effect to this Agreement or any of the provisions hereof, or to carry out the intent of this Agreement.
11. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Colorado. Jurisdiction for any disputes in any manner related to this Agreement or the Insurance Contract shall be exclusively in the State Courts for the City and County of Denver, State of Colorado. The party prevailing in any such lawsuit shall be entitled to recover from the losing party(s) its costs and expenses thereof including its attorneys' fees in a reasonable amount.
12. No waiver by Secured Party of any default shall operate as a waiver of any other default or the same default on a future occasion.
13. All rights of Secured Party hereunder shall inure to the benefit of its successors or assigns, and all obligations of Debtor shall bind Debtor's successors and assigns.
14. If there is more than one Debtor, their obligation hereunder shall be joint and several.
15. No provision of this Agreement may be modified except by a written agreement signed by both Debtor and Secured Party.
16. Debtor shall send a courtesy copy of any notices it sends to Secured Party related to this Agreement to Secured Party's counsel, Bart Burnett, Esq., Horowitz & Burnett, P.C., 1660 Lincoln, Suite 1900, Denver, Colorado 80264.
17. To the extent any provision of the Agreement is determined by a court of law to be unenforceable, such provision shall be modified to the extent necessary to make such provision enforceable to the fullest extent permitted by law. If no such modification will make the provision enforceable, such provision shall be stricken from this Agreement without invalidating the remainder of this Agreement.

18. If this Agreement is executed in several counterparts, each counterpart shall be deemed an original and all shall be deemed on instrument. Facsimile signatures shall be deemed original signatures. The undersigned hereby warrant and represent they are duly authorized to execute this Agreement on behalf of the party on whose behalf they sign and bind that party to the terms of this Agreement.

Dated this 26 day of January, 2015

DEBTOR:

City of Loveland, Colorado, a Municipal Corporation
500 East Third Street
Loveland, CO 80537

William D. Cahill
Authorized Agent

Name: William D. Cahill

Title: City Manager

ATTEST:

Jeanne M. Weaver
City Clerk Deputy



APPROVED AS TO FORM
BY: William C. H.
ASSISTANT CITY ATTORNEY

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

I, Jeannie M. Weaver, Deputy City Clerk of the City of Loveland, Colorado, do hereby certify that on William D. Cahill serves as the City Manager of the City of Loveland and is authorized to sign the Security Agreement by Section 2.24.040 of the Loveland Municipal Code. I also certify that I am the keeper of the original document.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Loveland this 20 day of January, 2015.

S E A L



Jeannie M. Weaver

Jeannie M. Weaver, CMC
Deputy City Clerk
City of Loveland, Colorado

Exhibit 1 to Security Agreement

Collateral Request Letter Agreement



7501 E. Lowry Blvd.
Denver, CO 80230-7006

www.pinnacol.com

December 2, 2014

City of Loveland

Subject: \$75,000 Mid-Size Deductible and Prior Large Deductible Years– Collateral Requirement

Policy Number: 4110349

Indicated financial collateral required to issue the policy on the mid size pricing option is without an aggregate. The indicated collateral based on a no aggregate basis is \$1,826,466 for the 01/01/2015 renewal. We have agreed to reduce the financial security required at the issuance of this policy renewal to \$25,000 loss fund and \$1,000,000 collateral requirement in return for an agreement stipulating increases using the following requirements.

City of Loveland and Pinnacol Assurance agree to increase the amount of the collateral if the incurred loss amounts less claim amounts already billed and received, within the deductible limits, reach or exceed 75% of the reduced collateral indicated above. At such point, you agree to increase the collateral to an amount equal to 150% of incurred loss amounts capped at the written deductible per claim, less deductible amounts already billed and received. The increased collateral will be delivered to Pinnacol Assurance within 30 days. Further collateral increases up to the full aggregate limitation will be required in the event the deductible incurred losses amounts capped at the written deductible per claim, less deductible amounts already billed and received exceed 75% of the new collateral amount. Failure to increase the collateral as indicated will result in cancellation of the policy with 10-day notice for non-payment.

This agreement must be signed by an officer of the City of Loveland capable of making such financial agreement.

If a Letter of Credit is to be used it must be clean, irrevocable, drawn on an NAIC approved bank acceptable to Pinnacol, and contain an "Evergreen" clause. The LOC amount is subject to review at twelve months, and at least annually thereafter, and according to statutory requirements may be adjusted if indicated.

Failure to provide the required collateral and loss fund by 01/01/2015 will result in the issuance of a 30 day notice of cancelation of the policy for failure to meet financial requirements of the alternative pricing program.

 2-9-15
City of Loveland
Signature of Officer (Print and Sign) Title

cc. Sarah Bensman, Business Director, Pinnacol Assurance
Kristin Trujillo, Underwriter Pinnacol Assurance
James Sumner, Finance Department, Pinnacol Assurance

Exhibit 2 to Security Agreement**Collateral**

U. S. Treasury Note 0.750%

Due: 10-31-2017

CUSIP Number: 912828TW0

PAR Amount: \$ 1,000,000.00

Price as of 12-31-2014: 99.2030%

Principal Value as of 12-31-2014: \$992,030.00

The Pledged Account at US Bank will also hold approximately \$104,800.00 of cash and equivalents to offset price and value fluctuations of the Treasury Note.

Exhibit A – Attachment 6

ACKNOWLEDGEMENT OF POSSESSION OF TREASURY NOTE

(“Agreement”)

To: U.S. Bank National Association (“Bank”)

Attention: U.S. Bank National Association
Institutional Trust & Custody
P.O. Box 5168, Mail Code DN-CO-TST
Denver, CO 80217
Attn: Tina Seberg

Re: Pinnacol Assurance (“Pinnacol”)

Effective Date: January 1, 2015

1. **Security Interest in Treasury Note.** Pinnacol has entered into an agreement with the City of Loveland Colorado (“City”) to issue, maintain and/or renew, as may be agreed upon by Pinnacol, workers’ compensation Insurance Policy #4110349, as amended by endorsements and other agreements agreed to by the parties, and as may be amended (collectively the “Insurance Contract”). To meet the requirement under the Insurance Contract and in accordance with the terms of a certain Security Agreement entered into by the City and Pinnacol, the City has granted Pinnacol a security interest in U.S. Treasury Note 0.75%, due 10-31-2017 CUSIP Number 912828TWO in the par value amount of \$1,000,000, and any and all proceeds therefrom and substitution thereof (the “Treasury Note”). The Treasury Note is being held by Bank. This is to evidence Pinnacol’s “possession” of the Treasury Note for purposes of perfection under the Uniform Commercial Code.

2. **Bank Acknowledgement.** Bank acknowledges that it holds possession of the Treasury Note for Pinnacol’s sole and exclusive benefit. Bank represents that it has not entered into any other agreement or acknowledgement regarding the Treasury Note, and to the best of its information and belief, no other party claims any interest in the Treasury Note except for Pinnacol. Bank acknowledges and agrees that for so long as this Agreement remains in effect: (i) Bank waives its rights of chargeback and setoff against the Treasury Note; and (ii) Bank does hereby expressly subordinate and make second, junior and inferior any and all liens, rights, powers, titles and interests of Bank in the Treasury Note to all liens, rights, titles and interests of Pinnacol in the Treasury Note, and Bank agrees that all liens, rights, titles and interests of Pinnacol in the Treasury Note shall be unconditionally first, prior and superior to all liens, rights, powers, titles and interest of Bank therein. Until all obligations of City owing to Pinnacol have been fully performed and paid in full as determined by Pinnacol, in cash: (i) Bank shall not take any action to enforce its rights of chargeback or setoff against the Treasury Note; (ii) Bank shall not take any action to enforce any security interest in or liens on, or exercise any other rights

with respect to, the Treasury Note, and (iii) Pinnacol may exercise any other rights with respect to the Treasury Note, free of any security interests of Bank, provided that Bank retains any rights it may have as a subordinated creditor with respect to the surplus, if any arising from any such disposition or enforcement.

3. Control of Treasury Note by Pinnacol. Bank, Pinnacol and City agree that Bank will comply only with written instructions originated by Pinnacol for the disposition of the Treasury Note ("Orders") without further instruction, agreement, consent or approval from City or any other person or entity and without regard to any inconsistent or conflicting Orders originated by City or any other person or entity to Bank.

4. Documentation. City hereby irrevocably agrees and instructs Bank, without obtaining any further instruction, agreement, consent or approval of any nature from the City, to deliver the Treasury Note and/or any document necessary to enforce Pinnacol's rights to the Treasury Note, to Pinnacol, and to endorse any document evidencing or representing the Treasury Note or take whatever actions are requested by Pinnacol upon any written request signed by an agent of Pinnacol ("Pinnacol Requests"). City hereby instructs Bank to accept Pinnacol Requests and Orders only from anyone reasonably purporting to be an agent of Pinnacol. The City hereby authorizes and agrees and irrevocably appoints Pinnacol and the Bank as its attorneys-in-fact for purposes of providing any necessary endorsement or taking any other action in order that the Pinnacol Requests be fully and timely honored and implemented.

5. Statements, confirmations, and notices of adverse claims inquiries by third parties. Bank will send copies of all statements and confirmations for the Treasury Note simultaneously to City and Pinnacol. Bank will use reasonable efforts promptly to notify Pinnacol and City if any other person or entity claims that they have an interest in the Treasury Note. If any third party inquires of Bank regarding the existence or non-existence of any adverse claim or interest in or to the Treasury Note, Bank agrees that it will use reasonable efforts promptly to advise such third party of the existence of this Agreement in favor of Pinnacol.

6. Release of Security Interest. This Agreement shall remain in full force and effect until Bank receives at the Banking Office listed herein, Pinnacol's written notice of release of its security interest in the Treasury Note. In connection with such termination, Bank shall follow Pinnacol Requests and Orders for payment, delivery or other disposition of the Treasury Note. Termination shall not affect the duties or responsibilities of any party hereto arising out of transactions occurring prior to termination.

7. Bank's Disclaimers; Scope. Pinnacol and City acknowledge and agree that Bank makes no representations or warranties, express or implied, concerning the validity, perfection, or priority of Pinnacol's security interest in the Treasury Note.

8. Indemnification of Bank by City. City agrees to indemnify, release, and hold Bank, its directors, officers, employees, attorneys, successors and assigns, harmless from and against any and all loss, liability, cost, damage and expense including, without limitation, legal and accounting fees and expenses, arising in any manner whatsoever out of Bank acting on Pinnacol Requests or Orders concerning the Treasury Note provided to Bank by Pinnacol excepting only losses, liabilities, costs, damages or expenses caused by Bank's gross negligence, willful misconduct or fraud.

9. Notices. Any notice given by any party under this Agreement shall be effective only if: (i) given in writing and (ii) personally delivered; sent by United States mail, postage prepaid; sent by overnight mail; or sent by fax as set forth herein or in Bank's records for City and Pinnacol, respectively. Pinnacol, City, or Bank may change the place to which notices, requests, and other communications are to be sent to it by giving written notice of such change to the others.

Notwithstanding the foregoing, Bank shall have no obligation to act upon any Pinnacol Requests or Orders, notice of default or other notices or instructions given to Bank hereunder until received in writing at the Banking office listed immediately below.

U.S. Bank National Association

Attention: Tina Seberg
Vice President
303-585-4571
Fax: 303-585-6255

City of Loveland

Attention: William D. Cihill, City Manager
500 E. Third Street, Suite 320
Loveland, CO 80537
Fax: 970-962-2900

Pinnacol Assurance

Attention: JAMES SUMNER
1501 E. LOWRY BLVD
DENVER CO 80233
Fax: 303-361-5875

With a copy to:

Bart B. Burnett, Esq. Horowitz & Burnett, P.C. 1660 Lincoln, Suite 1900
Denver, CO 80264
Fax: 303-996-8636

10. Successors and Assigns; Entire Agreement, Counterparts; Corporate/Partnership Authority; Headings; Non-Waiver; Amendments. The provisions of this Agreement shall be binding upon and inure to the benefit of Bank, Pinnacol and City and their respective successors and assigns and to no other person, firm or entity; provided, however, that neither Pinnacol nor City may assign any of their rights hereunder without Bank's prior written consent. Any and all other agreements between Pinnacol and the City concerning the Treasury Note shall remain in full force and effect. This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument. Each person signing on behalf of a party hereto warrants that such party has performed all corporate or partnership actions necessary to make this Agreement a binding obligation, enforceable in accordance with its terms. The headings of sections and paragraphs of this Agreement are for convenience and reference only, and they in no way define, limit or describe the scope or intent of this Agreement or the provisions of such sections or paragraphs. No consent or waiver, express or implied, by either party with respect to a failure of the other party to perform their obligations pursuant to the terms of this Agreement shall be deemed or construed to be a consent or a waiver as to any other rights which such party may have with respect to the performance of this Agreement. No modification, amendment or alteration of this Agreement will be effective against any party hereto unless specifically agreed upon in writing signed by that party.

11. Governing Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the substantive laws (other than conflict laws) of the State of Colorado. The parties hereto hereby (i) consent to the personal jurisdiction of the state and federal courts located in the State of Colorado in connection with any controversy related to or arising out of this Agreement; (ii) waive any argument that venue in any such forum is not convenient, (iii) agree that any litigation initiated in connection with this Agreement shall be venued in either the State or Federal courts located in Denver County, Colorado; and (iv) agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

12. Further Assurances. The parties agree that they and each of them will take whatever action or actions as are deemed by counsel for Pinnacol to be reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Agreement, and to that end, the parties agree that they will execute, acknowledge, seal, and deliver any further instruments or documents which may be necessary to give force and effect to this Agreement or any of the provisions hereto or to carry out the intent of this Agreement.

13. Severability. To the extent any provision of this Agreement is determined by a court of law to be unenforceable, such provision shall be modified to the extent necessary to make such provision enforceable to the fullest extent permitted by law. If no such modification will make the provision enforceable, such provision shall be stricken from this Agreement without invalidating the remainder of this Agreement.

THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.

IN WITNESS WHEREOF, this Agreement has been duly executed by each of the parties below and is effective as of the date first set forth hereinabove. The parties agree that a facsimile signature may substitute for and have the same legal effect as the original signature.



ATTEST:

Jannie M. Weare
Deputy CITY CLERK

U.S. BANK NATIONAL ASSOCIATION

By: Tina Seberg
Authorized Agent
Name: Tina Seberg
Title: Vice President

PINNACOL ASSURANCE

By: Amrit CHAUDHURI
Authorized Agent
Name: Amrit CHAUDHURI
Title: AVP

Exhibit 2



7501 E Lowry Blvd
Denver, CO 80230-7006
303-361-4000 / 800-873-7242
www.pinnacol.com

July 1, 2015
Policy #: 4110349

City of Loveland
200 N Wilson
Loveland, CO 80537

Flood & Peterson/ Ft Collins
P.O. Box 578
Greeley, CO 80632
(970) 266-8710

RE:Policy # 4110349

Dear Policyholder,

Thank you for choosing Pinnacol Assurance as your workers' compensation insurance provider and entrusting us with your business for another year. For your renewal, I have enclosed the following information about your policy and key services we can offer you:

- ◆ Your **Policy Information Page** is for the renewal period of 07/01/2015 through 07/01/2016. It provides an overview of the coverage and premium information reflected in your policy as of July 1, 2015. If there are changes to your company's information, please notify me immediately.
- ◆ The policy information page is not a substitute for a certificate of workers' compensation insurance. If you need a certificate of insurance, please call me directly or contact your agent.
- ◆ The **Contact Information Page** provides direct e-mail addresses and telephone numbers to connect with your dedicated service team members, who are anxious to serve you.
- ◆ The **Billing and Payment Options Page** reviews information on various payment plans. Choose the plan that is right for your company's financial needs.
- ◆ The **Innovative Online Services** information provides an overview of our Web services.

As Colorado's largest workers' compensation carrier, we are dedicated to delivering a variety of expert services and partnering with you to ensure the safety of your employees. Please contact your agent or a member of your Pinnacol Assurance service team at any time for assistance.

Again, thank you for choosing Pinnacol Assurance. I look forward to working with you.

Sincerely,

Kristin Trujillo, Underwriter
Phone (303) 361-4300 / (877) 361-4300
Fax (303) 361-5300 / (888) 329-2208



7501 E Lowry Blvd
Denver, CO 80230-7006
303-361-4000 / 800-873-7242
www.pinnacol.com

July 1, 2015
Policy #: 4110349

ITEM 1. INSURED

City of Loveland
200 N Wilson
Loveland, CO 80537

Flood & Peterson/ Ft Collins
P .O. Box 578
Greeley, CO 80632
(970) 266-8710

ITEM 2. POLICY PERIOD: FROM: 07/01/2015 TO 07/01/2016
12:01 A.M. MOUNTAIN STANDARD TIME

ITEM 3. A. Workers' Compensation Insurance: Part One of the policy applies to the workers' compensation law of the states listed here:

COLORADO

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in Item 3 A. The limits of our liability under part two are:

BODILY INJURY BY ACCIDENT	\$2,000,000	EACH ACCIDENT
BODILY INJURY BY DISEASE	\$2,000,000	EACH EMPLOYEE
BODILY INJURY BY DISEASE	\$2,000,000	POLICY LIMIT

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:

NONE

(Please contact Pinnacle Assurance for information on coverage outside the state of Colorado)

D. This policy includes the attached endorsements and schedules:

349 Include/Change/Restore Increased Limits Of Liability

412 Debit/Credit Contingent/ Exp. Mod. Factor

510 **Include Deductible Endorsement**

511 Other State Endorsement

CAT09 Catastrophe (Other than Certified Acts of Terrorism)

TRPRA: Terrorism Risk Insurance Program Reauthorization Act of 2015

ITEM 4. We will determine the premium for this policy by our manuals of rules, classifications, rates and rating plans. All information required below is subject to verification and change by audit. The statements of estimated advanced premium are also a part of this policy.

Coverage Information for 4110349**ESTIMATED PREMIUM**

Location: City of Loveland
200 N Wilson
Loveland, CO 80537

Period: 07/01/2015 - 01/01/2016

Class	RT	Description	Emp	Payroll	Rate	Prem Charge
100810	EM	FIREFIGHTERS CA	100.00	\$3,010,071	1.237320	\$37,244
100811	FIRE	FIREFIGHTERS CA	20.00	\$40,219	1.237320	\$498
550605	EM	STREET/ROAD CON	49.00	\$713,364	5.997600	\$42,785
632505	EM	CABLE LAYING-CO	15.00	\$322,707	3.540600	\$11,426
738005	EM	DRIVERS	11.00	\$250,977	5.657400	\$14,199
738205	EM	BUS CO: ALL OTH	15.00	\$232,743	5.796000	\$13,490
752005	EM	WATERWORKS OPER	44.00	\$1,155,035	3.187800	\$36,820
753905	EM	ELEC LIGHT/PWR	42.00	\$1,021,058	1.915200	\$19,555
758005	EM	SEWAGE DISPOS P	21.00	\$506,957	3.213000	\$16,289
771005	EM	FIREFIGHTERS &	100.00	\$3,010,071	4.949280	\$148,977
771105	VF	FIREFIGHTERS &	20.00	\$10,688	4.949280	\$529
772005	EM	POLICE OFFICERS	98.00	\$4,393,980	4.082400	\$179,380
838005	EM	AUTO SERVICE OR	14.00	\$423,897	3.074400	\$13,032
881005	EM	EXCLUSIVELY OFF	329.00	\$8,604,335	.201600	\$17,346
881105	BD	NON-SALARIED BD	200.00	\$1,568,525	.050400	\$791
881105	EO	NON-SALARIED BD	9.00	\$70,584	.050400	\$36
882005	EM	ATTORNEYS-ALL E	8.00	\$346,868	.226800	\$787
886905	EM	CHILD CARE CENT	23.00	\$47,956	1.801800	\$864
901505	EM	BUILDING OR PRO	29.00	\$785,240	4.914000	\$38,587
906005	EM	CLUBS-CNTRY, GO	122.00	\$647,816	2.091600	\$13,550
906316	EM	HEALTH CLUBS-AL	428.00	\$1,075,094	1.537200	\$16,526
910205	EM	PARKS N.O.C.-AL	63.00	\$835,640	4.498200	\$37,589
922005	EM	CEMETERY OPERAT	4.00	\$63,017	7.837200	\$4,939
940205	EM	STREET CLEANING	7.00	\$80,849	4.964400	\$4,014
940305	EM	GARBAGE/ASHES/R	31.00	\$656,496	7.534800	\$49,466
941005	EM	MUNICIPAL/TOWN/	40.00	\$1,331,371	1.625400	\$21,640
Total for City of Loveland				\$31,205,558		\$740,359

Period: 01/01/2016 - 07/01/2016

Class	RT	Description	Emp	Payroll	Rate	Prem Charge
100810	EM	FIREFIGHTERS CA	100.00	\$2,977,352	1.237320	\$36,839
100811	FIRE	FIREFIGHTERS CA	20.00	\$39,781	1.237320	\$492
550605	EM	STREET/ROAD CON	49.00	\$705,610	5.997600	\$42,320
632505	EM	CABLE LAYING-CO	15.00	\$319,200	3.540600	\$11,302
738005	EM	DRIVERS	11.00	\$248,248	5.657400	\$14,044
738205	EM	BUS CO: ALL OTH	15.00	\$230,213	5.796000	\$13,343
752005	EM	WATERWORKS OPER	44.00	\$1,142,480	3.187800	\$36,420
753905	EM	ELEC LIGHT/PWR	42.00	\$1,009,959	1.915200	\$19,343
758005	EM	SEWAGE DISPOS P	21.00	\$501,447	3.213000	\$16,111
771005	EM	FIREFIGHTERS &	100.00	\$2,977,352	4.949280	\$147,357
771105	VF	FIREFIGHTERS &	20.00	\$10,572	4.949280	\$523
772005	EM	POLICE OFFICERS	98.00	\$4,346,219	4.082400	\$177,430
838005	EM	AUTO SERVICE OR	14.00	\$419,289	3.074400	\$12,891
881005	EM	EXCLUSIVELY OFF	329.00	\$8,510,810	.201600	\$17,158
881105	BD	NON-SALARIED BD	200.00	\$1,551,475	.050400	\$782
881105	EO	NON-SALARIED BD	9.00	\$69,816	.050400	\$35
882005	EM	ATTORNEYS-ALL E	8.00	\$343,098	.226800	\$778

(continued on next page)

886905	EM	CHILD CARE CENT	23.00	\$47,434	1.801800	\$855
901505	EM	BUILDING OR PRO	29.00	\$776,705	4.914000	\$38,167
906005	EM	CLUBS-CNTRY, GO	122.00	\$640,775	2.091600	\$13,402
906316	EM	HEALTH CLUBS-AL	428.00	\$1,063,409	1.537200	\$16,347
910205	EM	PARKS N.O.C.-AL	63.00	\$826,557	4.498200	\$37,180
922005	EM	CEMETERY OPERAT	4.00	\$62,333	7.837200	\$4,885
940205	EM	STREET CLEANING	7.00	\$79,970	4.964400	\$3,970
940305	EM	GARBAGE/ASHES/R	31.00	\$649,360	7.534800	\$48,928
941005	EM	MUNICIPAL/TOWN/	40.00	\$1,316,899	1.625400	\$21,405
Total for City of Loveland				\$30,866,363		\$732,307

Description	Period	Adjustment	Amount
Ratable Manual Premium	07/01/2015 - 01/01/2016		\$702,617
Increased Limits (2,000,000/2,000,000/2,000,000)	07/01/2015 - 01/01/2016	1.014	\$9,837
Deductible Discount (\$75000 Ded)	07/01/2015 - 01/01/2016	.558	\$310,557-
Experience Modification	07/01/2015 - 01/01/2016	.780	\$88,417-
Schedule Rating & Designated Provider	07/01/2015 - 01/01/2016	.750	\$78,370-
Cost Containment Credit	07/01/2015 - 01/01/2016	.950	\$11,756-
Firefighters Cancer Disease Load	07/01/2015 - 01/01/2016		\$37,742
Ratable Manual Premium	01/01/2016 - 07/01/2016		\$694,976
Increased Limits (2,000,000/2,000,000/2,000,000)	01/01/2016 - 07/01/2016	1.014	\$9,730
Deductible Discount (\$75000 Ded)	01/01/2016 - 07/01/2016	.558	\$307,179-
Experience Modification	01/01/2016 - 07/01/2016	.780	\$87,456-
Schedule Rating & Designated Provider	01/01/2016 - 07/01/2016	.750	\$77,518-
Cost Containment Credit	01/01/2016 - 07/01/2016	.950	\$11,628-
Premium Discount	07/01/2015 - 07/01/2016	.899	\$44,872-
Annual Policy Fee	07/01/2015 - 07/01/2016		\$195
Terrorism Insurance Coverage	07/01/2015 - 07/01/2016		\$5,600
Catastrophe Insurance Coverage	07/01/2015 - 07/01/2016		\$5,600
Firefighters Cancer Disease Load	01/01/2016 - 07/01/2016		\$37,331
Net Estimated Annual Premium	07/01/2015 - 07/01/2016		\$485,875

Policyholder Disclosure Notice of Terrorism and Catastrophe Insurance Coverage

Coverage for acts of terrorism is included in your policy. Under your existing coverage, any losses resulting from certified acts of terrorism would be partially reimbursed by the United States Government. Beginning January 1, 2016:

- ◆ The current 85% Federal share of compensation under the TRIPRA decreases by one percentage point per calendar year until it is equal to 80%.
- ◆ The current program trigger for aggregate industry insured losses to exceed \$100 million increases by \$20 million per calendar year until it is equal to \$200 million.
- ◆ Notwithstanding above, the United States Government will not make any payment under the Act for any portion of Insured Losses that exceed \$100 billion.

Premium for terrorism is calculated on the basis of total payroll. The total Colorado payroll is divided by \$100 and multiplied by the approved terrorism rate, \$0.01 per \$100 of payroll. The calculation is expressed as (Colorado payroll / \$100 X Approved Terrorism Rate = Premium). This premium is not subject to any other modification including, but not limited to, premium discount, experience rating, schedule rating, or retrospective rating.

Additionally, all workers' compensation carriers are required to charge premium to cover large losses. Premium for Catastrophe (other than Certified Acts of Terrorism) is calculated on the basis of total payroll. The total Colorado payroll is divided by \$100 and multiplied by the approved Catastrophe (other than Certified Acts of Terrorism) rate, \$0.01 per \$100 of payroll. The calculation is expressed as (Colorado payroll / \$100 X Catastrophe (other than Certified Acts of Terrorism) Value = Premium). This premium is not subject to any other modifications including, but not limited to, premium discount, experience rating, schedule rating, or retrospective rating.

This Policy Information Page reflects coverage, premium and payroll information as of the date of issuance.



7501 E Lowry Blvd
Denver, CO 80230-7006
303-361-4000 / 800-873-7242
www.pinnacol.com

July 1, 2015
Policy #: 4110349

City of Loveland
200 N Wilson
Loveland, CO 80537

Flood & Peterson/ Ft Collins
P.O. Box 578
Greeley, CO 80632
(970) 266-8710

Your Pinnacol Team

Policy	4110349	Period	Period Effective Date	07/01/2015
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Policyholder City of Loveland

Team Large North

Local Phone 303-361-4300
Toll Free Phone 877-361-4300

Local Fax 303-361-5300
Toll Free Fax 888-329-2208

Position **Team Member**

Underwriter	Kristin Trujillo
Safety Consultant	David Knell
Claim Representative	James Mysza
Medical Claim Associate	Jessica Agosto
Nurse Case Manager	Sharon Maloney
Return To Work	Diane Koons
Marketing Representative	Joe Newhouse
Business Director	Sarah Bensman

Email

kristin.trujillo@pinnacol.com	303-361-4325
david.knell@pinnacol.com	303-361-4144
james.mysza@pinnacol.com	303-361-4320
jessica.agosto@pinnacol.com	303-361-4313
sharon.maloney@pinnacol.com	303-361-4337
diane.koons@pinnacol.com	303-361-4330
joe.newhouse@pinnacol.com	303-361-4763
sarah.bensman@pinnacol.com	303-361-4301

For questions about your policy, please contact your agent or your Pinnacol Assurance Underwriter.

As your team, we would like to sincerely thank you for your business. We look forward to serving you!

Billing and Payment Options

Pinnacol Assurance makes it easy to pay your workers' compensation insurance invoices by offering four payment options:

- Credit Card
- Electronic funds transfer (EFT)
- Online bill paying
- Mail directly to our bank's payment processing center

For added convenience, you can select the invoice (billing cycle) date that works best for your company.

Billing Cycle

You can change the invoice (billing cycle) date of your premium invoices to the day of the month that works best for you. By setting an invoice date, you maintain greater control over your company's cash flow.

Electronic Funds Transfer

Pinnacol Assurance's electronic funds transfer (EFT) process allows us to transfer funds on a specified date from your savings or checking account to pay your bill. To make a payment using EFT, visit Pinnacol.com, sign in and select Pay My Bill on the right side. Or contact our customer service team between 7 a.m. and 5:30 p.m.

Online Bill Paying

With online bill paying, you are able to manage your bills without having to worry about paper invoices or checks. If you elect to pay Pinnacol through your bank's online bill service you must:

- Use your policy number as your account number.
- Send payments to the payment processing center.
- Verify with your bank how long it will take for the payment to reach Pinnacol. Each bank has its own timeline.

Credit Card Payment

To pay with a personal or corporate credit card, call our customer service team between 7 a.m. and 5:30 p.m. Have your invoice and credit card number ready. These transactions are safe and secure.

Mail Directly to Bank

If you choose to mail payments, it is important to understand our billing process and timeline so that you may adjust your mailing accordingly. To avoid cancellation of your policy, keep the following time frames in mind to allow sufficient time for delivery and posting of your mailed payment.

- Invoices are due 20 days after issuance. Renewal invoices are mailed 35 days before the renewal month and are due 20 days after issuance. Payments must be mailed directly to the payment processing center.
- Please include the payment coupon with your payment and write your policy number on your check.
- Please allow sufficient time for delivery and posting of your payment to avoid possible cancellation. On average, payments are posted the day after they are received at the payment processing center.
- If payment is not received by the due date, a notice of cancellation is issued and sent via certified mail. Please ensure overdue balances are resolved by the cancellation due date so your policy remains in effect.

For more information about what Pinnacol Assurance's technology can offer you, call Pinnacol Assurance at 303-361-4000 or 800-873-7242, or contact your insurance agent.



7501 E Lowry Blvd
Denver, CO 80230-7006
303-361-4000 / 800-873-7242
www.pinnacol.com

Innovative Online Services

Pinnacol.com was designed to provide intuitive navigation, easy-to-order resources, a dedicated safety section, the ability to register for seminars, and even a comprehensive "En Español" section. The site was created to answer your questions about workers' compensation insurance and Pinnacol Assurance, as well as to make doing business with us as easy as possible.

Our online tools, which can be accessed at www.pinnacol.com, provide quick, secure ways for you to submit information or to access details about your policy once you register. To register, visit Pinnacol.com and click the orange button at the top of your screen. To complete the registration process, you will need your:

- Policy number
- Federal Tax ID Number (FEIN)
- Policy renewal date

Pinnacol.com provides access to all of the tasks you need to perform, including the following tools and information:

- Report an Injury
- Pay Your Bill
- Find a Medical Provider
- Request Certificate of Insurance
- Enter Wages or RTW Information
- Complete Your Audit Report
- Complete Your Payroll Report
- Manage OSHA Recordkeeping
- Monitor the progress of a claim
- Run claims summary reports by:
 - Accident Type
 - Body part
 - Injury type
 - Claim paid amounts by employee
 - Date of injury or date received
- View billing and policy information
- Run reports that summarize policy information
- E-mail your underwriter or claims representative
- View a list of certificate holders

For more information about what you can do online and how to register, call Pinnacol Assurance's Web Support Specialist at 303-361-4740 or 1-866-823-5466 (toll free), or contact your insurance agent.

Exhibit 3

7501 E. Lowry Blvd.
Denver, CO 80230



www.pinnacol.com

June 18, 2015

City of Loveland
500 East Third St.
Loveland, CO 80537

RE: City of Loveland
Policy # 4110349

Review of the collateral amount for the mid-size deductible policy years.

01/01/2012 to 01/01/2013 Mid-size Deductible Year

Manual Premium	\$832,691
Aggregate (No aggregate stop)	Unlimited
Incurred Losses	\$286,782
Paid Losses	\$286,782
Maximum Per Claim Liability	\$75,000
Collateral Requirement	\$0

01/01/2013 to 01/01/2014 Mid-size Deductible Year

Manual Premium	\$921,493
Aggregate (No aggregate stop)	Unlimited
Incurred Losses	\$555,578
Paid Losses	\$555,578
Maximum Per Claim Liability	\$75,000
Collateral Requirement	\$0

01/01/2014 to 01/01/2015 Mid-size Deductible Year

Manual Premium	\$1,234,989
Aggregate (No aggregate stop)	Unlimited
Incurred Losses	\$787,157
Paid Losses	\$454,035
Maximum Per Claim Liability	\$75,000
Collateral Requirement	\$333,122

01/01/2015 to 07/01/2015 Mid-size Deductible Year

Manual Premium	\$682,577
Aggregate (No aggregate stop)	Unlimited
Incurred Losses	\$100,961
Paid Losses	\$51,840
Maximum Per Claim Liability	\$75,000
Collateral Requirement	\$49,121

07/01/2015 to 07/01/2016 Mid-size Deductible Year

Page 2

Manual Premium		\$1,397,593
Aggregate (No aggregate stop)		Unlimited
Incurred Losses		\$
Paid Losses		\$
Maximum Per Claim Liability		\$75,000
Collateral Requirement		\$Unlimited

The collateral requirement for the policy period is indicated below. We will be using the following for the security requirement, with the attached agreement letter allowing for an increase in collateral security if required by losses.

	Indicated	Required
Policy Period 01/01/2012 to 01/01/2013	\$0	\$0
Policy Period 01/01/2013 to 01/01/2014	\$0	\$0
Policy Period 01/01/2014 to 01/01/2015	\$Unlimited	\$333,122
Policy Period 01/01/2015 to 01/01/2016	\$Unlimited	\$49,121
Policy Period 01/01/2015 to 01/01/2016	\$Unlimited	\$1,397,593
 Total Collateral Requirements	 \$Unlimited	 \$1,779,836
2015 Required Collateral	\$1,000,000	

Failure to provide the collateral as indicated will result in cancellation of the policy with notice for non-compliance. Security must be received in our office by 07/01/2015.

If you sign the attached escalation letter, stating that you will agree to increase the amount of the collateral when certain conditions exist, we will accept the "required" amount indicated above in the 2015 Required Collateral exhibit. Pinnacol Assurance is requesting the issuance of a Letter of Credit with regard to the collateralization of the Mid-Size Deductible renewal program for 07/01/2015

The Letter of Credit must be clean, irrevocable, drawn on a NAIC approved bank acceptable to Pinnacol, and contain an "evergreen" clause. The LOC amount is subject to review at twelve months, and at least annually thereafter, and according to statutory requirements may be adjusted if indicated.

Thank you for your attention to this important matter. If you have any questions please contact Kristin Trujillo 303-361-4325.

Sincerely,

Kristin Trujillo
Underwriter

Cc: Sarah Bensman, Business Director, Pinnacol Assurance
James Sumner, Finance Dept., Pinnacol Assurance

Exhibit 4

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE
MID-SIZE POLICY DEDUCTIBLE ENDORSEMENT
State of Colorado**

In consideration of the Estimated Deductible Premium, We agree with you that:

1. This agreement is between you and us. It does not change the rights of others under this Policy.
2. We will pay and You will reimburse Us for all payments we make on your behalf as benefits under Part One, Workers Compensation Insurance, of this Policy or as Damages under Part Two, Employers Liability Insurance, of this Policy, or the Limited Other States Coverage Endorsement, up to the amount of the Deductible as shown below:

A Per Claim Deductible of \$75,000 in benefits or damages because of bodily injury by accident or disease to any one employee.

3. We shall provide investigation, administration, adjustment, and settlement services, and shall provide for the defense of claims or "suits."
4. You will also pay all expenses, costs, and interest incurred in connection with the investigation, administration, adjustment, settlement, or defense of any claim or "suit", up to the deductible limit.
5. Under Part Two, Employers Liability Insurance, the terms of this Policy, including those with respect to (a) our right and duty with respect to the defense of those suits and (b) your duties in the event of an injury, apply irrespective of the application of any Deductible amount. The applicable limits of liability shall be reduced by the amount of any damages within any Deductible amount.
6. When used in this Endorsement

"Deductible Per Claim" shall mean the amount of benefits or damages because of bodily injury or bodily injury by disease to any one employee to which this insurance applies and which you have a duty to pay under this Policy.

"Aggregate Deductible" shall mean, the amount shown in the schedule of deductibles below as aggregate is the most you must reimburse us for the amounts as set forth in paragraphs two (2.) and four (4.) because of bodily injury for each policy period, limited to the amount of the aggregate.

You are obligated to reimburse us for losses and expenses equal to the full amount of the aggregate even if,

- (a) this endorsement is issued for a term of less than one (1) year or
- (b) the policy, or this endorsement, is cancelled for any reason by you or by us before the end of the policy period.

SCHEDULE OF DEDUCTIBLES

Coverage	Deductible Amount	Basis
Bodily Injury by Accident or Disease:	<u>\$ 75,000</u>	Each Claim
All Covered Bodily Injury Aggregate:	No Aggregate Stop	No Aggregate stop

7. Deductible Credit Factor: .558
8. All claims for benefits or damages because of bodily injury by the same accident to any one person will be considered as one claim when determining how the deductible amounts apply.

We have your rights and the rights of persons entitled to the benefits of this insurance to recover all advances and payments, including those within the deductible amount, from anyone liable for the injury.

It is imperative that you do everything necessary to protect those rights for us and to help us enforce them.

If we recover any advances or payments made under this policy from anyone liable for the injury, the amount we recover, less expenses to recover against third parties, will first be applied to any payments made by us in excess of the deductible amount; then the remainder of that recovery, if any will be applied to reduce the deductible amount paid by you.

9. Cancellation:

If you fail to comply with the terms of this endorsement, we will apply the same cancellation terms of this policy as apply to non-payment of the policy premium.

If we cancel in accordance with the prior paragraph, your obligation to reimburse us as required by other terms of this endorsement is not waived, and we retain our right to enforce such deductible if necessary.

10. Your Duties:

- a. The first Named Insured shown in the Declarations agrees and is obligated on behalf of all Named Insureds to reimburse us for any deductible amounts that we expend.
- b. Each Named Insured is jointly and severally liable for all deductible amounts under this policy.

11. Deductible Calculations:

After three years from the expiration of the policy period we will complete a calculation based on incurred reserves on all open claims. You and we may agree that a bill based on the difference between paid and incurred on those claims is a final deductible calculation. If we agree, we will bill the difference between paid and incurred on those claims, and no other calculation will be made unless there is a clerical error in this final calculation. If we disagree, you will continue to pay monthly deductible bills as defined in the endorsement.

After four years from expiration of the policy period we will complete a calculation based on incurred reserves on all open claims. We will bill the difference between paid and incurred on those claims, and this adjustment will be the final adjustment. No other calculation will be made unless there is a clerical error in this final calculation.

You will pay losses monthly. We will determine the monthly loss payment using the following formula: Monthly payment = paid losses for immediately preceding month.

Payments will be due twenty days after the date of monthly billing. Cumulative payments will be subject to the maximum Aggregate limitation that would otherwise apply.

You will maintain a separate deposit with us in amount equal to the highest anticipated monthly payment. We will refund this deposit to you upon complete and final payment.

We may secure our interest in the amount of premium that is deferred under this payment plan, by means of an instrument that is acceptable to you and us.

12. All terms, conditions, and limitations of this Policy not inconsistent with this Endorsement continue to apply.

All terms, conditions, and limitations of this Policy not inconsistent with this Endorsement continue to apply.

I hereby declare that I have read, understand, and agree with all the terms, conditions and obligations of this, Mid-size deductible Endorsement, attached to and made a part of this policy.

Name of the Insured: _____

By: _____ Title: _____ Date: _____



CITY OF LOVELAND

CITY CLERKS OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537

(970) 962-2322 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 8
MEETING DATE: 9/15/2015
TO: City Council
FROM: Tami Yellico, City Attorney
PRESENTER: Tami Yellico, City Attorney

TITLE:

A motion approving the settlement of the Pulliam quiet title litigation as set forth in the Stipulation and Joint Motion for Entry of Decree and authorizing the City Attorney to sign the Stipulation and Joint Motion for Entry of Decree

RECOMMENDED CITY COUNCIL ACTION:

Discussion; possible motion.

OPTIONS:

1. Discussion
2. Approval of Motion set forth above settling the Pulliam quiet title litigation.
3. Take no action.

SUMMARY:

This is an administrative action. It is recommended, if City Council desires to approve the settlement of the Pulliam quiet title litigation, that City Council approve the motion set forth above approving the Stipulation and Joint Motion for Entry of Decree ("Stipulation").

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

BACKGROUND:

On October 6, 1936, the City of Loveland (the "City") entered into a written agreement with D.T. Pulliam and L.B. Pulliam (the "Agreement"), pursuant to which the Pulliams agreed to pay the City the sum of \$20,000 in cash and to convey to the City a parcel of property located at 545 Cleveland Avenue for construction of a building to be used for "community purposes." The Agreement spelled out other conditions/details relating to the City's future use of the building. On October 27, 1936, the Pulliams conveyed title to the property to the City. The deed contained the "community purposes" requirement but not all of the conditions spelled out in the prior Agreement between the parties. The term "community purposes" was defined as including "religious, educational, agricultural, musical and civic meetings and gatherings, as well as conventions and assemblies and said term shall be construed to mean any legitimate purposes that would be for the uplift and benefit of the community or a substantial part of the citizens of the community." The deed (and Agreement) stated that, if the City ever ceased using the building for community purposes, title to the property would revert to the school district. The

Agreement also provided that it would be binding on the heirs and successors of the parties signing it.

In the two years following conveyance of the property, the City constructed the building contemplated by the Agreement and deed, now known as the Pulliam Community Building. It has been maintained by the City and used for numerous community purposes over the years. The Pulliam Community Building is now more than 70 years old and, due to its age and deteriorating condition, requires extensive updating and renovation. Current fire and building codes have restricted usage of the building in recent decades, including use of the auditorium.

City Council (the "Council") directed the City Attorney to clear the title restrictions on the Pulliam Building. With the cooperation of Evan Patterson, one of the Pulliam heirs, the City has identified over 150 heirs of the Pulliam grantors who arguably have an interest in the terms of the Agreement and conveyance of the property. Significant efforts were made by the City's retained litigation counsel to discuss disputed issues with representatives of the Pulliam heirs and the school district in an effort to streamline the matter for litigation. The City filed its quiet title/declaratory judgment complaint on March 25, 2015, asking the Court to determine that the City has fee simple absolute title to the property, free of the many conditions spelled out in the Agreement and deed, and that neither the school district nor the Pulliam heirs have any reversionary interest in the property. The City filed the suit as a class action complaint, asking the Court to certify the 150 Pulliam heirs as a class to be represented by Evan Patterson and Jon-Mark Patterson. The school district filed a disclaimer in the action and agreed to be bound by any determinations made by the Court.

The Pulliam heirs, through their representatives, asked for certain conditions which they would accept to settle their interests in the lawsuit. Those conditions were brought to the Council for consideration at the July 21, 2015 meeting, at which time Council gave the City's attorneys some further direction regarding concerns and potential terms for settlement. Following that meeting, the City's attorneys drafted a stipulation (attached) reflecting Council's comments and submitted it to the class representatives for the Pulliam heirs, who have indicated acceptance of the terms subject to final approval by City Council. The crux of the proposed settlement is contained in paragraph 19 of the attached Stipulation and includes the following eight provisions:

- a) that the City is the rightful owner and holds fee simple absolute title to the subject property described in the deed, subject only to the conditions expressly contained within this stipulation and set forth below;
- b) that the City's title to the property is not subject to any interest of the school district; to the extent the 1936 deed attempted to create some conditional interest in the subject property on the part of the school district, said conditional interest violated the Rule Against Perpetuities and was invalid, and has otherwise been disclaimed by the school district;
- c) that the Pulliams retained no reversionary interest when they conveyed title to the City via the 1936 deed, and thus their heirs have no such reversionary interest in or title to the subject property;
- d) that the City's title to the property is subject only to an obligation to use the property for community purposes, so as to honor the intent of the original gift

from D.T. Pulliam and L.B. Pulliam. The term 'community purposes' was defined in the 1936 agreement as including "religious, educational, agricultural, musical and civic meetings and gatherings, as well as conventions and assemblies and said term shall be construed to mean any legitimate purposes that would be for the uplift and benefit of the community or a substantial part of the citizens of the community." The parties recognize that this definition of "community purposes" is not precise, and for purposes of this stipulation and hereon after, the parties agree that said term shall be construed liberally in order to allow the City as much flexibility as possible in its future ownership and use of the property for the benefit of the community;

- e) further, the City may convey its title to the subject property to another owner, including but not limited to a public authority, charitable trust and/or foundation, non-profit corporation or other similar entity, that has in its governing documents a public or charitable purpose, provided that any subsequent conveyance is subject to the same limitations as set forth in paragraph 19(d) above. However, any such conveyance by the City shall be made only upon the passing of an ordinance by the Loveland City Council authorizing said conveyance, after compliance with all public notice and public comment requirements set forth in Section 4-9 of the City Charter;
- f) the City may also enter into agreements with any public authority, charitable trust and/or foundation, non-profit corporation or other similar entity, that has in its governing documents a public or charitable purpose, for the operation, maintenance and/or repair and renovation of the subject property, without transferring title to said property;
- g) though the Pulliam descendants and heirs have no reversionary interest or title to the subject property, the City agrees that the class representatives, namely Evan Patterson and Jon-Mark Patterson, or any other legal representative of the certified class appointed by the Larimer County District Court, shall have the right to enforce the terms of this stipulation. Any legal action brought to enforce its terms must be filed in the Larimer County District Court, and the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs incurred in said dispute. This provision for an award of fees and costs is enforceable only by the City and any legally appointed representative of the certified class; and
- h) that aside from the specific conditions and terms expressly stated in this stipulation, the parties agree there are no other conditions or limitations on the City's use, maintenance, operation, repair and renovation of the subject property, whether or not contained in the 1936 agreement or deed.

The Pulliam representatives have signed the Stipulation. If Council approves the Stipulation, it will be filed with the Court and it is expected the Court will enter a decree embodying that

Stipulation once further minor procedural tasks are completed. The Stipulation will resolve all disputed issues associated with the quiet title/declaratory judgment action.

REVIEWED BY CITY MANAGER:

William D. Cain

LIST OF ATTACHMENTS:

1. Class Action Complaint to Quiet Title and for Declaratory Judgment
2. Stipulation and Joint Motion for Entry of Decree

DISTRICT COURT, LARIMER COUNTY, COLORADO
 Larimer County Justice Center
 201 Laporte Avenue, Suite 100
 Fort Collins, CO 80521-2761
 (970) 498-6100

Plaintiff: THE CITY OF LOVELAND, a Colorado Municipal Corporation,

v.

Defendants: THOMPSON SCHOOL DISTRICT R2-J, f/k/a SCHOOL DISTRICT NO. 2, LARIMER COUNTY, COLORADO; EVAN PATTERSON, as an individual and on behalf of all others similarly situated; JON-MARK PATTERSON, as an individual and on behalf of all others similarly situated; and all unknown persons who claim an interest in the subject matter of this action.

COURT USE ONLY

Case Number:

Courtroom:

Kimberly B. Schutt, #25947
 WICK & TRAUTWEIN, LLC
 323 South College Avenue, Suite 3
 P.O. Box 2166, Fort Collins, CO 80522
 Phone Number: (970) 482-4011
 E-mail: kschutt@wicklaw.com
 FAX Number: (970) 482-8929

**CLASS ACTION COMPLAINT TO QUIET TITLE AND
 FOR DECLARATORY JUDGMENT**

COMES NOW the Plaintiff, the City of Loveland ["the City"], by and through its counsel, Loveland Deputy City Attorney Judith Yost Schmidt and WICK & TRAUTWEIN, LLC, and pursuant to C.R.C.P. 23, C.R.C.P. 105, C.R.C.P. 57(a) and C.R.S. §13-15-1015, brings this class action to quiet title and for declaratory judgment as to the property described herein.

In support hereof, the City states, alleges and avers as follows:

I. PARTIES, VENUE AND JURISDICTION

1. The City is a municipal corporation with a legal address of 500 E. Third Street, Loveland, Larimer County, Colorado.

2. On information and belief, Defendant Thompson School District R2-J [f/k/a School District No. 2, Larimer County, Colorado] is a public school district in good standing in Colorado. Its principal place of business is located at 800 S. Taft Avenue, Loveland, Larimer County, Colorado.

3. Defendant Evan Patterson is the great-grandson of D.T. Pulliam and L.B. Pulliam and is a proposed representative of a class of approximately 150 living Pulliam heirs. Evan Patterson resides at 11 Gregg Drive in Loveland, Larimer County, Colorado.

4. Defendant Jon-Mark Patterson is a great-great-grandson of D.T. Pulliam and L.B. Pulliam and is a proposed representative of a class of approximately 150 living Pulliam heirs. Jon-Mark Patterson resides at 320 East 3rd Street in Loveland, Larimer County, Colorado.

5. Venue and jurisdiction in this court are proper pursuant to C.R.C.P. 98(a) and C.R.C.P. 105, as the property at issue is located in Larimer County, Colorado.

II. GENERAL ALLEGATIONS

6. Plaintiff hereby incorporates paragraphs 1 through 5 as if fully set forth herein.

7. On October 6, 1936, the City of Loveland entered into a written agreement with D.T. Pulliam and L.B. Pulliam ["the Pulliams"], a copy of which is attached hereto as *Exhibit 1*.

8. Pursuant to said agreement, the Pulliams promised to pay the City the sum of \$20,000 in cash and to convey to the City a parcel of property described as the South Seventy (70) feet of Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), Block Eleven (11), in Loveland, Colorado ["the property"]. According to the agreement, the promised conveyance was "to contain suitable restriction clauses to the effect that said property is to be used solely for community purposes and should said premises be used for any other purpose, then the title to revert to the Board of Education of School District No. 2, Larimer County, Colorado, and its successors, and said deed also is to contain a provision that the North wall of any building erected thereon may be used by the First Baptist Church."

9. Upon receipt of said conveyance and the \$20,000 cash, the agreement provided that the City was to erect a "suitable building containing an auditorium, meeting rooms in the basement and other rooms and meeting halls...", according to specified architectural plans, on the property conveyed by the Pulliams.

10. The agreement further provided that, when construction of the building was completed, the City would "properly maintain and operate said building and the various parts thereof" and "allow the same to be used for 'community purposes only.'" The term 'community purposes' was defined as including "religious, educational, agricultural, musical and civic meetings and gatherings, as well as conventions and assemblies and said term shall be construed to mean any legitimate purposes that would be for the uplift and benefit of the community or a substantial part of the citizens of the community."

11. The agreement contained various other provisions regarding the construction and use of the proposed building, including the following:

- a) the City could charge a reasonable rental fee for use of said building or any part thereof;
- b) part of the building could be used for City offices and display rooms, provided that said use did not interfere with the use of the community halls or meeting places;
- c) that the building constructed by the City would be of good, safe and sound construction, showing first class workmanship, with good and satisfactory acoustics in the auditorium;
- d) that the City would properly furnish and equip said building with suitable and adequate furniture and furnishings of the best grade materials; that the auditorium would be furnished with first class equipment and merchandise, to be seated with stationary individual opera chairs; and that when completed, furnished and equipped, the building would be suitable and satisfactory as a place for community meetings;
- e) when completed and furnished, the building would be suitable, practical and adequate for the purposes contemplated by the agreement, including an auditorium on the upper floor and a dining hall and meeting halls in the basement beneath the auditorium;
- f) that the City would allow no use of said auditorium which will be of such a nature as to damage or injure said auditorium, its furniture, fixtures and equipment; and
- g) that the auditorium would be used for no purpose which necessitates the removal of chairs.

12. The agreement also stated that it would be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

13. Subsequent to the signing of this agreement, the Pulliams completed the promised payment of \$20,000 in cash and conveyance of the property by way of a deed dated October 27, 1936, transferring title to said property to the City of Loveland. Said deed is attached hereto as *Exhibit 2*.

14. The deed contained a restriction clause stating, "This property is conveyed to the second party for use by the second party for community purposes only and should the second party use said premises for any other purpose or purposes then and in that event the above property shall revert to and become the property of the Board of the Education of School District No. 2 of Larimer County, Colorado, subject to the same restriction as herein contained."

15. The deed contained one additional restriction clause stating, "Second party accepts this conveyance with the understanding and agreement that the North wall of any building erected thereon may be attached to and used by the First Baptist Church as the south wall of any building hereafter constructed by said Church."

16. The deed did not contain any other restriction clauses, nor did it incorporate by reference or make any mention of the earlier written agreement between the parties dated October 6, 1936. The deed also contained no language giving the Pulliams a reversionary interest of any kind in the subject property.

17. In the two years that followed, the City (through a Works Progress Administration project) did construct a building containing an auditorium and meeting rooms on the property conveyed by the Pulliams in the deed attached hereto as Exhibit 2. Since that time, the building commonly known in Loveland as "the Pulliam Community Building," has been maintained by the City and used for numerous community purposes over the years.

18. The Pulliam Community Building is now more than 70 years old and, due to its age and deteriorating condition, requires extensive updating and renovation. Current fire and building codes have restricted usage of the building in recent decades, including use of the auditorium.

19. The City, through its City Council, is studying various options for the future of the Pulliam Community Building. However, because of the conditions contained in the deed and in the prior agreement dated October 6, 1936, there is uncertainty and debate as to what restrictions apply to the City's current and future ownership and use of the building and underlying property.

20. As alleged below, the City seeks to have the Court settle this uncertainty and debate by declaring that the October 6, 1936 agreement for conveyance of the subject property merged into the later signed deed, such that any restrictions not specifically contained in the deed do not legally restrict the City's current and future ownership and use of the subject property. Alternatively, or in addition, the City seeks to have the Court declare that said restrictions have become ineffectual and/or inequitable to enforce against the City over time and with changing conditions.

21. Also, the City brings this action seeking to have the Court declare a) the City has fee simple absolute title to the subject property free of any restrictions that the property be used for community purposes; b) any limitation over to the school district contained in the deed is contrary to the common law "Rule Against Perpetuities" and thus void as a matter of law; and c) the Pulliams and their heirs do not have any reversionary interest in the subject property.

22. The parties named in the caption above may claim some right, title or interest in the subject property adverse to the City, and the claims of said Defendants are without foundation or right.

23. There may be persons interested in the subject matter of this action whose names cannot be inserted herein because said names are unknown to the City, although diligent efforts have been made to ascertain the names of said persons; such persons have been made defendants and designated "all unknown persons who claim any interest in the subject matter of this action"; so far as the City's knowledge extends, the interests of the unknown parties are derived through some one or more of the named Defendants, or as heirs of the Pulliams.

III. CLASS ACTION ALLEGATIONS

24. Plaintiff hereby incorporates paragraphs 1 through 23 as if fully set forth herein.

25. Pursuant to Colorado Rule of Civil Procedure 23, Plaintiff brings this class action and seeks certification of the claims and certain issues in this action against Evan Patterson and Jon-Mark Patterson, individually and as representatives of a class of defendants defined as the living descendants and heirs of D.T. Pulliam and L.B. Pulliam.

26. The 1936 agreement between the City of Loveland and the Pulliams, for which the City seeks this Court's review and declaratory relief, was expressly made binding on the parties' heirs, executors, administrators, successors and assigns of the parties thereto.

27. On information and belief, there are approximately 150 living descendants and heirs of D.T. Pulliam and L.B. Pulliam, living in various parts of the United States, including Colorado and about 22 other states. The extremely large number of heirs in the class would make joinder of all of them as defendants in this suit impractical, if not impossible.

28. All of the living descendants and heirs of D.T. Pulliam and L.B. Pulliam are similarly situated, such that the questions of law and fact to be determined in action for declaratory relief and to quiet title are common to all members of the defendant class, and affect them equally. Those questions include, but are not limited to, the following:

a) whether the October 6, 1936 agreement between D.T. Pulliam and L.B. Pulliam and the City of Loveland, for conveyance of the subject property, merged into the later signed deed, such that any restrictions not specifically contained in the deed do not legally restrict the City's current and future ownership and use of the subject property;

- b) Alternatively, or in addition, whether said restrictions have become ineffectual and/or inequitable to enforce against the City over time and with changing conditions;
- c) Whether the City has fee simple absolute title to the subject property, free of any conditions or restrictions on its use of the property;
- d) Whether the limitation over to the school district contained in the deed is contrary to the common law "Rule Against Perpetuities" and thus void as a matter of law; and
- e) Whether the Pulliams (and their heirs) had any reversionary interest in the subject property.

29. The individually named defendants and proposed representatives, Evan Patterson and Jon-Mark Patterson, are lineal descendants and heirs of D.T. Pulliam and L.B. Pulliam, and have claims or defenses which are typical of the proposed class.

30. The individually named defendants and proposed representatives, Evan Patterson and Jon-Mark Patterson, are knowledgeable of the subject matter of this action, do not have any interests which conflict with the proposed class of Pulliam heir defendants, and are expected to fairly and adequately represent and protect the interests of the members of the defendant class.

31. Certification of this class action is appropriate under Colorado Rule of Civil Procedure 23(b)(2) because the City is acting on grounds generally applicable to the class, and seeking declaratory relief with respect to the class as a whole.

32. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit the interests of a large number of Pulliam heirs to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of this action against the numerous individuals.

IV. FIRST CLAIM FOR RELIEF (Declaratory Judgment)

- 33. Plaintiff hereby incorporates paragraphs 1 through 32 as if fully set forth herein.
- 34. As indicated above, D.T. Pulliam and L.B. Pulliam entered into an agreement with the City dated October 6, 1936, for payment of cash and a conveyance of real property to the City for construction of a building to be used for community purposes.
- 35. With regard to actual conveyance of title to the property, the agreement stated that "said conveyance to contain suitable restriction clauses to the effect that said property is to be used solely for community purposes and should said premises be used for any other purpose,

then the title to revert to the Board of Education of School District No. 2, Larimer County, Colorado, its successors, and said deed also is to contain a provision that the North wall of any building erected thereon may be used by the First Baptist Church."

36. Thereafter, on October 27, 1936, D.T. Pulliam and L.B. Pulliam signed a deed conveying title to the subject property to the City. The only restriction clauses contained in the deed provided as follows:

a. "This property is conveyed to the second party for use by the second party for community purposes only and should the second party use said premises for any other purpose or purposes then and in that event the above property shall revert to and become the property of the Board of Education of School District No. 2 of Larimer County, Colorado, subject to the same restriction as herein contained."

b. "Second party accepts this conveyance with the understanding and agreement that the North wall of any building erected thereon may be attached to and used by the First Baptist Church as the south wall of any building hereafter constructed by said Church."

37. Pursuant to the doctrine of merger, any restrictions contained in the 1936 agreement between the City have merged into the later signed deed, such that any restrictions not specifically contained in the deed are not currently valid and binding on the City.

38. Alternatively, or in addition, to the extent that certain restrictions contained the agreement or the deed did not merge into the deed and do still apply to the City's ownership and use of the property, said restrictions have become ineffectual with time because of changes in conditions which have defeated the purpose of said restrictions and would now be inequitable to enforce against the City.

39. Under the Uniform Declaratory Judgment Act, C.R.S. §13-51-101, *et seq.*, and C.R.C.P. 57, this Court has jurisdiction to resolve uncertainty and debate regarding the conditions applying to the City's use and ownership of the subject property. The Court may determine and declare the relative rights, duties and obligations under the agreement and deed to terminate the uncertainty and any possible controversy giving rise to this proceeding.

40. Upon information and belief, all persons or entities known to plaintiff who might have a claim or any interest which would be affected by the requested declaration of rights have been named as parties to this proceeding. Though the deed contained a provision regarding First Baptist Church, said church does not own or occupy the adjoining property to the north and, on information belief, has not occupied the property since 1959. The subject deed did not confer a benefit on First Baptist Church in language which applied to subsequent owners of the adjoining property or that could be construed as a covenant running with the land.

41. Pursuant to C.R.C.P. 57(m), the court has the authority to order a speedy hearing of the action and may advance same on its calendar. Advancing this action on the court's calendar is appropriate and is requested so that the City Council can make timely decisions regarding the subject property.

V. **SECOND CLAIM FOR RELIEF**
(Quiet Title)

42. Plaintiff hereby incorporates paragraphs 1 through 41 as if fully set forth herein.

43. The City is in rightful possession of and holds title to the subject property, pursuant to the 1936 deed attached hereto as Exhibit 2.

44. The deed from the Pulliams to the City provided that the subject property should be used for community purposes only, and "should the second party use said premises for any other purpose or purposes then and in that event the above property shall revert to and become the property of the Board of the Education of School District No. 2 of Larimer County, Colorado, subject to the same restriction as herein contained."

45. Any interest of the school district in the subject property created by said deed was a conditional "limitation over" that was and still is contingent on an uncertain event, for which it was and still is impossible to determine when or if title will ever vest in the school district.

46. Accordingly, the clause in the 1936 deed creating a conditional interest for the school district in the subject property is too remote and is invalid, as it violates the rule against perpetuities. Said rule provides that no interest in real property is valid unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.

47. Because the conditional interest of the school district is invalid, the City should be declared to have a fee simple absolute interest in the subject property; there is no reversionary interest in the Pulliams or their heirs.

48. The City thus brings this action pursuant to C.R.C.P. 105 to quiet its title to the subject property and to remove any potential cloud upon its title caused by this invalid conditional interest of the school district.

49. The City also brings this action under C.R.C.P. 105 to remove any potential clouds upon its title to the subject property caused by the uncertainty as to what restrictions, if any, apply to the City's ownership and use of said property.

50. On information and belief, the defendants named above may claim some right, title or interest in the subject property adverse to the City, and may further contest removal of

any restrictions on the City's ownership and use of said property, and the claims of said Defendants are without foundation or right.¹

VI. PRAYER FOR RELIEF

WHEREFORE, the City prays for an order certifying that the action may be maintained as a class action, and certifying defendants Evan Patterson and Jon-Mark Patterson as representatives of the defendant class of Pulliam heirs; and

The City further prays for declaratory and equitable relief under C.R.C.P. 57 and C.R.C.P. 105, as follows:

- a) that the City is the rightful owner and holds fee simple absolute title to the subject property legally described in paragraph 8 above and in the deed attached as Exhibit 2, free of any conditions or restrictions on its use of the property;
- b) that the City's title to the property is not subject to the conditional interest of the school district, which is invalid;
- c) that the Pulliams retained no reversionary interest when they conveyed title to the City via the 1936 deed, and thus their heirs have no such reversionary interest in the subject property;
- d) that the City's title to the property is free of any restrictions contained in the 1936 agreement with D.T. Pulliam and L.B. Pulliam or in the deed itself, by virtue of the doctrine of merger and/or because the restrictions contained in said agreement and deed have become ineffectual and/or inequitable to enforce against the City over time and due to changing conditions;
- e) that the defendants have no interest, estate, or claim of any kind whatsoever in the subject property, forever barring and enjoining the defendants from asserting any claim, title or interest thereto;
- f) that the City is entitled to all costs incurred in obtaining the relief sought herein, to the extent that any of the defendants do not file a disclaimer and contest the City's claims made in this action;
- g) and for such other relief as to the Court may deem proper.

¹ On information and belief, the board of directors for the defendant school district voted at its March 18, 2015 board meeting to authorize its attorney to file a disclaimer on its behalf in this action. Therefore, the school district may not be asserting any right, title or interest adverse to the City of Loveland.

Plaintiff does not demand a jury trial.

DATED this 25th day of March, 2015.

WICK & TRAUTWEIN, LLC

This document was served electronically pursuant to C.R.C.P. 121 §1-26. The original pleading signed by Kimberly B. Schutt is on file at the offices of Wick & Trautwein, LLC

By: s/Kimberly B. Schutt
Kimberly B. Schutt, #25947
Attorneys for Plaintiff

And

Judy Yost Schmidt, #13451
Loveland Deputy City Attorney
500 East Third Street, Suite 330
Loveland, CO 80537

Plaintiff's Address:

City of Loveland
500 E. Third Street
Loveland, CO 80537

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100</p> <p>Plaintiff: THE CITY OF LOVELAND, a Colorado Municipal Corporation,</p> <p>v.</p> <p>Defendants: THOMPSON SCHOOL DISTRICT R2-J, f/k/a SCHOOL DISTRICT NO. 2, LARIMER COUNTY, COLORADO; EVAN PATTERSON, as an individual and on behalf of all others similarly situated; JON-MARK PATTERSON, as an individual and on behalf of all others similarly situated; and all unknown persons who claim an interest in the subject matter of this action.</p>	<p>COURT USE ONLY</p>
<p>Kimberly B. Schutt, #25947 WICK & TRAUTWEIN, LLC 323 South College Avenue, Suite 3 P.O. Box 2166, Fort Collins, CO 80522 Phone Number: (970) 482-4011 E-mail: kschutt@wicklaw.com FAX Number: (970) 482-8929</p>	<p>Case Number: 2015 CV 30229 Courtroom: 5C</p>
<p>STIPULATION AND JOINT MOTION FOR ENTRY OF DECREE</p>	

COMES NOW the Plaintiff, The City of Loveland [“City”], and Jon-Mark Patterson and Evan Patterson, as individuals and appointed representatives of the class of Pulliam heirs, and respectfully submit the following stipulation and joint motion for entry of decree:

1. On March 25, 2015, the City filed a Class Action Complaint for Quiet Title and Declaratory Judgment relating to certain real property located at 545 Cleveland Avenue, legally described as the South Seventy (70) feet of Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), Block Eleven (11), in Loveland, Colorado. A copy of said Complaint is attached hereto as ***Exhibit 1*** and incorporated herein by reference.

2. The Complaint named as defendants the Thompson School District R2-J, formerly known as School District No. 2, Larimer County, Colorado, as well as Evan Patterson and Jon-Mark Patterson, individually and on behalf of a proposed class of heirs of D.T. Pulliam and L.B. Pulliam. The Complaint also named as defendants all unknown persons who may claim an interest in the subject of the action.

3. The action arose out of an October 6, 1936 agreement between the City and D.T. Pulliam and L.B. Pulliam. Pursuant to said agreement (attached hereto as part of the Complaint and incorporated herein by reference), the Pulliams promised to pay the City the sum of \$20,000 in cash and to convey to the City the above-described parcel of property. According to the agreement, the promised conveyance was "to contain suitable restriction clauses to the effect that said property is to be used solely for community purposes and should said premises be used for any other purpose, then the title to revert to the Board of Education of School District No. 2, Larimer County, Colorado, and its successors, and said deed also is to contain a provision that the North wall of any building erected thereon may be used by the First Baptist Church."

4. Upon receipt of said conveyance and the \$20,000 cash, the agreement provided that the City was to erect a "suitable building containing an auditorium, meeting rooms in the basement and other rooms and meeting halls..." , according to specified architectural plans, on the property conveyed by the Pulliams.

5. The agreement further provided that, when construction of the building was completed, the City would "properly maintain and operate said building and the various parts thereof" and "allow the same to be used for 'community purposes only.'" The term 'community purposes' was defined as including "religious, educational, agricultural, musical and civic meetings and gatherings, as well as conventions and assemblies and said term shall be construed to mean any legitimate purposes that would be for the uplift and benefit of the community or a substantial part of the citizens of the community."

6. The agreement contained various other provisions regarding the construction and use of the proposed building, including the following:

- a) the City could charge a reasonable rental fee for use of said building or any part thereof;
- b) part of the building could be used for City offices and display rooms, provided that said use did not interfere with the use of the community halls or meeting places;
- c) that the building constructed by the City would be of good, safe and sound construction, showing first class workmanship, with good and satisfactory acoustics in the auditorium;
- d) that the City would properly furnish and equip said building with suitable and adequate furniture and furnishings of the best grade materials; that the auditorium would be furnished with first class equipment and merchandise, to be seated with stationary individual opera chairs; and that when completed, furnished and equipped, the building would be suitable and satisfactory as a place for community meetings;

e) when completed and furnished, the building would be suitable, practical and adequate for the purposes contemplated by the agreement, including an auditorium on the upper floor and a dining hall and meeting halls in the basement beneath the auditorium;

f) that the City would allow no use of said auditorium which will be of such a nature as to damage or injure said auditorium, its furniture, fixtures and equipment; and

g) that the auditorium would be used for no purpose which necessitates the removal of chairs.

7. The agreement also stated that it would be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

8. Subsequent to the signing of this agreement, the Pulliams completed the promised payment of \$20,000 in cash and conveyance of the property by way of a deed dated October 27, 1936, transferring title to said property to the City of Loveland. Said deed is attached hereto with the Complaint and incorporated by reference.

9. The deed contained a restriction clause stating, "This property is conveyed to the second party for use by the second party for community purposes only and should the second party use said premises for any other purpose or purposes then and in that event the above property shall revert to and become the property of the Board of the Education of School District No. 2 of Larimer County, Colorado, subject to the same restriction as herein contained."

10. The deed contained one additional restriction clause stating, "Second party accepts this conveyance with the understanding and agreement that the North wall of any building erected thereon may be attached to and used by the First Baptist Church as the south wall of any building hereafter constructed by said Church."

11. The deed did not contain any other restriction clauses, nor did it incorporate by reference or make any mention of the earlier written agreement between the parties dated October 6, 1936. The deed also contained no language giving the Pulliams a reversionary interest of any kind in the subject property.

12. In the two years that followed, the City (through a Works Progress Administration project) did construct a building containing an auditorium and meeting rooms on the property conveyed by the Pulliams in the deed attached hereto as Exhibit 2. Since that time, the building, commonly known in Loveland as "the Pulliam Community Building," has been maintained by the City and used for numerous community purposes over the years.

13. The Pulliam Community Building is now more than 70 years old and, due to its age and deteriorating condition, requires extensive updating and renovation. Current fire and

building codes have restricted usage of the building in recent decades, including use of the auditorium.

14. The City thus filed this class action to have the Court settle uncertainty and debate as to what restrictions apply to the City's current and future ownership and use of the building and underlying property. The City prayed for declaratory and equitable relief under C.R.C.P. 57 and C.R.C.P. 105, as follows:

- a) that the City is the rightful owner and holds fee simple absolute title to the subject property described in the deed, free of any conditions or restrictions on its use of the property;
- b) that the City's title to the property is not subject to the conditional interest of the school district, which is invalid;
- c) that the Pulliams retained no reversionary interest when they conveyed title to the City via the 1936 deed, and thus their heirs have no such reversionary interest in the subject property;
- d) that the City's title to the property is free of any restrictions contained in the 1936 agreement with D.T. Pulliam and L.B. Pulliam or in the deed itself, by virtue of the doctrine of merger and/or because the restrictions contained in said agreement and deed have become ineffectual and/or inequitable to enforce against the City over time and due to changing conditions;
- e) that the defendants have no interest, estate, or claim of any kind whatsoever in the subject property, forever barring and enjoining the defendants from asserting any claim, title or interest thereto;
- f) that the City is entitled to all costs incurred in obtaining the relief sought herein, to the extent that any of the defendants do not file a disclaimer and contest the City's claims made in this action;
- g) and for such other relief as to the Court may deem proper.

15. The school district accepted and waived service of process, and filed a disclaimer of any interest in the subject property on April 15, 2015. The disclaimer stated that "the school district understands, by not appearing in this action, it will be bound by the determination made by the Court as to issues stated in the class action complaint with regard to the subject property for which it is filing this disclaimer."

16. Evan Patterson and Jon-Mark Patterson also signed waivers and acceptances of service, which were filed by the Court on May 6, 2015.

17. Though the deed contained a provision regarding First Baptist Church, said church does not own or occupy the adjoining property to the north and, on information belief, has not occupied the property since 1959. The subject deed did not confer a benefit on First Baptist Church in language which applied to subsequent owners of the adjoining property or that could be construed as a covenant running with the land. Therefore, First Baptist Church has not been made a party to this action.

18. The Court entered an order granting the motion for class action certification, finding that all of the requirements of C.R.C.P. 23(a) have been satisfied and that the provisions of C.R.C.P. 23(b)(2) were met. In doing so, the Court certified as a class of defendants all of the descendants and heirs of D.T. Pulliam, to be represented by Evan Patterson and Jon-Mark Patterson, with all relief granted in this action to be binding on the class of defendants.

19. Evan Patterson and Jon-Mark Patterson, in their capacity as class action representatives, have entered into good faith negotiations with representatives of the City in an effort to resolve the disputed issues set forth in the Complaint. Pursuant to these discussions, the parties have agreed to the following terms and hereby jointly move the Court for entry of the proposed decree submitted herewith which embodies these terms:

- a) that the City is the rightful owner and holds fee simple absolute title to the subject property described in the deed, subject only to the conditions expressly contained within this stipulation and set forth below;
- b) that the City's title to the property is not subject to any interest of the school district; to the extent the 1936 deed attempted to create some conditional interest in the subject property on the part of the school district, said conditional interest violated the Rule Against Perpetuities and was invalid, and has otherwise been disclaimed by the school district;
- c) that the Pulliams retained no reversionary interest when they conveyed title to the City via the 1936 deed, and thus their heirs have no such reversionary interest in or title to the subject property;
- d) that the City's title to the property is subject only to an obligation to use the property for community purposes, so as to honor the intent of the original gift from D.T. Pulliam and L.B. Pulliam. The term 'community purposes' was defined in the 1936 agreement as including "religious, educational, agricultural, musical and civic meetings and gatherings, as well as conventions and assemblies and said term shall be construed to mean any legitimate purposes that would be for the uplift and benefit of the community or a substantial part of the citizens of the community." The parties recognize that this definition of "community purposes" is not precise, and for purposes of this stipulation and hereon after, the parties agree that said term shall be construed liberally in order to allow the City as much flexibility as possible in its future ownership and use of the property for the benefit of the community;

e) further, the City may convey its title to the subject property to another owner, including but not limited to a public authority, charitable trust and/or foundation, non-profit corporation or other similar entity, that has in its governing documents a public or charitable purpose, provided that any subsequent conveyance is subject to the same limitations as set forth in paragraph 19(d) above. However, any such conveyance by the City shall be made only upon the passing of an ordinance by the Loveland City Council authorizing said conveyance, after compliance with all public notice and public comment requirements set forth in Sections 4-7 and 4-9 of the City Charter;

f) the City may also enter into agreements with any public authority, charitable trust and/or foundation, non-profit corporation or other similar entity, that has in its governing documents a public or charitable purpose, for the operation, maintenance and/or repair and renovation of the subject property, without transferring title to said property;

g) though the Pulliam descendants and heirs have no reversionary interest or title to the subject property, the City agrees that the class representatives, namely Evan Patterson and Jon-Mark Patterson, or any other legal representative of the certified class appointed by the Larimer County District Court, shall have the right to enforce the terms of this stipulation. Any legal action brought to enforce its terms must be filed in the Larimer County District Court, and the prevailing party shall be entitled to an award of reasonable attorney's fees and costs incurred in said dispute. This provision for an award of costs and fees is enforceable only by the City and any legally appointed representative of the certified class; and

h) that aside from the specific conditions and terms expressly stated in this stipulation, the parties agree there are no other conditions or limitations on the City's use, maintenance, operation, repair and renovation of the subject property, whether or not contained in the 1936 agreement or deed.

20. By their signature below, the attorney and parties certify that they have authority to enter into this stipulation and that said stipulation shall be forever binding on the parties to this action and on the certified class. Said stipulation was properly approved by the Loveland City Council at its regular meeting on _____, 2015, for which proper public notice was given, at which time Council authorized its attorneys to sign this stipulation.

21. The parties further agree that the Court can approve this settlement as a proper compromise of this class action litigation pursuant to C.R.C.P. 23(e). By signing below, the class representatives certify that they have given reasonable notice of the terms of this compromise to the members of the certified class, and that the stipulation and decree shall be forever binding on the certified class of descendants and heirs of D.T. and L.B. Pulliam.

22. Notice of this action was published in the Loveland *Reporter Herald* as reflected in the affidavit of publication filed with the Court on August 4, 2015. Any other unknown defendants who may have an interest in this action were required to file an answer or other responsive pleading on or before August 31, 2015. No such answers or responsive pleadings

were filed, and appropriate steps were taken to comply with the Servicemembers' Civil Relief Act, 50 U.S.C. § 501, et seq., with military counsel appointed to represent any unknown defendants who may be in the military. The parties to this stipulation therefore represent in good faith that there are no other parties believed to have an interest in this litigation, and the Court may adopt this stipulation and enter the proposed decree submitted herewith in order to bring this litigation to a conclusion.

WHEREFORE, the parties to this stipulation agree that these terms are reasonable and just and resolve the disputed issues set forth in the City's Complaint filed March 25, 2015 in the above-captioned action, and respectfully request the Court to approve this stipulation and enter the proposed decree submitted herewith.

RESPECTFULLY SUBMITTED this ____ day of September, 2015.

THE CITY OF LOVELAND

By: _____

Tami Yellico, #19417
Loveland City Attorney
500 East Third Street, Suite 330
Loveland, CO 80537

WICK & TRAUTWEIN, LLC
Kimberly B. Schutt, #25947
Attorneys for Plaintiff City of Loveland

THE CERTIFIED CLASS OF DESCENDANTS AND
HEIRS OF D.T. PULLIAM AND L.B. PULLIAM, BY ITS
APPOINTED REPRESENTATIVES:

By: _____

Jon-Mark C. Patterson
Patterson Tabert Law Offices
1624 Topaz Drive
Loveland, Colorado 80537
(970) 612-1208

By: _____

Mr. Evan Patterson
11 Gregg Drive
Loveland, CO 80538
(970) 669-7010



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: **9**
MEETING DATE: 9/15/2015
TO: City Council
FROM: Leah Browder, Public Works Director
PRESENTER: Leah Browder, Public Works Director

TITLE:

Resolution Supporting Participation by the City of Loveland in a U.S. Highway 34 Coalition

RECOMMENDED CITY COUNCIL ACTION:

Approve the Resolution.

OPTIONS:

1. Adopt the action as recommended, which will keep the concept moving forward with Loveland's participation.
2. Deny the action, which would result in Loveland not participating in the coalition.
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration

SUMMARY:

This is an administrative action. The City of Loveland (City) has been asked to participate in the formation of a U.S. Highway 34 Coalition and to continue to participate as an ongoing member in the Coalition. Evans, Greeley, Johnstown and Windsor have all approved Resolutions, along with Weld and Larimer Counties, supporting the creation of the Coalition. This item consists of a Resolution supporting and encouraging the creation of the Coalition; pledging to have a City Council Member and a staff member in attendance at Coalition meetings; pledging that the City Council will consider matching funds for grants as part of the City's budget process should such opportunities arise; and stating that the City Council will seek to integrate its efforts with other regional transportation coalitions.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

It is anticipated that this may result in the future need to provide funds. The amount is not currently known nor is any funding currently set aside for this use.

BACKGROUND:

U.S. Highway 34 is a regionally significant roadway in northern Colorado, serving many purposes including the movement of people, goods and services, as well as providing a travel way for a significant amount of visitors to the area. Due to the regional nature of this roadway, looking at it from a bigger perspective with the adjoining entities could potentially create a more unified approach along the corridor. This would be similar to the approach taken for I-25, U.S. 287 and

U.S. 85. As part of this effort, Evans, Greeley, Johnstown and Windsor have all approved Resolutions along with Larimer and Weld Counties.

A resolution is required to show City Council support for the U.S. Highway 34 Coalition, including active participation in the efforts.

A Coalition formation meeting was held on September 3, 2015 before the monthly North Front Range Metropolitan Planning Organization meeting in Greeley. Invited elected officials included Larimer County Commissioner Tom Donnelly; Town of Kersey Mayor Bob Kellerhuis; Weld County Commissioners; Mayor John Morris from the City of Evans; Mayor John Vazquez for the Town of Windsor; Mayor Tom Norton for the City of Greeley; Councilmember Troy Mellon of the Town of Johnstown; City of Loveland Councilor Dave Clark; and associated support staff. Please see attached Agenda and draft ByLaws for the US Highway 34 Coalition Board.

The next Coalition meeting is planned to occur at 4 p.m. (before the monthly North Front Range Metropolitan Planning Organization meeting) on October 1, 2015 in Eaton.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Resolution
2. U.S. 34 Coalition Agenda
3. U.S. Hwy 34 Coalition Bylaws

RESOLUTION NO. R-61-2015

A RESOLUTION OF THE LOVELAND CITY COUNCIL CONCERNING SUPPORT FOR THE CREATION OF A U.S. HIGHWAY 34 COALITION

WHEREAS, the City Council of the City of Loveland, Colorado (the “City”), pursuant to Colorado Revised Statutes and the City’s Home Rule Charter, is vested with authority to administer the affairs of the City; and

WHEREAS, the City recognizes and values U.S. Highway 34 as a significant transportation corridor in Northern Colorado; and

WHEREAS, the City desires to work with other municipalities and counties to address safety and transportation concerns along U.S. Highway 34; and

WHEREAS, the City desires to send a strong message to our state and federal elected officials and associated agencies that U.S. Highway 34 is important to the long-term health and economic development of our region; and

WHEREAS, the City anticipates that, to qualify for funding to improve safety, access, economic development opportunities, long range planning and other efforts along the U.S. Highway 34 corridor, a U.S. Highway 34 coalition (the “Coalition”) would advocate for funding and assist local entities to apply for grant aid; and

WHEREAS, it is in the best interests of the citizens of the City and the region to create a coalition representing the U.S. Highway 34 corridor; and

WHEREAS, it is in the best interests of the City to be a member of the Coalition.

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

Section 1. That the City fully supports and encourages the creation of a U.S. Highway 34 Coalition.

Section 2. That the City pledges to have one Council member available to attend meetings of the U.S. Highway 34 Coalition.

Section 3. That the City pledges to consider matching funds for grants as part of the City's budget process should such opportunities arise and will seek to integrate its efforts with other regional transportation coalitions.

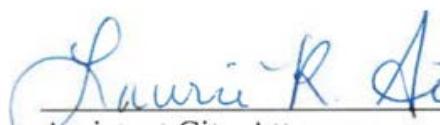
ADOPTED this 15th day of September, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Laurie R. Ali
Assistant City Attorney

US 34 COALITION

SEPTEMBER 3, 2015 4:00PM

**GREELEY FAMILY FUN PLEX
501 65TH AVE., GREELEY CO**

Agenda

- Membership
- Resolution Status
- Draft Bylaws
- PEL 101 ~CDOT
- Staff Involvement
- Community Logos for Letterhead
- Other Items
- Next Meeting

BYLAWS
US HIGHWAY 34 COALITION BOARD

ARTICLE I – Name of the Board and Purpose.

The Board shall be called the “US Highway 34 Coalition Board” (“Board”) recognizes and values US Highway 34 as a significant transportation corridor in Northern Colorado. The Board is dedicated to improve safety, access, economic development opportunities, long range planning and other efforts along the US Highway 34 Corridor.

The Coalition will send a strong message to our elected officials, state and federal agencies that US Highway 34 is important to our region by advocate for funding and assist local entities to apply for grants.

ARTICLE II – Membership.

A. Membership – The Board shall consist of a maximum of nine (9) members.

1. The Board shall include representation from each of the following Entities:

- a. City of Greeley
- b. Weld County
- c. City of Loveland
- d. Larimer County
- e. City of Evans
- f. City of Windsor
- g. Town of Johnstown
- h. Town of Kersey
- i. CDOT

B. Appointment of members – New members of the Board shall be included upon a passing resolution for their appointment by the Board.

ARTICLE III – Officers.

A. The Board shall elect from its own members a Chairman and Vice-Chairman. Term of office shall be for one (1) year.

B. In the absence of the Chairman and the Vice-Chairman, a temporary Chairman will be selected by the Board.

ARTICLE IV – Nomination and Election of Officers.

- A. The nomination and election of annual officers shall be held during the August meeting of each calendar year. Each nomination shall be seconded to be placed on the ballot, and elections shall be by written ballot unless there is no contest for the office.

ARTICLE V – Meetings.

- A. Meetings of the Board shall be held at least quarterly. The agenda for each meeting shall be developed by the Chairman and Coalition Staff. Minutes shall be kept and distributed to the Board members by the Coalition Staff.
- B. Written notice of all regular meetings of the Board, including agendas, shall be delivered electronically to Board members at least three (3) days prior to the meeting date.
- C. Special meetings may be called when deemed necessary by the Chairman, provided that at least twenty-four (24) hours notice is given to each member prior to any special meeting. Notice may be accomplished by telephone; email or leaving written notice at a member's residence. Votes may be facilitated either through a phone conference or e-mail with minutes being entered into the record by the Secretary.
- D. A quorum shall consist of not less than a majority of the Board. A quorum will be necessary at any meeting where the agenda includes:
 1. Changes in Bylaws.
 2. All duties as outlined in Article II of these Bylaws.
 3. Election of officers.
 4. Special meetings.
 5. Personnel Actions.
- E. Robert's Rules of Order newly revised shall prevail to the extent they are not in conflict with specific provisions of these bylaws.
- F. Board members may participate in-person or electronically.
- G. Regularly scheduled meetings will be open to the public.
- H. Voting will be based upon a simple-majority of those present and voting.
- I. As necessary, the Board may vote to enter into executive session to discuss legal, financial, personnel or confidential matters. No formal vote will be taken in executive session.

ARTICLE VI – Duties of Chairman.

- A. It shall be the responsibility of the Chairman to call all regular meetings, preside at all meetings, appoint committees when and as required, and carry out general Chairman responsibilities.

ARTICLE VII – Duties of Vice-Chairman.

- A. It shall be the responsibility of the Vice-Chairman to assume the duties of the Chairman in his absence. Also, he shall perform other duties as assigned by the Chairman.

ARTICLE VIII – Duties of Coalition Staff.

- A. It shall be the responsibility of Coalition Staff to keep minutes of all meetings of the Board and prepare in time for distribution prior to each regular meeting.

ARTICLE X – Committees.

- A. The Board may create and dissolve standing and ad hoc committees as they deem necessary.

ARTICLE XI – Amendment or revision.

- A. Revision to these by-laws requires a two-thirds majority vote by the Board. Amendments to by-laws must be provided to Board members a minimum of three (3) days before meeting at which vote will occur.



CITY OF LOVELAND
ECONOMIC DEVELOPMENT OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM:	10
MEETING DATE:	9/15/2015
TO:	City Council
FROM:	Betsey Hale, Economic Development
PRESENTER:	Mike Scholl, Economic Development Manager

TITLE:

A Motion to issue Developer Request for Proposals (RFP) for the South Catalyst Project consistent with the direction provided by Council

RECOMMENDED CITY COUNCIL ACTION:

Approve the motion.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. (the RFP would not be issued)
3. Adopt a modified action. (Council may seek changes to the RFP, which could be reflected in a modified RFP)
4. Refer back to staff for further development and consideration. (If the changes are substantial, Council may choose to send it back to staff for additional revisions with direction to bring it back at a future Council meeting.)

SUMMARY:

This is an administrative item. This is a discussion on the South Catalyst project and seeking a motion to authorize the City Manager to issue a Request for Proposals (RFP) for a development partner for the South Catalyst project in Downtown Loveland.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

BACKGROUND:

At the September 1, 2015 regular meeting, City Council directed staff to bring back a draft Request for Proposals for consideration by Council. The RFP provides an open and transparent process for interested developers to offer a vision for the project and to demonstrate the experience and financial capability to complete the project. Based on previous Council discussion, staff will include representatives from the Loveland Downtown Partnership and the Downtown Development Authority in the interview and selection process.

The RFP is the first step in the process of selecting the developer. Staff is recommending the following process for the developer selection:

1. **Issue the RFP.** The preliminary RFP is intended to allow interested developers to share their vision for the project and to demonstrate the experience and financial capabilities to complete a successful project. All responses that meet the basic threshold, (1) consistency with project goals, (2) past experience and (3) financial capability, will be interviewed by the stakeholder group. (*September/October*)
2. **Shortlist/Investigation.** Based on the interviews and preliminary investigation, up to three developers will be shortlisted for further investigation. Staff would, at this point, verify financials, complete background checks, visit completed projects, and check references. Staff would also ask for additional information on the project vision that would include a preliminary project pro forma and concept plan. (*October/November*)
3. **Developer Selection.** Based on the investigation process, the stakeholder group will make a recommendation to City Council for an Exclusive Right to Negotiate with a developer. (*tentative, December 1 regular meeting*)

The draft of the RFP and Map are included for review.

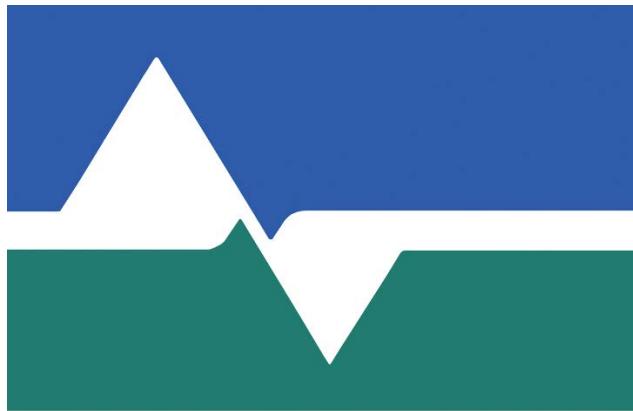
REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Request for Proposals - DRAFT
2. Map

DOWNTOWN REQUEST FOR PROPOSALS



City of Loveland

The City of Loveland (City) is seeking a development partner for the downtown “**South Catalyst Project**” in downtown Loveland. The property, which covers just under two city blocks (see map), is owned by the City and offers a unique opportunity to create an innovative commercial development within a vibrant downtown district.

The developer selected through this process will receive an **Exclusive Right to Negotiate** (ERN) for 180 days. A fully refundable deposit of \$10,000 will be due upon the developer signing the ERN.

Schedule:

Friday, October 23 – 5:00 pm

Proposals Due

Week of November 9

Developer Interviews (2 hours)

Tuesday, December 1 (tentative)

Consideration of the ERN by City Council at a regular meeting

Background: As part of the Downtown Strategic Plan and Downtown Vision Book, the City of Loveland is seeking an interested development partner for a significant development project in downtown Loveland, Colorado. The City has acquired approximately 2.76 acres of contiguous property excluding the street rights of way over two city blocks in the core of the Downtown (“Site”). It is anticipated that an adjacent parcel to the south portion of the Site will be developed and occupied by Larimer County with a 50,000 square foot government office building. The County will self-develop and the selected developer will need to coordinate any construction and predevelopment with the County.

Desired Project: The City is seeking to redevelop the Site in a manner that will have long-term positive impact on the ongoing revitalization of Downtown Loveland. The City is interested in developments that will achieve some mix of the following:



City of Loveland

DOWNTOWN REQUEST FOR PROPOSALS

- bring new employees downtown
- increase retail opportunities
- increase the number of residential units; and
- provide unique entertainment attractions that will bring people downtown such as a movie theater

The Site should encompass vibrant mixed-use development that activates the Downtown. Loveland seeks a project that will not only be economically viable in its own right, but will generate benefits and activity for the surrounding downtown area. The project design should complement the existing Downtown environment. The project should generate significant property and sales tax revenue. A significant anchoring tenant is also highly desirable.

Project Area: The project area includes approximately 2.76 acres or roughly 120,500 square feet on two blocks bordered by Lincoln and Cleveland Avenue and by 2nd Street and Back Stage Alley (alley between 3rd and 4th Streets) in the heart of the City's core downtown. Depending on the design, alleys can be vacated and portions of 2nd and 3rd Street can be incorporated into the project design. The project area is marked on the attached map.

City Contribution: The City anticipates that its primary participation will be (1) the contribution of the land, which may be priced below-market depending upon final negotiations; (2) the provision of a parking structure, which is expected to provide project parking and supplement the existing supply of public parking; and (3) the waiver of certain fees including materials use tax, building permit fees, and Capital Expansion Fees. The City is open to negotiating a partnered solution for parking ownership.

The City may consider additional public contributions beyond the land, parking structure and fee waivers. These additional public contributions would be subject to full revenue analysis and terms including the possibility of future revenue sharing at the time of sale.

Developer Interviews: Interviews will be held with developers on the week of November 9 in the City Manager's Conference Room at Loveland City Hall. The interviews will include representatives from both the City and the Downtown Development Authority and each interview will last approximately two hours.

Larimer County: The City and Larimer County are in negotiations for the construction of a 50,000 square foot County office building on the parcel adjacent to the southern portion of the Site (see map). As part of the project, the County will require up to 120 employee parking spaces provided in the proposed parking structure and 60 to 80 customer spaces, which can be accommodated on street. A site for the structured parking will need to be identified that is accessible by the County employees. In addition, the developer will work with the County regarding a project design that accommodates public access to the proposed County building from 2nd Street.

Requirements: By responding to the RFP, the developer is seeking to make a proposal to the City to be the development partner for this project. If selected, the City will begin negotiations



DOWNTOWN REQUEST FOR PROPOSALS

with the developer on a Disposition and Development Agreement for the project. The response must include:

1. *Cover Letter* addressed to: Bill Cahill, City Manager
City of Loveland
500 E. 3rd Street
Loveland, Colorado 80537
2. *Completed Proposal Form: (see below)*
3. *Concept Plan Description* – Provide a basic description of proposed project that includes the parcels to be developed, estimated total square footage, the proposed uses, and any other information that will aid in understanding the concept plan. While detailed renderings or conceptual plans are welcome, the City is not requiring them and firms will not be disqualified for not including them. The City is only requiring a basic narrative.
4. *Preliminary Pro Forma* – Include a project pro forma that includes lease rates, construction costs, a preliminary estimate of public contributions and a projected cash flow analysis for a term of no less than ten years.
5. *Management and Financial Information* – Include the names and contact information of the principals of the firm responding to the RFP, plus current financial statements of the firm that demonstrate capability to complete the proposed project. If the firm responding to the RFP wishes to protect the financial statements from public release, clearly mark the statement as “**Confidential and Proprietary Information**”. If so marked, then the City will protect these items from disclosure to the extent permitted by law.
6. Examples of similar projects and development history.
7. Developer’s expectations of the City on the assistance required to complete the project.

Proposals should be concise. A proposal generally should not exceed five total pages, excluding project experience, development history and the attached application form.

Review Process: The RFP review process is intended to be simple and efficient. City staff will review the proposal for completeness and consistency with the overall strategic plan goals. If the proposal meets the basic criteria, staff will schedule interviews with the development teams to discuss the developer’s overall vision for the project. The City may choose to shortlist no more than three developers and request additional information on the project vision and financial impact.

Proposals will be evaluated for their overall impact to the downtown and the potential for generating property and sales tax increment revenue to the Loveland Urban Renewal Authority/Downtown Development Authority.



DOWNTOWN REQUEST FOR PROPOSALS

Exclusive Right to Negotiate: Upon selection of a developer, staff will prepare a request to the City Council to authorize an Exclusive Right to Negotiate (ERN) and request from the developer a minimum \$10,000 refundable deposit. The ERN will provide for exclusive negotiations with the developer for the purposes of achieving a development project. The ERN will have a duration of 180 days with opportunity to extend based on commitment to the project and progress. The outcome of the negotiation would be a development agreement for consideration by the City Council.

Consideration/Selection: Consideration will be given to developers based on the following criteria:

1. Consistency with approved plans
2. Financial ability to compete the project
3. Past development experience; and
4. Any work or project previously completed or currently underway in Downtown Loveland will be taken into consideration

Negotiation of Financial Assistance: Once the ERN is approved, the City will engage in negotiations with the developer on a Disposition and Development Agreement that may include participation from the recently formed Loveland Downtown Development Authority.

Location: See the attached map. The area is bounded by Lincoln Avenue to the east and Cleveland Avenue on the west and includes the area north of 1st Street to Back Stage Alley (alley between 3rd and 4th Streets), with an exclusion of three parcels at the corner of 3rd and Cleveland and the parcel reserved for the County. (See map)

Deposit: If selected, the developer will be required to post a \$10,000 refundable deposit prior to consideration of the Exclusive Right to Negotiation by the City Council.

Other Materials:

Downtown Strategic Plan: <http://www.cityofloveland.org/index.aspx?page=1697>

Downtown Vision Book: <http://www.cityofloveland.org/index.aspx?page=1698>

Deadlines: TBD

Questions: Please direct all questions to Mike Scholl, Economic Development Department, (970) 962-2607 or mike.scholl@cityofloveland.org.

Disclaimer: Any development agreement, including the Exclusive Right to Negotiate, is subject to the review and approval of the Loveland City Council.



DOWNTOWN REQUEST FOR PROPOSALS

PROPOSAL FORM

CONTACT INFORMATION

Entity Name: _____

Type of Organization: _____

State of Organization _____

Main Contact: _____

Address: _____

Phone: _____ Email: _____

MANAGEMENT AND FINANCIAL INFORMATION

Key investors (any investor with more than 15 percent share of ownership, whether individual or other entity). Also, please identify principals who have management control.

Name _____

Address _____

Phone _____

DOWNTOWN REQUEST FOR PROPOSALS

REFERENCES

List three references who may give information about the ability of the Proposer to complete the development proposal

Name

Address

Phone

CONSENT TO CREDIT REPORTS

I hereby consent to allow for a credit check/report to be obtained on the principals and firm proposing on the Downtown South Catalyst project.

Signature

Date

CERTIFICATIONS (please initial to the left and sign at bottom)

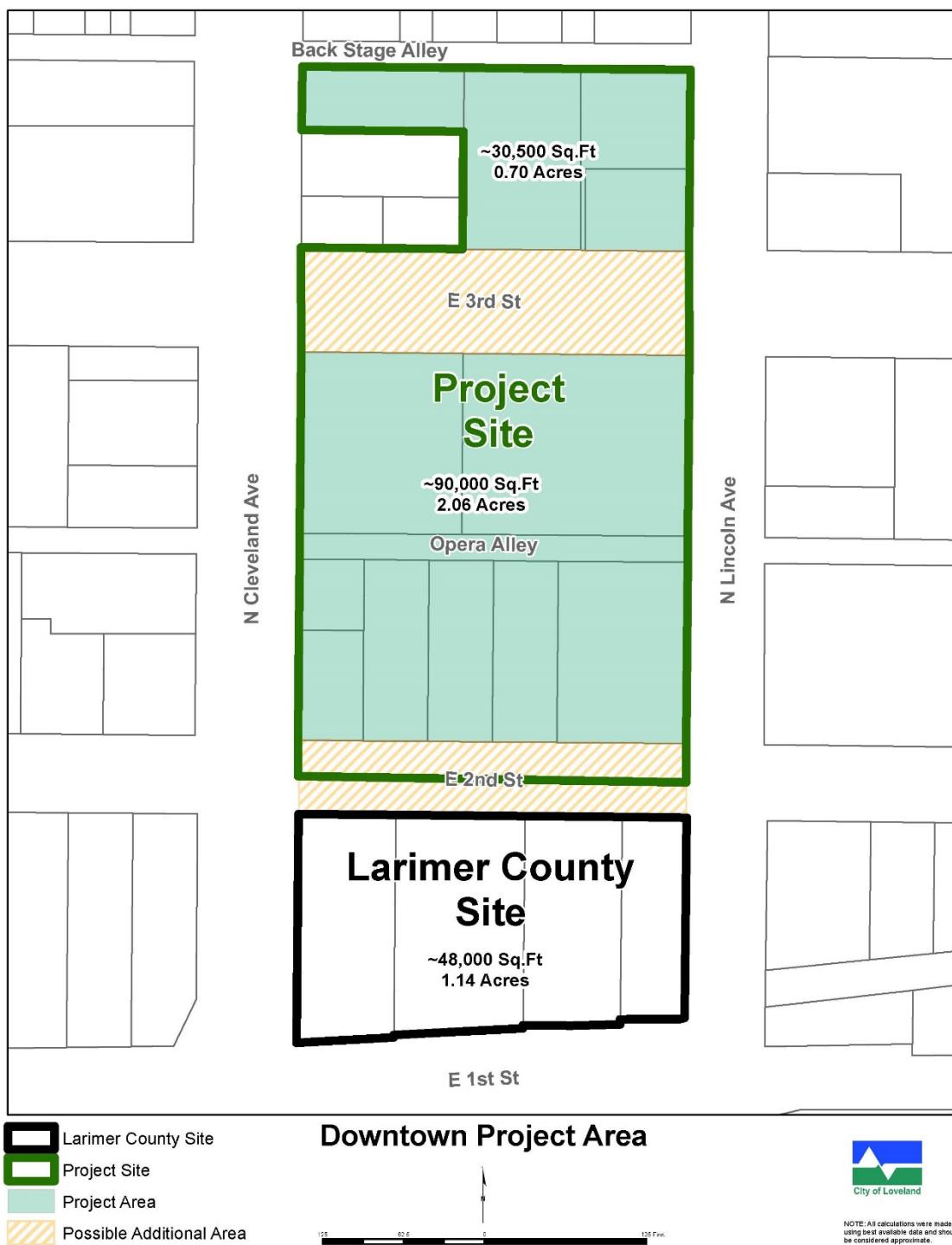
I have read and understand the proposal.

Signature

Date

DOWNTOWN REQUEST FOR PROPOSALS

Map



NOTE: All calculations were made using best available data and should be considered approximate.





- Larimer County Site
- Project Site
- Project Area
- Possible Additional Area

Downtown Project Area



NOTE: All calculations were made using best available data and should be considered approximate.



CITY OF LOVELAND
BUDGET OFFICE

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AGENDA ITEM: 11
MEETING DATE: 9/15/2015
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Brent Worthington, Finance Director

TITLE:

Council directed revisions to the City Manager's Recommended Budget for 2016

SUMMARY:

At the September 8, 2015 Study Session, City Council directed staff to make several revisions to the City Manager's 2016 Recommended Budget. Council discussion at the Study Session was incomplete and will be continued at this September 15 meeting.

BACKGROUND:

The September 8 Study Session resulted in Council giving direction on several issues in the 2016 Budget:

- Reduce the General Fund appropriation by eliminating the Urban Forester Program.
- Increase the General Fund appropriation to allow the hiring of two additional Police Department positions (one patrol officer, one detective)
- Restore funding for the Loveland Honors Event
- Increase funding for the Volunteer Recognition program
- Reduce the Capital Projects budget by eliminating funding for the Police Records Management System and reducing funding for the Police Training Facility Design Phase.

In addition, Council directed staff to bring forward (in conjunction with the City Manager's 2016 Recommended Budget) Supplemental Appropriations to the 2016 Budget for a US 34 Traffic Mitigation project, improvements to the US 34/Taft Intersection, and various spot improvements.

At the end of the Study Session, Councilors indicated that there may be other items to discuss. This time on the Regular Agenda for September 15 is provided for continued discussion on other items as needed.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS

Detailed narrative of changes



CITY OF LOVELAND
FINANCE DEPARTMENT
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TO: **City Council**
FROM: **Brent Worthington, Finance Director**
DATE: **September 15, 2015**
RE: **Council Budget Direction**

At the September 8, 2015 Study Session, City Council directed the following revisions to the City Manager's 2016 Recommended Budget:

- (\$206,995) Remove the Urban Forester project, General Fund: 1 FTE, plus equipment (This item is to be brought back to Council during the 2017 Budget development process to be reevaluated).
- \$372,000 Add two positions in the Police Department: 1 FTE patrol officer; 1 FTE Detective.
\$196,000, General Fund; Personnel Costs (including benefits)
\$ 76,000, General Fund; Equipment
\$100,000, Police CEF Fund; Patrol Cars
- \$800 Loveland Honors Event: Add back to the Development Services budget (General Fund).
- \$1,700 Volunteer Recognition Program. Add back to the Human Resources budget (General Fund). Per Council's direction, the initial budget of \$6,000 is to be reduced to \$4,700 (the average expense for this program over the past 3 years).
- (\$2,905,125) Police Records Management System, TABOR Excess Fund. Council has requested that bids be sought prior to determining the appropriation for the project. At the time bids are received, Council will consider a supplemental appropriation.
- (\$1,075,000) Police Training Facility: \$537,500 each from TABOR Excess and Police CEFs. Council directed Staff to appropriate the City's share of 2016 design costs for this project, without regard to potential Fort Collins participation. Further, staff was directed to explore other options for project design to meet Loveland needs only.

Schedule of Revisions:

General Fund	\$ 67,505
Police CEF	(437,500)
Tabor Excess	<u>(3,442,625)</u>
Total	\$(3,812,620)

Council also directed staff to prepare and bring forward Supplemental Appropriations (in October at the same time as other Budget adoption actions) for the following Street Improvement Projects:

\$5,000,000	US 34 Traffic Mitigation
2,000,000	Spot Improvements
<u>1,800,000</u>	US 34/Taft Intersection
\$8,800,000	Total

These appropriations will be developed in conjunction with Public Works staff. Not all work will be done in 2016; the Supplemental Appropriations will take the design and construction schedules into account.