



AGENDA

TUESDAY, OCTOBER 4, 2016

5:00 PM - Dinner - City Manager's Conference Room

6:00 PM LOVELAND CITY COUNCIL MEETING

Board of Directors of the General Improvement District #1

CITY COUNCIL CHAMBERS

500 EAST THIRD STREET

LOVELAND, COLORADO

Notice of Non-Discrimination

It is the policy of the City of Loveland to provide equal services, programs and activities without regard to race, color, national origin, creed, religion, sex, sexual orientation, disability, or age and without regard to the exercise of rights guaranteed by state or federal law. It is the policy of the City of Loveland to provide language access services at no charge to populations of persons with limited English proficiency (LEP) and persons with a disability who are served by the City.

For more information on non-discrimination or for translation assistance, please contact the City's Title VI Coordinator at TitleSix@cityofloveland.org or 970-962-2372. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act (ADA). For more information on ADA or accommodations, please contact the City's ADA Coordinator at ADACoordinator@cityofloveland.org or 970-962-3319.

Notificación en contra de la discriminación

La política de la Ciudad de Loveland es proveer servicios, programas y actividades iguales sin importar la raza, color, origen nacional, credo, religión, sexo, orientación sexual, discapacidad, o edad y sin importar el uso de los derechos garantizados por la ley estatal o federal. La política de la Ciudad de Loveland es proveer servicios gratis de acceso de lenguaje a la población de personas con dominio limitado del inglés (LEP, por sus iniciales en inglés) y a las personas con discapacidades quienes reciben servicios de la ciudad.

Si desea recibir más información en contra de la discriminación o si desea ayuda de traducción, por favor comuníquese con el Coordinador del Título VI de la Ciudad en TitleSix@cityofloveland.org o al 970-962-2372. La Ciudad hará acomodaciones razonables para los ciudadanos de acuerdo con la Ley de Americanos con Discapacidades (ADA, por sus iniciales en inglés). Si desea más información acerca de la ADA o acerca de las acomodaciones, por favor comuníquese con el Coordinador de ADA de la Ciudad en ADACoordinator@cityofloveland.org o al 970-962-3319.

Title VI and ADA Grievance Policy and Procedures can be located on the City of Loveland website at: cityofloveland.org

Please Note: Starting times shown on agenda are estimates only; actual times may vary

1. INTRODUCTION

1.1 CALL TO ORDER

1.2 PLEDGE OF ALLEGIANCE

1.3 **ROLL CALL**1.4 **PROCLAMATIONS****Proclamation Declaring October 2016 as Domestic Violence Awareness Month**

Glenda Shayne, Executive Director, Alternatives to Violence

[PROCLAMATION Domestic Violence Month 2016](#)**Proclamation Declaring Saturday, October 8, 2016 as the Day of the Annual Waterway Clean-up**

Leah Browder, Public Works Director

[PROCLAMATION Annual Waterway Cleanup Day](#)**(6:15) 2. CONSENT AGENDA**

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. Comments will be limited to no more than three minutes, the City Clerk will start the timer once an introduction is made and a buzzer will sound when the three minutes have expired.

2.1 **CITY CLERK**

(presenter: Terry Andrews)

APPROVAL OF MEETING MINUTES

Approval of the City Council minutes for the August 30, 2016 and September 13, 2016 Study Sessions and the September 20, 2016 Regular Meeting.

A Motion Approving the City Council minutes for the August 30, 2016 and September 13, 2016 Study Sessions and the September 20, 2016 Regular Meeting.

[08302016 Minutes SS](#)[09132016 Minutes SM & SS](#)[09202016 Minutes RM](#)2.2 **CITY MANAGER**

(presenter: Steve Adams)

APPOINTMENT TO THE SENIOR ADVISORY BOARD

This is an item appointing a member to the Senior Advisory Board.

Adopt a motion to appoint Karol Stroschein as the Chilson Senior Advisory

Committee representative on the Senior Advisory Board for a two-year term effective until October 4, 2018.

2.2 CMO B+C Appointment Coversheet

ADJOURN AS CITY COUNCIL AND CONVENE AS THE BOARD OF DIRECTORS OF THE GENERAL IMPROVEMENT DISTRICT (GID) #1

**2.3 DEVELOPMENT SERVICES (presenter: Troy Bliss)
THE FOUNDRY INCLUSION IN THE GID**

The proposal by the City for including all of the The Foundry project site in the General Improvement District No. 1 is a necessary adjustment to its boundaries due to the acquisition of properties and the established redevelopment area. The boundaries of the General Improvement District No. 1 are situated so as to align with whole properties (lots, parcels, tracts, etc.) or developments in order to apply additional tax for contribution in maintaining/upgrading public parking and pedestrian facilities downtown. The General Improvement District No. 1 is not established over portions of properties. Consequently, this adjustment is appropriate so that all of The Foundry project site is within the boundaries and not just a portion. The first reading of the ordinance was unanimously approved by the City Council at the September 20, 2016 Council meeting

A Motion to Approve, on Second Reading, Ordinance #6050 Granting A Petition For Inclusion Of The Area Of The City Of Loveland, County Of Larimer Generally Bounded By Lincoln Avenue To The East, Cleveland Avenue To The West, Opera Alley To The North And East First Street To The South Within The Loveland General Improvement District No. 1 In The City Of Loveland, Colorado.

2.3 DS The Foundry GID Coversheet

ORD for GID inclusion of the South Catalyst Project aka The Foundry second reading

Att 2 DS GID inclusion Memo

Att DS GID Petition for Inclusion in the GID No 1 Exhibit A

Att DS GID Walker Parking Analysis Exhibit B

Att DS GID Downtown URA Map Exhibit C

Att DS Lee Farm letter to Council

ADJOURN AS THE BOARD OF DIRECTORS OF THE GID#1 AND RECONVENE AS THE LOVELAND CITY COUNCIL

**2.4 PUBLIC WORKS (presenter: Chris Carlson)
WILSON TO TAFT AVE FLOOD RECOVERY**

This project contains all remaining flood recovery work between Wilson Avenue and Centennial Park, including the following: replacement of the pedestrian bridge crossing the Big Thompson River downstream of Wilson Avenue; repair and realignment of several sections of concrete pedestrian trail between Wilson and Taft Avenue; repairs, utility protection, trail realignment, and erosion protection north of the Cottonwood Meadows Subdivision at an avulsion area; repair of three damaged storm sewer outfalls; repair and restoration of a pre-flood stormwater quality treatment pond; and construction of a trail connection to the west sidewalk on Taft Avenue. The first reading of the ordinance was unanimously approved by the City Council at the September 20, 2016 Council meeting.

A Motion to Approve, on Second Reading, Ordinance #6051 Enacting A Supplemental Budget Appropriation To The 2016 City Of Loveland Budget For Construction Of The Wilson To Taft Avenue Flood Recovery Project.

[2.4 PW Wilson-Taft Flood Recovery Project Coversheet](#)

[ORD Supp Approp Wilson to Taft \(flood recovery\) second reading](#)

2.5 DEVELOPMENT SERVICES (presenter: Kerri Burchett)
MIRASOL SECOND ADDITION ANNEXATION

This is a consideration of the following items on second reading:

- Adoption of an ordinance to annex 6.8 acres of property to be known as the Mirasol Second Addition; and
- A quasi-judicial action to zone the 6.8 acres to Mirasol Community Planned Unit Development.

The property is located at the southeast corner of 4th Street SE and St. Louis Avenue. The applicant is the Housing Authority of the City of Loveland.

The City Council public hearing was held on September 20, 2016. After receiving public testimony, the Council voted unanimously to approve the annexation and zoning ordinances. After annexation and zoning, the next step in the process is a preliminary development plan that requires a Planning Commission hearing. This will provide the neighborhood with another opportunity to participate and comment on the site plan and building design.

1. *A Motion to Approve, on Second Reading, Ordinance #6052 Approving The Annexation Of Certain Territory To The City Of Loveland, Colorado, To Be Known And Designated As "Mirasol Second Addition" To The City Of Loveland.*

2. *A Motion to Approve, on Second Reading, Ordinance #6053 Amending Section 18.04.060 Of The Loveland Municipal Code, The Same Relating To Zoning Regulations For "Mirasol Second Addition" To The City Of Loveland.*

[2.5 DS Mirasol 2nd Annexation Coversheet](#)

[ORD Mirasol Second Addition Annexation second reading](#)

[Att 2a Exh A Annexation Agreement Mirasol Second Addition EXH](#)

[ORD Mirasol Second Addition Zoning second reading](#)

[Att 4 DS Mirasol 2nd Annexation Staff Memo](#)

[Att 4 DS Mirasol 2nd Annexation Staff Memo 2](#)

[Att 5 Mirasol Powerpoint](#)

2.6 ECONOMIC DEVELOPMENT (presenter: Mike Scholl)
SUPPLEMENTAL APPROPRIATION FOR EWI

City Council approved an agreement with EWI on October 20, 2015 to fund EWI operations at the Rocky Mountain Center for Innovation and Technology (RMCIT). The agreement called for the City to invest \$2 million, and EWI would identify an additional \$4 million for the project. The total development cost is \$6 million including the City's contribution. The initial appropriation for \$500,000 was approved at the October 2015 meeting and was paid to EWI. In accordance with the terms of the agreement, EWI has requested the next installment of \$1 million. EWI has met the performance measures as defined in the agreement that includes execution of RMCIT lease, contracts with financing partners, Colorado Advanced Manufacturing Alliance

(CAMA) and the Colorado State Office of Economic Development and International Trade (OEDIT), and hiring of four staff including a director, business development, technology leader, and engineer.

Based on feedback from Council at the 1st reading of the appropriation ordinance, staff will work with EWI to develop a reporting system to insure the City's investment is tracked and used in accordance with the terms of the agreement. The first reading of the ordinance was approved unanimously by the City Council at the September 20, 2016 Council meeting.

A Motion to Approve, on Second Reading, Ordinance #6054 Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget for Edison Welding Institute (EWI) Incentive.

[2.6 ED EWI Appropriation Coversheet](#)

[ORD Supp Approp EWI second reading](#)

[Att 2 ED EWI Letter of Request 2016](#)

[Att 3 ED EWI Project Updates](#)

[Att 4 ED EWI Colorado Fully Executed 10 21 15](#)

2.7 PARKS AND RECREATION (presenter: Marilyn Hilgenberg)

PUBLIC COMMENT

SUPPLEMENTAL APPROPRIATION FOR OPEN LANDS ACQUISITION

A supplemental budget ordinance to appropriate adequate funding for the acquisition of the Namaqua West Open Lands Acquisition along the Big Thompson River in west Loveland. A supplemental appropriation for \$1,600,000 from the Open Space Tax Fund is required to supplement available funding for the acquisition of the Namaqua West Open Lands acquisition. The current Open Space Tax Fund balance is \$6,064,377. The new fund balance would be \$4,464,377 upon approval of the supplemental appropriation.

A Motion to Approve, on First Reading, An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For The Namaqua West Property Open Lands Acquisition.

[2.7 P&R Namaqua West Open Lands Coversheet](#)

[ORD Supp Appropriation Namaqua West first reading](#)

[Att P&R Purchase Contact Namaqua West](#)

[Att P&R Namaqua West Map](#)

2.8 ECONOMIC DEVELOPMENT (presenter: Cindy Mackin)

PUBLIC COMMENT

PHASE II OF THE WAYFINDING PROGRAM

The ordinance requests \$55,000 from the Lodging Tax Fund to support completion of Phase II of the wayfinding program. The funding is from reserves in the Lodging Tax Fund and reduces the flexibility for funding other future events or programs. If the request is approved the remaining 2016 unassigned fund balance in the Lodging Tax Fund will be \$553,324.

A Motion to Approve, on First Reading, An Ordinance Enacting A Supplemental

Budget And Appropriation To The 2016 City Of Loveland Budget For Phase II Of The Wayfinding Program

[2.8 ED Wayfinding Signs Coversheet](#)
[ORD Supp Approp Wayfinding Signs first reading](#)
[Att ED Wayfinding Phase II Map](#)

2.9 PUBLIC WORKS (presenter: Chris Carlson)
PUBLIC COMMENT
BIG THOMPSON RIVER CORRIDOR MASTER PLAN

City Council approval is necessary to accept a Community Development Block Grant – Disaster Recovery (CDBG-DR) planning grant awarded by the State of Colorado to the City of Loveland. The grant is intended to reimburse the City of Loveland for the cost of preparing a detailed, multi-objective Big Thompson River Corridor Master Plan. The ordinance on first reading appropriates funding for the engineering and planning costs to develop the Big Thompson River Corridor Master Plan. The project is anticipated to cost up to \$275,000, of which \$249,700 will be reimbursed by the CDBG-DR planning grant. The City's cost share is \$25,300 maximum. The City will contract with a consulting firm to develop the master plan, which is expected to be completed in approximately 12 months. The Stormwater Utility Capital Fund will be used as the primary funding source for the \$275,000 cost, but the fund balance will increase as the CDBG-DR grant reimbursements are received. A maximum amount of \$25,300 will be spent above the CDBG-DR grant amount of \$249,700. The existing working cash balance of the Stormwater Utility Capital fund is \$7,170,622. It will be reduced to a minimum of balance of \$6,895,622 before reimbursement from the grant and to a minimum balance of \$7,145,322 after reimbursement is received.

- 1. A Motion to Adopt Resolution R-91-2016, Authorizing the City Manager to Execute the Community Development Block Grant – Disaster Recovery (CDBG-DR) Planning Grant Agreement (Project No. CDBG-DR P16-025) Between the City of Loveland And The State of Colorado Department of Local Affairs.***
- 2. A Motion to Approve, on First Reading, An Ordinance Enacting a Supplemental Budget and Appropriation to the 2016 City of Loveland Budget for the Big Thompson River Corridor Master Plan.***

[2.9 PW Big T River Corridor Master Plan Coversheet](#)
[RES CDBG Grant River Corridor](#)
[EX A Resolution Re CDBG Disaster Recovery Resiliency Planning Grant Agreement](#)
[ORD Big Thompson River Master Plan first reading](#)
[PW Att River Master Plan Map](#)

2.10 PUBLIC WORKS (presenter: Leah Browder)
IGA WITH CDOT FOR ROADWAY MAINTENANCE

City Council approval will allow City staff to proceed with renewing an IGA with CDOT so that the City can continue to provide maintenance services on certain CDOT roadways totaling just over 123 lane miles within or abutting city boundaries. The IGA would become effective in 2016 and would be renewable annually for a term of up to five years, assuming both parties are amenable and that State funds are appropriated accordingly. The annual contract payment from CDOT to the City would total \$110,916

and is subject to yearly increase should the City request and validate the need for an adjustment and CDOT accept the request.

A Motion to Adopt Resolution R-92-2016, Approving An Intergovernmental Agreement Between The City Of Loveland, Colorado And The Colorado Department Of Transportation Regarding Maintenance Services For U.S. Highways.

[2.10 PW IGA w CDOT for Roadway Maintenance Coversheet](#)

[RES Approving IGA with CDOT for Road Maintenance](#)

[EXH A to Resolution Approv CDOT IGA for Road Maintenance](#)

2.11 FINANCE (presenter: Theresa Wilson)

AUGUST FINANCE REPORT

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 August 31, 2016. Citywide Revenue (excluding internal transfers) of \$193.2 million is 97.4% of year to date (YTD) budget. Sales Tax collections are 5.1% above the same period in 2015, and 99.3% of the YTD budget. This data spans eight months, and the trend has been slowly rising. Building Material Use Tax is 125.3% of YTD budget. Sales and Use Tax collections combined are 102.8% of YTD budget. Citywide total expenditures of \$186,449,533 (excluding internal transfers) are 71.1% of the YTD budget.

[2.11 FIN August Report Coversheet](#)

[FIN August 2016 SnapShot](#)

[FIN Att August 2016 SnapShot PP](#)

2.12 CITY MANAGER'S OFFICE (presenter: Alan Krcmarik)

AUGUST INVESTMENT REPORT

The budget projection for investment earnings for 2016 is \$2,199,328. On the portfolio's 2016 beginning balance this equates to an annual interest rate of 1.02%. Based on the August monthly report, the estimated yield on the fixed income securities held by USBank was at 1.32%, for total assets the yield was 1.10%. For the year-to-date, total earnings of \$1,448,163 have been posted to City fund accounts. U.S. short-term Treasury interest rates rose in August; the portfolio's change in unrealized gain for the year-to-date eased down \$1.095 million. The end of August portfolio market value is estimated to be \$216.9 million. The peak amount for the portfolio was reached before the 2013 flood when it had an estimated market value of \$226.3 million.

[2.12 CMO August Investment Report Coversheet](#)

[CMO Att August Investment Focus](#)

(6:20) 3. CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

(6:25) 4. PUBLIC COMMENT

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

5. REGULAR AGENDA

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.

5.1 CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

(7:00) 5.2 **CITY ATTORNEY AND PUBLIC WORKS** (presenter: Tami Yellico)
IGA FOR FUNDING I-25 IMPROVEMENTS

In late 2015, the municipalities of Berthoud; Estes Park; Fort Collins; Loveland; Timnath; Wellington; Windsor and Johnstown passed Resolutions of Support for the Use of Larimer County Mill Levy Funds for Interstate 25 (I-25) Improvements.

As a result, Larimer County included in their 2016 budget a temporary increase to the Road and Bridge mill levy which is offset with an equal decrease in the County's general fund mill levy thus resulting in no net increase in the mill levy. The cooperative approach between the County and participating municipalities includes utilizing revenue realized from the temporary redistribution to establish a fund to create matching monies for a partially grant-funded \$237 million project to widen a 14-mile stretch of the I-25 from State Highway 14 to State Highway 402.

The proposed IGA is the result of the collective efforts of legal representatives from all municipalities participating in this effort. It puts into place the mechanics for participating agencies to direct the increased Road and Bridge mill levy proceeds to the collaborative I-25 project fund. Increased Larimer County property values provide an opportunity to increase the County Road and Bridge Mill Levy within the County's total Mill Levy commencing in 2016 for a period of five years by an estimated amount of \$2 million annually without decreasing the amount shared back to the participating municipalities and without increasing the total County Mill Levy.

A Motion to Adopt Resolution R-93-2016 Approving An Intergovernmental Agreement (IGA) For Funding Interstate 25 Improvements.

[5.2 PW I-25 IGA for Improvements Coversheet](#)

[RES Approving and IGA for funding I-25 Improvements](#)

[PW Att I-25 IGA for Funding EXH](#)

[PW att 3 I-25 Improvements Resolution of Support](#)

(7:30) 5.3 **CITY ATTORNEY** (presenter: Tami Yellico)
DISCUSSION AND POSSIBLE EXECUTIVE SESSION

City Council may be asked to consider formal action, including the possibility of calling an Executive Session, to consider negotiations, legal advice, and personnel matters concerning the process for naming an interim or acting city attorney.

[5.3 CAO Ex Session Interim or Acting CA Coversheet](#)

(8:30)

6. REPORTS

6.1 **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.

6.2 **CITY MANAGER REPORT**

6.3 **CITY ATTORNEY REPORT**

7. ADJOURNMENT



CITY COUNCIL

Civic Center • 500 East Third Street, Suite 330 • Loveland, CO 80537
(970) 962-2303 • Fax (970) 962-2900 • TDD (970) 962-2620
www.cityofloveland.org

PROCLAMATION

WHEREAS, domestic violence is a serious crime that affects people of all races, ages, gender, and income levels; and

WHEREAS, domestic violence is widespread and devastating to society as a whole, but particularly women and children; and

WHEREAS, 1 in 3 women and 1 in 4 men in the United States have experienced some form of physical violence by an intimate partner; and

WHEREAS, on a typical day, domestic violence hotlines receive approximately 21,000 calls, an average of close to 15 calls every minute; and

WHEREAS, according to the National Coalition Against Domestic Violence, in 2014 there were 25 domestic violence related fatalities in Colorado and 1,018 people in Colorado were abducted by current or former dating partners; and

WHEREAS, in Loveland, Alternatives to Violence provides crisis response, shelter, housing, advocacy and referrals for medical care, law enforcement, and employment; and

WHEREAS, Alternatives to Violence and their volunteers offer critical assistance and support to victims in need – help that might otherwise not be available.

WHEREAS, during National Domestic Violence Awareness Month, we recognize the significant achievements we have made in reducing domestic violence in our community, and we recommit ourselves to the important work still before us; and

Now, Therefore, we, the City Council of Loveland do hereby declare October 2016 as

DOMESTIC VIOLENCE AWARENESS MONTH

in the City of Loveland, Colorado and ask the citizens of this community to help raise awareness about how to prevent, recognize, and stop domestic violence.

Signed this 4th day of October, 2016

Cecil A. Gutierrez, Mayor





CITY COUNCIL

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PROCLAMATION

WHEREAS, the Annual Waterway Clean-up event is one of the programs listed in the City of Loveland's General Municipal Separate Storm Sewer (MS4) Permit; and

WHEREAS, each of the Adopt-A-Waterway Groups consisting of, the Loveland High River Watch Club, the Namaqua Unitarian Universalist Congregation, the Wood Group and the Loveland Open Lands Advisory Commission, will be cleaning their adopted sections of the Big Thompson River and the Morey Wildlife Reserve; and

WHEREAS, the High Plains Environmental Center; the Big Thompson Watershed Forum; Larimer County; American Rivers; the City of Greeley; the City of Loveland; along with local businesses such as: the Loveland Reporter Herald Newspaper; the Big Thompson 4-Wheelers; Stan's Auto; Big Thompson Brewery and others; will be providing their time and materials for the event; and

WHEREAS, the Big Thompson Watershed Coalition; and others have volunteered to participate in the event; and

WHEREAS, the event will help improve the aesthetics of the community, and the riparian corridor of the Big Thompson River and other water bodies slated to be cleaned during the event; and

WHEREAS, the event will provide the citizens of Loveland an opportunity to help remove trash and other assorted debris within and along our waterways along with the material that still remains in and along the Big Thompson River from the receding waters from the 2013 historic flood event; and

WHEREAS, these efforts will help reduce the pollutants within our community, and improve upon the water quality of the Big Thompson River and other water bodies addressed during the clean-up.

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim Saturday, October 8, 2016 as the day of the

ANNUAL WATERWAY CLEAN-UP

event along the Big Thompson River and at various locations in the City of Loveland.

Signed this 4th day of October, 2016

Cecil A. Gutierrez, Mayor





MINUTES
LOVELAND CITY COUNCIL STUDY SESSION Meeting
Tuesday, August 30, 2016 CITY COUNCIL CHAMBERS 6:30 PM

COUNCIL PRESENT: Gutierrez, Fogle, Johnson, Ball, Overcash, Clark, and Shaffer

COUNCIL ABSENT: Krenning and McKean

1. STUDY SESSION ITEMS

1.1. WATER AND POWER

2016 POWER COST-OF-SERVICE RATE STUDY RESULTS

Jim Lees, Utility Accounting Manager, presented this item to Council. Staff has been working on a cost-of-service rate study for the Power Utility since February. Staff really appreciated the attendance and participation of LUC Chair Gene Packer and Board Members Dave Schneider and Larry Roos at the Kickoff Meeting. In addition, information has been presented to the whole LUC at their June, July and August meetings. Dan Kasbohm, Rate Analyst for Utility Financial Solutions (UFS), Power rate consultant, presented the results of the 2016 Power Cost-of-Service Rate Study. Staff sought direction from City Council on four key study topics:

1. 2017 proposed rates
2. A proposed rate track for 2017-2021
3. A proposed change in how Residential Self-Generating customers are billed
4. A proposed change in calculating the Targeted Minimum Cash Reserve for the Power Utility

1.2. HUMAN RESOURCES

**PRESENTATION OF THE 2017 BENEFIT FUND BUDGET
RECOMMENDATIONS**

Julia Holland, Human Resources Director and Matthew Elliott, Senior Budget Analyst, presented this item which is an annual review of the benefit program costs and contributions to determine necessary changes for the upcoming year. The City has worked diligently to mitigate rising costs as much as possible. However, due to the continuing impact of rising health care expenses, recent high claims experience and minimal premiums

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August 30, 2016

adjustments, we are proposing a considerable increase to our premiums for 2017 through the annual budget process. The total increase for medical expenses is estimated to be \$4.2 million. This recommendation would result in an annual increase for medical costs of \$3,835,497 for the city and an annual increase of \$447,719 for employees. Council asked staff to prepare comparison charts in contributions, employer impact and rate increase projections.

1.3. Loveland Fire Rescue Authority

OVERVIEW OF THE MITIGATION MASTER PLAN

Pat Mialy, Fire Captain and Emergency Manager; Jeremy Hall, Logan Simpson Design; Mike Gardner, Michael Baker International Inc; presented the draft of the Mitigation Master Plan (MMP). The intent of a MMP is to document all of the current mitigation projects, develop or update local mitigation strategies that result in greater disaster resiliency, identify future mitigation projects that support those strategies, identify potential funding sources, and to construct implementation plans for those projects collaboratively. Michael Baker International Inc was contracted to facilitate the production of the plan for the City, funded with a Community Development Block Grant – Disaster Recovery (CDBG-DR) federal planning grant recently awarded to the City of Loveland by the State of Colorado for \$95,066. The objective of the study session was to familiarize the City Council with what a Mitigation Master Plan accomplishes for the City and to highlight the reasons that the identified mitigation projects should be planned for implementation.

2. ADJOURN

Hearing no further business come before Council, Mayor Gutierrez adjourned the August 30, 2016 Study Session at 10:11 p.m.

Respectfully submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

LOVELAND CITY COUNCIL STUDY SESSION
August 30, 2016



MINUTES
LOVELAND CITY COUNCIL SPECIAL MEETING AND
LOVELAND CITY COUNCIL STUDY SESSION
Tuesday, September 13, 2016 CITY COUNCIL CHAMBERS 6:30 PM

COUNCIL PRESENT: Gutierrez, Krenning, Fogle, McKean, Johnson, Ball, Overcash, Clark. Councilor Shaffer arrived at 6:47 p.m.

6:30 P.M. SPECIAL MEETING

1 INTRODUCTION

1.1 CALL TO ORDER

1.2 ROLL CALL

2 AGENDA

2.1 CITY ATTORNEY

BRINKMAN PROPERTY TRANSFER

A special meeting of City Council September 13, 2016 at 6:00 p.m., to be located in City Council Chambers at 500 E. 3rd Street, Loveland. The purpose of the meeting is for Council to consider an Ordinance on First Reading to transfer the property at 130 N. Cleveland Avenue to Brinkman Capital, LLC for a portion of The Foundry Project in the City of Loveland. Gary Lunquist 833 W. 10th St, Loveland, CO encouraged Council to be fully informed regarding the project proposed.

Moved by Councillor Shaffer, seconded by Councilor Johnson

A Motion to Approve, On First Reading, An Ordinance Authorizing The Sale Of Real Property Located Within The City Of Loveland At 130 North Cleveland Avenue Pursuant To Section 4-7 Of The City Of Loveland Municipal Charter.

Moved by Councilor Krenning, seconded by Mayor Pro Tem Fogle

A Motion amending Section 2 in the ordinance from \$5,000 to \$100.

CARRIED UNANIMOUSLY

LOVELAND CITY COUNCIL STUDY SESSION
September 13, 2016

Original Motion as amended.

CARRIED UNANIMOUSLY

2.2 CITY COUNCIL

APPOINT COUNCILOR JOHNSON TO CML LEGISLATIVE POLICY
COMMITTEE

***A Motion to Appoint Councilmember Johnson to the Colorado
Municipal League (CML) Legislative Policy Committee.***

3 ADJOURN TO STUDY SESSION

STUDY SESSION

3.1 FINANCE

PRESENTATION AND DISCUSSION OF THE DRAFT 2017 BUDGET

The Loveland City Charter requires the City Manager to submit a proposed budget for the next ensuing fiscal year to the City Council by the first Tuesday in October. This agenda memorandum and associated packet of materials is intended to fulfill this requirement. Discussion ensued. After the presentation, Council thanked City Manager Adams and Staff for all of their hard work. Staff will bring the budget to Council for first reading on October 18, 2016.

4 ADJOURN

Hearing no further business come before Council, Mayor Gutierrez adjourned the September 13, 2016 Study Session at 9:25 p.m.

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor



MINUTES
LOVELAND CITY COUNCIL MEETING
Tuesday, September 20, 2016 CITY COUNCIL CHAMBERS 6:00 PM

COUNCIL PRESENT:

Mayor Gutierrez
Council:
Krenning, Ball, Overcash, Clark and McKean. Shaffer arrived at 6:10 p.m;
Johnson arrived at 7:00 p.m.

COUNCIL ABSENT:

Mayor Pro Tem Fogle

1 INTRODUCTION

1.1 CALL TO ORDER

1.2 PLEDGE OF ALLEGIANCE

1.3 ROLL CALL

1.4 PROCLAMATIONS

PROCLAMATION DECLARING THE MONTH OF SEPTEMBER AS SUICIDE AWARENESS MONTH

Rick Hufnagel, Alliance for Suicide Prevention of Larimer County, read by Councilor Ball.

PROCLAMATION DECLARING SEPTEMBER 26, 2016 THROUGH OCTOBER 2, 2016 AS DIAPER NEED AWARENESS WEEK

Dr. Rachel Konda-Sundheim and Jan Touslee, The Nappie Project, read by Councilor McKean.

2 CONSENT AGENDA

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

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interrupt other speakers. Side conversations should be moved outside the Council Chambers. Comments will be limited to no more than three minutes, the City Clerk will start the timer once an introduction is made and a buzzer will sound when the three minutes have expired.

Items 2.3, 2.8 and 2.11 were removed from the consent agenda and considered on Regular agenda. Item 2.7 was removed from the Agenda and postponed to a future date.

Moved by Councilor Shaffer, seconded by Councilor Krenning

Motion to approve the Consent Agenda with the exceptions of items 2.3, 2.7, 2.8 and 2.11.

CARRIED UNANIMOUSLY

**2.1 CITY CLERK
APPROVAL OF MINUTES**

Approval of the City Council minutes for the August 23, 2016 Special Meeting and the September 6, 2016 Regular Meeting.

A Motion Approving the City Council minutes for the August 23, 2016 Special Meeting and the September 6, 2016 Regular Meeting.

CARRIED UNANIMOUSLY

**2.2 CITY MANAGER
APPOINTMENTS TO THE AFFORDABLE HOUSING COMMISSION**

This is an item appointing a member to the Affordable Housing Commission.

Adopt a motion to appoint Jerry Beers to the Affordable Housing Commission for a partial term effective until June 30, 2018

CARRIED UNANIMOUSLY

**2.3 LOVELAND POLICE DEPARTMENT
ABANDONED VEHICLE CODE AMENDMENT**
This item was considered on the Regular agenda 5.1.1

**2.4 COMMUNITY PARTNERSHIP OFFICE
CDBG APPROPRIATION**

On July 5, 2016, City Council adopted a resolution to grant Community Development Block Grant funds in the amount of \$417,140 during the 2016-2017 grant year. \$80,000 of this amount was funding returned to the City from the

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Bohemian Foundation when the Bohemian Foundation became the managing partner of the Sister Mary Alice Murphy Center for Hope in Fort Collins. The \$80,000 must be appropriated prior to contracting with 2016-2017 grant recipients. The first reading of the ordinance was unanimously approved by the City Council at the September 6, 2016 Council meeting. The \$80,000 is Community Development Block Grant (CDBG) funding and will not affect the City of Loveland General Fund balance. The CDBG Fund is a zero balance fund thus, the appropriations allotted in the CDBG Fund must match the revenue received.

A Motion to Approve, on Second Reading, Ordinance #6046 Enacting a Supplemental Budget and Appropriation to the 2016 City of Loveland Budget for Reallocation of Community Development Block Grant Funds.

CARRIED UNANIMOUSLY

2.5 LOVELAND FIRE RESCUE AUTHORITY, PUBLIC WORKS, RISK MANAGEMENT FIRE TRAINING CENTER

This is a three-way request, involving Loveland Fire Rescue Authority, Public Works and Risk Management. The three projects are separate, but interrelated:

1. Elimination of the current impoundment pond at the FTC, due to environmental issues (\$206,242)
2. The establishment of a new drainage system (stormwater and wastewater) due to the elimination of the impoundment pond and to account for additional on-site stormwater management necessary for FTC masterplan (\$260,314).
3. The construction of a new bridge on Railroad Avenue to mitigate flooding issues, which in turn, will eliminate the current entrance into the FTC, thus forcing the construction of a new primary and secondary emergency entrance into the facility (\$219,409).
4. Relocation of site amenities such as signage and the flagpole (\$12,035).

The total cost of all three sub-projects is \$698,000.

The first reading of the ordinance was unanimously approved by the City Council at the September 6, 2016 Council meeting.

This request was unanticipated and therefore unbudgeted. \$206,242 of the requested amount is funded by fund balance in the Risk & Insurance Fund. If approved, the remaining Risk & Insurance Fund Balance will be \$3,695,054. Possible funding options for the remainder of the project costs include Tabor Excess and/or General Fund unassigned fund balance. The remaining 2016 General Fund Unassigned Fund Balance would be \$8,574,108 or the remaining 2016 TABOR Excess ending balance would be \$20,083,545.

A Motion to Approve, on Second Reading, Ordinance #6047 Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For The Fire Training Center

CARRIED UNANIMOUSLY

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**2.6 CITY MANAGER'S OFFICE
SPECIAL DISTRICT NO. 1 REALLOCATION OF ASSESSMENTS**

In late 2015, The City of Loveland completed the refunding of its Special Improvement District No. 1 (Series 2007) revenue bonds. Through the refunding, the interest rate on the bonds was lowered from 5.625% to 3.90%. The bonds are paid off through the payment of assessments by property owners in the district that receive benefits from the improvements financed by the original SID No. 1 bonds. In January of 2016, a new assessment role was presented to and adopted by Council. Since January, property owners in SID No. 1 have subdivided and combined lots leading to the need to update the special assessment roll. As the land is developed, property owners and land developers sometimes have to subdivide larger tracts and occasionally small parcels are combined to create larger parcels. The City plays an integral role in the lot configuration process and always desires to ensure that the value of the property is sufficient to adequately cover the amount of the assessments on the property. Recent lot changes have led to the revisions of the special assessment roll. By keeping the assessment roll current, the assessment payments will be accurately calculated, be fully transparent to the property owners, and be billed and collected on time, so that payments on the Series 2015 revenue bonds will be paid as expeditiously as possible. The property owners affected by this action agree with the provisions and the revised assessment provided for in the Ordinance and revised Assessment Role. The first reading of the ordinance was unanimously approved by the City Council at the September 6, 2016 Council meeting.

A Motion to Approve, on Second Reading, Ordinance #6048 Approving The Re-Appportionment Of Assessment To Align With The Creation Of A New Lot Within Special Improvement District No. 1

CARRIED UNANIMOUSLY

**2.7 DEVELOPMENT SERVICES
EVERGREEN MEADOWS 2ND VACATION**
Staff requested this item be removed and considered at a future date.

**2.8 DEVELOPMENT SERVICES
THE FOUNDRY INCLUSION IN THE GID**
This item was considered on the Regular Agenda 5.1.2

**2.9 FINANCE
SET DATE FOR PUBLIC HEARING ON 2017 BUDGET**

The City Charter requires an action to set the date, time, and place for a public hearing on the 2017 Recommended Budget, after it has been submitted by the City Manager for Council consideration. This action satisfies that requirement. The resolution sets the date for the public hearing for October 18, 2016, to coincide with

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consideration of the budget ordinances to adopt the 2017 Budget on first reading.

A Motion to Adopt Resolution R-85-2016 Establishing A Date, Time, And Place For A Public Hearing On The 2015 Recommended Budget For The City Of Loveland, Colorado.

CARRIED UNANIMOUSLY

**2.10 HUMAN RESOURCES
BENEFITS FUND COST SHARE**

At the direction of City Council, on September 6, 2016, staff is providing a Resolution to set policy related to the Benefit Fund.

A Motion to Adopt Resolution R-86-2016 Establishing The City Of Loveland Heath Benefits Policy.

CARRIED UNANIMOUSLY

**2.11 CITY ATTORNEY
AMENDING CITY COUNCIL MEETING RULES**

This item was considered on the Regular Agenda 5.1.3

3 CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

4 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, expressed concern regarding Building Code and regulations specifically how a business owner can find out what the codes are and how they effect their business; Jana Flores, owner of Artisan You, expressed concern regarding her encounter with Planning Staff; Howard Dawson, expressed support of Initiative 1A; Stacy Lynne (4 or more = 10 min), expressed concern regarding Det. Koopman's continued employment.

5 REGULAR AGENDA

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

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ordinance for it to become law.

5.1 CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

**5.1.1 LOVELAND POLICE DEPARTMENT
ABANDONED VEHICLE CODE AMENDMENT**

Provisions of LMC Section 10.28.010 place an undue hardship upon owners of vehicles who utilize public streets and other public rights of way to park motor vehicles for a period of time greater than seventy two hours. The Code currently permits a vehicle to be towed if located upon a public right-of-way for more than seventy two hours. The proposed changes permit the tow of a motor vehicle parked on any portion of a street, highway, alley or other public right-of-way if the vehicle is reasonably determined to be deserted, discarded, or inoperable. The proposed ordinance provides the Loveland Police Department with factors to consider when determining whether a vehicle is abandoned. The proposed ordinance would not impact the numerous other provisions of the Code related to parking. The proposed changes to LMC Section 10.28.021 provide the Loveland Police Department greater flexibility, in terms of time, to report abandoned vehicles to the Colorado Department of Revenue and remains consistent with state law. The proposed changes to LMC 10.20.030 broaden the types of vehicles, whether motorized or non-motorized, which are constructed or designed for sleeping or dwelling purposes, from parking or standing upon public rights of way for a period of time greater than seventy two hours. The first reading of the ordinance was unanimously approved by the City Council at the September 6, 2016 Council meeting.

Moved by Council Shaffer, seconded by Councilor McKean

A Motion to Approve, on Second Reading, Ordinance #6045 Amending Sections 10.28.010, 10.28.021, and 10.20.030 of the Loveland Municipal Code Pertaining to Abandoned Motor Vehicles on Public Rights of Way, the Reporting of Abandoned Motor Vehicles, and Vehicles Designed for Dwelling or Sleeping Purposes

Moved by Councilor Bell, seconded by Councilor Clark

A Motion to amend the resolution from "72 hours" to "48 hours".

FAILED 1-7 Yes vote: Bell

Roll was called on the original motion.

CARRIED UNANIMOUSLY

**ADJOURN AS CITY COUNCIL AND CONVENE AS THE BOARD OF
DIRECTORS OF THE GID#1**

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**5.1.2 DEVELOPMENT SERVICES
PUBLIC HEARING
THE FOUNDRY INCLUSION IN THE GID**

This item considers adoption of an ordinance on first reading, to include the property legally described in the attached ordinance, comprising of various lots and block within the Original Town of Loveland, City of Loveland, County of Larimer, State of Colorado in the General Improvement District No. 1. The proposal by the City for including all of the The Foundry project site in the General Improvement District No. 1 is a necessary adjustment to its boundaries due to the acquisition of properties and the established redevelopment area. The boundaries of the General Improvement District No. 1 are situated so as to align with whole properties (lots, parcels, tracts, etc.) or developments in order to apply additional tax for contribution in maintaining/upgrading public parking and pedestrian facilities downtown. The General Improvement District No. 1 is not established over portions of properties. Consequently, this adjustment is appropriate so that all of The Foundry project site is within the boundaries and not just a portion. Mayor Gutierrez opened the public hearing at Stacy Lynne, County resident expressed concern regarding the controversial nature of this item. Staff addressed a parking analysis.

Moved by Councilor Shaffer, seconded by Councilor Clark

A Motion to Approve, on First Reading, An Ordinance Granting A Petition For Inclusion Of The Area Of The City Of Loveland, County Of Larimer Generally Bounded By Lincoln Avenue To The East, Cleveland Avenue To The West, Opera Alley To The North And East First Street To The South Within The Loveland General Improvement District No. 1 In The City Of Loveland, Colorado.

CARRIED UNANIMOUSLY.

**ADJOURN AS THE BOARD OF DIRECTORS OF THE GID #1 AND
RECONVENE AS LOVELAND CITY COUNCIL**

**5.1.3 CITY ATTORNEY
AMENDING CITY COUNCIL MEETING RULES**

This item is a City Council request to update its rules to include Council Member's reports as the last item on the agenda at the first regular meeting of the month and after the consent and public comment items on the agenda at the second regular meeting of the month. **Directed Changes: 1) Remove 4h. entirely; 2) In the second sentence of 3.d remove word "reports".**

Moved by Councilor Shaffer, seconded by Councilor Krenning

A Motion to Adopt Resolution R-87-2016 Amending The Rules Of Procedure For The City Council Of The City Of Loveland, Colorado, as amended.

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CARRIED UNANIMOUSLY

5.2 ECONOMIC DEVELOPMENT

PUBLIC COMMENT

EDISON WELDING INSTITUTE APPROPRIATION

City Council approved an agreement with EWI on October 20, 2015 to fund EWI operations at the Rocky Mountain Center for Innovation and Technology (RMCIT). The agreement called for the City to invest \$2 million, and EWI would identify an additional \$4 million for the project. The total development cost is \$6 million including the City's contribution. The initial appropriation for \$500,000 was approved at the October 2015 meeting and was paid to EWI. In accordance with the terms of the agreement, EWI has requested the next installment of \$1 million. EWI has met the performance measures as defined in the agreement that includes execution of RMCIT lease, contracts with financing partners, Colorado Advanced Manufacturing Alliance (CAMA) and the Colorado State Office of Economic Development and International Trade (OEDIT), and hiring of staff.

Moved by Councilor Shaffer, seconded by Councilor Johnson

A Motion to Approve, on First Reading, An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget for Edison Welding Institute (EWI) Incentive.

CARRIED UNANIMOUSLY.

5.3 DEVELOPMENT SERVICES

PUBLIC HEARING

MIRASOL 2ND ADDITION ANNEXATION

This is a public hearing to consider a resolution and the following ordinances on first reading: Adoption of a resolution and ordinance to annex 6.8 acres of property to be known as the Mirasol Second Addition; and A quasi-judicial action to zone the 6.8 acres to Mirasol Community Planned Unit Development. The property is located at the southeast corner of 4th Street SE and St. Louis Avenue. The applicant is the Housing Authority of the City of Loveland. Mayor Gutierrez Opened the public hearing at 8:37 p.m. Presenters: Applicant Sam Betters, Dave Lingle and Jeff Feners. Public: Lori Goble, resident spoke in favor of the annexation, but expressed some concerns i.e access to downtown; Shelley Porter neighbor, spoke in opposition of the annexation; Margaret Royelle 1107 Finch St. expressed concern with traffic on St. Louis both volume and speed.

Moved by Councilor Shaffer, seconded by Councilor Clark

1. A Motion to Adopt Resolution R-89-2016 Concerning The Annexation To The City Of Loveland, Colorado, Of A Certain Area Designated As "Mirasol

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Second Addition" More Particularly Described Herein, And Setting Forth Findings Of Fact And Conclusions Based Thereon As Required By The Colorado Constitution And By State Statute.

CARRIED UNANIMOUSLY

Moved by Councilor Shaffer, seconded by Councilor Krenning

2. A Motion to Approve, on First Reading, An Ordinance Approving The Annexation Of Certain Territory To The City Of Loveland, Colorado, To Be Known And Designated As "Mirasol Second Addition" To The City Of Loveland.

CARRIED UNANIMOUSLY

Moved by Councilor Shaffer, seconded by Councilor Ball

3. A Motion to Approve, on First Reading, An Ordinance Amending Section 18.04.060 Of The Loveland Municipal Code, The Same Relating To Zoning Regulations For "Mirasol Second Addition" To The City Of Loveland.

CARRIED UNANIMOUSLY

**5.4 DEVELOPMENT SERVICES
PUBLIC HEARING
LEE FARM ADDITION GDP AMENDMENT**

This is a quasi-judicial action with a public hearing to consider an ordinance on first reading, amending the previously approved General Development Plan for Lee Farm. Primary changes include removal of a community center, reduction in density, as well as reconfiguring some internal road networks (primarily W. 35th Street, minor collector, and local streets). The amendment focuses on developing a mixture of residential uses on 247 acres in northwest Loveland. The property is generally located on the west side of N. Wilson Avenue, east of the Hogback and future Cascade Avenue alignment. It is directly north of the Hunter's Run Subdivision and directly south of the Buck Subdivision (see the attached vicinity map). The applicant is The True Life Companies represented by Katie Cooley. The Planning Commission recommended approval of the General Development Plan amendment by a vote of 5 to 1 at a public hearing on August 8, 2016. Mayor Gutierrez opened the public hearing at 9:32 p.m. Public Comment: Casey Hogan, 344 Atwood Ct, spoke in opposition to the ordinance; Jim Vernon Atwood, spoke in opposition to the ordinance; Mary Wilkinson 480 Atwood spoke in opposition to the ordinance.

Moved by Councilor Clark, seconded by Councilor Shaffer

A Motion to extend the meeting to 11:00 p.m. and consider items 5.7 and 5.8

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immediately following this item.

CARRIED UNANIMOUSLY

Councilor Krenning, seconded by Councilor Clark

A Motion to Continue, An Ordinance Amending Section 18.04.060 Of The Loveland Municipal Code, The Same Relating To Zoning Regulations For Certain Property Located Within The Lee Farm Addition Planned Unit Development (# P-91) And Approving The Amendment To The General Development Plan For Said Planned Unit Development to October 18, 2016.

CARRIED UNANIMOUSLY

Moved by Councilor Johnson, seconded by Councilor McKean

A Motion to extend the meeting to 11:30 p.m.

CARRIED 7-1 No Vote: Ball

**5.5 CITY ATTORNEY
PUBLIC HEARING
FOUNDRY METRO DISTRICT SERVICE PLAN**

This proposed resolution is to approve the Service Plan for Foundry Loveland Metropolitan District (the "District"). The District is generally located between 1st Street and Back Stage Alley, between Cleveland Avenue and Lincoln Avenue in the City of Loveland. It consists of approximately 4 acres for mixed-use development. The purpose of the District will be to construct, finance, operate, and maintain a portion of the public improvements for the benefit of its occupants, taxpayers, and visitors. A mill levy cap of 50 mills is proposed for the District, subject to certain adjustment provisions. Public Hearing opened at 10:53 p.m. Councilor Ball left at 11:00 p.m. Debra Early spoke on behalf of the proposed Metro District. Public Comment: Stacy Lynne, County resident, submitted questions to the Council.

Moved by Councilor Shaffer, seconded by Councilor Clark

A Motion to Adopt Resolution R-90-2016 Of The Loveland City Council Approving The Consolidated Service Plan For Foundry Loveland Metropolitan District.

CARRIED UNANIMOUSLY

**5.6 CITY ATTORNEY
BRINKMAN PROPERTY TRANSFER**

Staff has been working on the financing plan for the public improvements for The

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Foundry Project ("Project"). A key component of the Project financing is the formation of a Metropolitan District ("District") by Brinkman Capital, LLC (the "Developer") that will have the same boundaries as the Project area. The District will be comprised of all of the properties in the Project, including 130 North Cleveland Avenue. The negotiations to this point have included the transfer of property owned by the City to the Developer for the Project, with the City retaining the property on which the garage will be located. Public improvements in the Foundry include a public parking garage, public plaza, and other public improvements. The purpose of the District will be to levy property taxes on the properties within the Project to assist in paying the debt on the special revenue bonds to be issued by the City on behalf of the DDA to finance the parking garage and other public improvements, and for the District to own and maintain the public plaza spaces. Through this financial plan, the City, the District, and the Developer will be making a substantial investment in downtown Loveland for the benefit of the community. The ordinance was approved on first reading by City Council at the September 13, 2016 Special Meeting. Public comment: Stacy Lynne, County resident, expressed concern with Brinkman Partners may use tax dollars for private projects.

Moved by Councilor Shaffer, seconded by Councilor Johnson

A Motion to Approve, on Second Reading, Ordinance #6049 to transfer the property at 130 N. Cleveland Avenue to Brinkman Capital, LLC for a portion of The Foundry Project in the City of Loveland.

CARRIED UNANIMOUSLY

Moved by Councilor McKean, seconded by Councilor Johnson

A Motion to extend the meeting until midnight.

CARRIED 6 - 1 No vote: Krenning

**5.7 HUMAN RESOURCES
CLINIC UPDATE & SERVICE AGREEMENT**

Annually staff reviews the status of the Employee Clinic with City Council. The presentation on the utilization and return on investment of the Clinic is information only. Staff is also requesting City Council authorize the execution of a new contract for the Employee Clinic with a new recommended vendor, Marathon. The change in vendor management of the Clinic is expected to provide a higher level of service both clinically and administratively for a comparable annual cost. The amount requested for 2017 can be allocated within the current proposed 2017 benefit budget. There were no public comments.

Moved by Councilor Shaffer, seconded by Councilor Johnson

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A Motion to Adopt Resolution R-88-2016 Authorizing Award Of A Contract To Marathon Health, LLC For Employee Health Clinic Services.

CARRIED UNANIMOUSLY

5.8 PUBLIC WORKS

PUBLIC COMMENT

SUPPLEMENTAL APPROPRIATION FOR WILSON TO TAFT FLOOD RECOVERY

This ordinance will appropriate funding for construction of the Wilson to Taft Avenue Flood Recovery project. This project contains all remaining flood recovery work between Wilson Avenue and Centennial Park, including the following: replacement of the pedestrian bridge crossing the Big Thompson River downstream of Wilson Avenue; repair and realignment of several sections of concrete pedestrian trail between Wilson and Taft Avenue; repairs, utility protection, trail realignment, and erosion protection north of the Cottonwood Meadows Subdivision at an avulsion area; repair of three damaged storm sewer outfalls; repair and restoration of a pre-flood stormwater quality treatment pond; and construction of a trail connection to the west sidewalk on Taft Avenue. The overall project budget is \$1,125,000. The Parks and Recreation Department currently has \$600,000 appropriated for this flood recovery work. The Open Lands and Trails Division will contribute \$50,000 already appropriated from recreation trail CEF's. This provides a total of \$650,000 from the Parks and Recreation Department's existing appropriated funds. The Public Works Department currently has \$192,903 appropriated for this flood recovery work. The Public Works and Parks & Recreation Department 2016 budget appropriations combined together equal \$842,903. This requires a supplemental appropriation request of \$282,097 to cover the anticipated \$1,125,000 project budget. Based on a percentage split in types of eligible work, \$209,020 will be appropriated from the Stormwater Utility Capital Fund and \$73,077 from the General Fund. Therefore, \$282,097 in supplemental appropriation is requested. This project is eligible for partial reimbursement from FEMA. The appropriation uses existing balances within the General Fund and Stormwater Utility Capital fund. The existing working cash balance of the Stormwater Utility Capital fund is \$7,379,642. It will be reduced by \$209,020 to a new balance of \$7,170,622. The General Fund balance will be reduced by \$73,077. There were no public comments.

A Motion to Approve, on First Reading, An Ordinance Enacting A Supplemental Budget Appropriation To The 2016 City Of Loveland Budget For Construction Of The Wilson To Taft Avenue Flood Recovery Project.

CARRIED UNANIMOUSLY

6 REPORTS

6.1 BUSINESS FROM CITY COUNCIL

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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.

Dave Clark - Algae in the water? Rule of 4 for drinking fountain requirement
Krenning - Made a motion regarding consideration by City Council on non-City ballot measures:

Moved by Councilor Krenning, seconded by Councilor Overcash

A Motion approving a Resolution that City Council will not consider resolutions in support or opposition of matters involving questions which appear on any ballot and are subject to a vote of the people.

Moved by Councilor Krenning, seconded by Councilor Overcash

A Motion to call the question.

CARRIED UNANIMOUSLY

Roll was called on the Original Motion

CARRIED 4-3; No Votes: Shaffer, Johnson and Gutierrez

6.2 CITY MANAGER REPORT

6.3 CITY ATTORNEY REPORT

7 ADJOURNMENT

Mayor Gutierrez adjourned the September 20, 2016 Regular Meeting of Council at 12:00 a.m. September 21, 2016.

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

AGENDA ITEM: 2.2
MEETING DATE: 10/4/2016
TO: City Council
FROM: City Manager's Office
PRESENTER: Steve Adams



TITLE:
Member Appointment to Senior Advisory Board

RECOMMENDED CITY COUNCIL ACTION:

1. Adopt a motion to appoint Karol Stroschein as the Chilson Senior Advisory Committee representative on the Senior Advisory Board for a two-year term effective until October 4, 2018

OPTIONS:

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

SUMMARY:

This is an item appointing a member to the Senior Advisory Board

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

BACKGROUND:

Section 2.60.240 of the Loveland Municipal Code states:

There is established a senior advisory board consisting of fifteen members. Nine members shall be appointed by the city council to serve terms of three years. Six members shall be nominated by the senior advisory board, and approved by the city council, to serve terms of two years. These six members shall consist of one at large member, and one member from each of the following organizations: Chilson Senior Advisory Committee, Housing Authority of the City of Loveland, Colorado, McKee Senior Services, the UCH Aspen Club/Senior Services, and the McKee Medical Center Seasons Club.

Karol Stroschein is recommended for appointment as the representative for the Chilson Senior Advisory Committee on the **Senior Advisory Board** for a two-year term effective until October 4, 2018.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

None

AGENDA ITEM: 2.3
MEETING DATE: 10/4/2016
TO: City Council
FROM: Brett Limbaugh, Development Services Director
PRESENTER: Troy Bliss, Current Planning



TITLE:

An Ordinance Granting A Petition For Inclusion Of The Area Of The City Of Loveland, County Of Larimer Generally Bounded By Lincoln Avenue To The East, Cleveland Avenue To The West, Opera Alley To The North And East First Street To The South Within The Loveland General Improvement District No. 1 In The City Of Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action: If the action were denied, only a portion of the project site would fall within the boundaries of the General Improvement District No. 1 (as it currently exists). This would create complications in determining how to assess annual ad valorem real property and personal property taxes to the project site as well as interpreting how parking provisions would be applied and to what portions of the site. For all intents and purposes, this proposed inclusion is a "clean-up" to the boundaries of the General Improvement District No. 1 based upon the City's acquisition of properties.
3. Adopt a modified action: City Council could consider a modification to the proposed boundaries of this inclusion in the General Improvement District No. 1. However, if certain portions of the project site were excluded, those portions would be impacted due to additional land area being needed for parking purposes. Additionally, it would not comply with the intent of the General Improvement District No. 1 because it does not comprise the entire redevelopment area.
4. Refer back to staff for further development and consideration: This would cause undue delay to the project. City staff does not have the ability to consider alternatives to the General Improvement District No.1 in terms of boundaries or purpose.

SUMMARY:

The proposal by the City for including all of The Foundry project site in the General Improvement District No. 1 is a necessary adjustment to its boundaries due to the acquisition of properties and the established redevelopment area. The boundaries of the General Improvement District No. 1 are situated so as to align with whole properties (lots, parcels, tracts, etc.) or developments in order to apply additional tax for contribution in maintaining/upgrading public parking and pedestrian facilities downtown. The General Improvement District No. 1 is not established over portions of properties. Consequently, this adjustment is appropriate so that all of The Foundry project site is within the boundaries and not just a portion. The first reading of the ordinance was unanimously approved by the City Council at the September 20, 2016 Council meeting.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

BACKGROUND:

The City has not seen many requests for inclusion in the General Improvement District No. 1. Dating back to 2002, only seven (7) have been considered. The most recent being this past January 2016, for a property located at 348 N. Jefferson Avenue, which City Council approved unanimously.

City staff fully supports the inclusion of The Foundry project site into the General Improvement District No. 1. This request adjusts the boundaries of the General Improvement District No. 1 to where all of the project site would be included - not just a portion. It would add other properties and property owners to the overall General Improvement District No.1, possibly increasing tax funding to continue maintaining/upgrading public parking and pedestrian facilities. And, it would help facilitate mixed-use development – primarily the inclusion of residential – bringing in more people to create a sustainable downtown.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. Ordinance
2. Staff Memorandum

FIRST READING: September 20, 2016

SECOND READING: October 4, 2016

ORDINANCE NO. 6050

AN ORDINANCE GRANTING A PETITION FOR INCLUSION OF THE AREA OF THE CITY OF LOVELAND, COUNTY OF LARIMER GENERALLY BOUNDED BY CLEVELAND AVENUE TO THE WEST, LINCOLN AVENUE TO THE EAST, OPERA ALLEY TO THE NORTH AND EAST FIRST STREET TO THE SOUTH WITHIN THE LOVELAND GENERAL IMPROVEMENT DISTRICT NO. 1 IN THE CITY OF LOVELAND, COLORADO

WHEREAS, on September 2, 2016, the City Clerk received a verified petition from the City of Loveland, a municipal corporation, ("Petitioner"), the owner of the following legally described real property located in the City of Loveland and generally bounded by Cleveland Avenue to the west, Lincoln Avenue to the east, Opera Alley to the north and East First Street to the south ("Property") seeking the inclusion of said Property within the Loveland General Improvement District No. 1 ("GID"):

LOTS 1 AND 2, BLOCK 24, IN THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, EXCEPT THAT PORTION CONVEYED BY DEED RECORDED JULY 2, 2001 AT RECEPTION NO. 2001053327

LOTS 15 AND 16, BLOCK 19, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

LOTS 6, 7, 8 AND 9 BLOCK 24, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO EXCEPT THAT PORTION AS SET FORTH IN RULE AND ORDER RECORDED AUGUST 12, 2002 AT RECEPTION NO. 2002085435

LOTS 19 AND 20, BLOCK 19 CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

LOTS 3, 4 AND 5, BLOCK 24, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO EXCEPT THAT PORTION AS DESCRIBED IN RULE AND ORDER RECORDED AUGUST 12, 2002 AT RECEPTION NO. 2002085435

LOTS 17 AND 18, BLOCK 19, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

LOTS 10, 11 AND 12, BLOCK 24, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO EXCEPT THAT PORTION CONVEYED BY DEED RECORDED AUGUST 14, 2001 AT RECEPTION NO. 2001069804

THE SOUTH 85 FEET OF LOTS 13 AND 14, BLOCK 19, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

AN UNDIVIDED 50% INTEREST IN THE FOLLOWING PROPERTY:
LOTS 21 THRU 24, BLOCK 19, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

LOTS 13 AND 14, LESS THE SOUTH 85 FEET, BLOCK 19, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

WHEREAS, the petition is intended to include the boundaries of the proposed South Catalyst Project also known as The Foundry within the GID; and

WHEREAS, the Petitioners have deposited with the City Clerk a sum of money sufficient to pay the costs of the inclusion proceedings; and

WHEREAS, pursuant to Colorado Revised Statute Section 31-25-618 the City Clerk, ex officio secretary to the board of directors of the GID, has caused notice of filing of the petition to be given and published in the Loveland Reporter-Herald, a newspaper of general circulation in the GID, pursuant to the requirements of such section; and

WHEREAS, pursuant to such section, the board of directors of the GID conducted a public hearing on September 20, 2016 concerning the inclusion of the Property in the GID; and

WHEREAS, the board of directors of the GID has determined that the allegations of the petition are true; that the Petitioners are the owners of the Property to be included in the GID; and that it would be in the best interests of the GID to include the Property within the GID.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, ex officio board of directors of the Loveland General Improvement District No. 1 in Loveland, Colorado:

Section 1. The Property is hereby included in the Loveland General Improvement District No. 1 in Loveland, Colorado.

Section 2. The secretary to the board of directors shall file a certified copy of this ordinance with the clerk and recorder of Larimer County.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Signed this 4th day of October, 2016.

Cecil A. Gutierrez
Mayor, ex officio, President
Board of Directors
General Improvement District No. 1
Loveland, Colorado

ATTEST:

City Clerk, ex officio, Secretary
Board of Directors
General Improvement District No. 1
Loveland, Colorado

APPROVED AS TO FORM:



Teresa G. Andrews
Assistant City Attorney

AN ORDINANCE GRANTING A PETITION FOR INCLUSION OF THE AREA OF THE CITY OF LOVELAND, COUNTY OF LARIMER GENERALLY BOUNDED BY LINCOLN AVENUE TO THE EAST, CLEVELAND AVENUE TO THE WEST, OPERA ALLEY TO THE NORTH AND EAST FIRST STREET TO THE SOUTH WITHIN THE LOVELAND GENERAL IMPROVEMENT DISTRICT NO. 1 IN THE CITY OF LOVELAND, COLORADO

Ordinance # 6050

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on September 20, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on September 24, 2016 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on October 8, 2016.

City Clerk

Effective Date: October 18, 2016



Current Planning Division
 410 E. 5th Street • Loveland, CO 80537
 (970) 962-2523 • eplan-planning@cityofloveland.org

MEMORANDUM

TO: City Council

FROM: Troy Bliss, Senior Planner, Current Planning Division

DATE: September 20, 2016

SUBJECT: Petition for Inclusion into the General Improvement District No. 1 (GID)

I. EXHIBITS

- A. Signed Petition from City of Loveland dated September 2, 2016
- B. Preliminary Parking Analysis for South Catalyst Project
- C. Map of the Current GID Boundaries

II. KEY ISSUES

In consideration of this request for including generally the southern portion of the South Catalyst project site into the GID, no issues have been identified by City staff. Notification of this petition for inclusion in the GID was published in the *Reporter Herald* as required by Colorado State Statutes. No correspondence has been received from citizens regarding this request.

III. BACKGROUND

The subject properties have never been part of the GID because of previous residential uses or the interests of commercial businesses owners. When the City of Loveland purchased these properties as part of the overall South Catalyst project, it created disconnect with respect to the GID and its boundaries. The South Catalyst project is envisioned as an integrated master planned development in downtown Loveland. Much like Lincoln Place or Gallery Flats, it anticipates a mixture of uses that while would function independently, operate as a network of supporting uses. Consequently, it is appropriate to continue the boundaries over the entire site so that it is not just partially a part of the GID. The GID is not applied to partial properties or developments – it covers entire sites within downtown (see Exhibit C). Consequently, this action is seen as a “clean-up” to the GID boundaries when considering development plans for the South Catalyst project.

Parking Analysis

The City is in partnership with Brinkman Partners, planning to build a 460 space parking structure on the subject property generally located at the northwest corner of N. Lincoln Avenue and E. 2nd Street. With the inclusion of the parking structure, the South Catalyst project is providing a key component towards the purpose of the GID – additional parking for downtown. Attached to this memorandum is an initial parking study performed by Walker Parking Consultants for the South Catalyst project (see **Exhibit B**) to help project what parking demands with respect to the project. Additionally, major streets surrounding the project such as N. Lincoln Avenue, N. Cleveland Avenue, and E. 2nd Street would afford parking opportunities in proximity. It is anticipated that the segment of E. 3rd Street between N. Lincoln Avenue and N. Cleveland Avenue would not have any street parking, however east of N. Lincoln Avenue and west of N. Cleveland Avenue does include angled parking on both sides. .

IV. VICINITY MAP



V. GENERAL IMPROVEMENT DISTRICT NO. 1 (GID)

City Council has not been presented with many requests for inclusion of properties in the GID. Dating back to 2002, only seven (7) requests have been considered. Most of the requests for previous GID inclusions were prompted by development proposals or change in use including the Lincoln Place Building, the Mortgage Office located at the northeast corner of N. Washington Avenue and E. 4th Street, a restaurant located between N. Lincoln Avenue and N. Jefferson Avenue on the north side of E. 6th Street, and the Friendly Pawn Shop at the northeast corner of N. Lincoln Avenue and E. 2nd Street. This request by the City of Loveland is in keeping with the nature of previous requests, particularly when considering issues related to parking.

VI. RECOMMENDATION

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

PETITION FOR INCLUSION IN THE GENERAL IMPROVEMENT DISTRICT (GID)
NO. 1

RECEIVED

SEP - 2 2016

To the City Council of the City of Loveland, Colorado:

CITY CLERKS OFFICE
LOVELAND, CO

The undersigned do hereby petition for inclusion into the General Improvement District No. 1 for the following described real property, to-wit:

LOTS 1 AND 2, BLOCK 24, IN THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, EXCEPT THAT PORTION CONVEYED BY DEED RECORDED JULY 2, 2001 AT RECEPTION NO. 2001053327

LOTS 15 AND 16, BLOCK 19, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

LOTS 6, 7, 8 AND 9 BLOCK 24, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO EXCEPT THAT PORTION AS SET FORTH IN RULE AND ORDER RECORDED AUGUST 12, 2002 AT RECEPTION NO. 2002085435

LOTS 19 AND 20, BLOCK 19 CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

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THE SOUTH 85 FEET OF LOTS 13 AND 14, BLOCK 19, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

AN UNDIVIDED 50% INTEREST IN THE FOLLOWING PROPERTY:

LOTS 21 THRU 24, BLOCK 19, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

LOTS 13 AND 14, LESS THE SOUTH 85 FEET, BLOCK 19, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

for inclusion in the General Improvement District No. 1 (as illustrated in Exhibit 1); and that the said City Council consider this petition and amend the boundaries of the General Improvement District No. 1, to include the above described property as petitioned for above. ALL PERSONS WHO'S SIGNATURES ARE AFFIXED HERETO STATE AND REPRESENT TO THE BEST OF THEIR KNOWLEDGE, INFORMATION AND BELIEF THAT THE ABOVE DESCRIBED REAL PROPERTY IS ACCURATE. IT IS THE PETITIONER'S DESIRE TO BE INCLUDED IN THE GENERAL IMPROVEMENT DISTRICT NO. 1 SO THAT ANNUAL AD VALOREM REAL PROPERTY AND PERSONAL PROPERTY TAXES CAN BE APPLIED TO SERVICES, INCLUDING PEDESTRIAN AND PARKING FACILITIES, PROVIDED BY THE DISTRICT. BY BEING PART OF THE GENERAL IMPROVEMENT DISTRICT NO. 1, FOR WHICH THE PROPERTY WILL BE TAXED, THE UNDERSIGNED AGREES TO PAY THE MILL LEVY ASSESSMENT TO MAINTAIN AND UPGRADE PUBLIC PARKING AND PEDESTRIAN FACILITIES, AND OTHER RELATED EXPENSES FINANCED THROUGH THE GID NO. 1.

Signature and mailing address of all property owners must be provided in the space below. Also state if land is within or adjacent to the property described above.

Stephen C. Adams, City Manager

City of Loveland

500 E. 3rd Street

Loveland, Colorado 80537

The following statement is and is intended to be represented as a sworn statement and an "oath" as defined by Section 18-8-501, CRS, as amended. (WARNING: A person commits a Class 1 petty offense if he makes a materially false statement, other than those prohibited by Sections 18-8-502 and 18-8-502, CRS as amended, which he does not believe to be true, under an oath required or authorized by law).

EXHIBIT A

STATE OF COLORADO)
ss
COUNTY OF LARIMER)

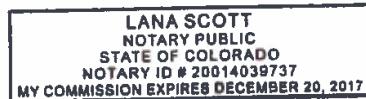
Stephen C. Adams, the affiant, being first duly sworn, upon oath depose(s) and say(s): that affiant was the circulator of the above and foregoing petition; that the signatures on said petition were signed in affiant's presence; and that they are the signatures of the persons they purport to be.

Stephen Adams
Stephen C. Adams, City Manager

Subscribed and sworn to before me this 2nd day of September, 2016.

Witness my hand and official seal.

My commission expires: December 20, 2017



Lana Scott
Notary Public

500 E. 3rd St. Ste. 330 Loveland, CO 80537
Address

APPROVED AS TO FORM

By: Maselma
SS DEPUTY CITY ATTORNEY

EXHIBIT A

EXHIBIT 1

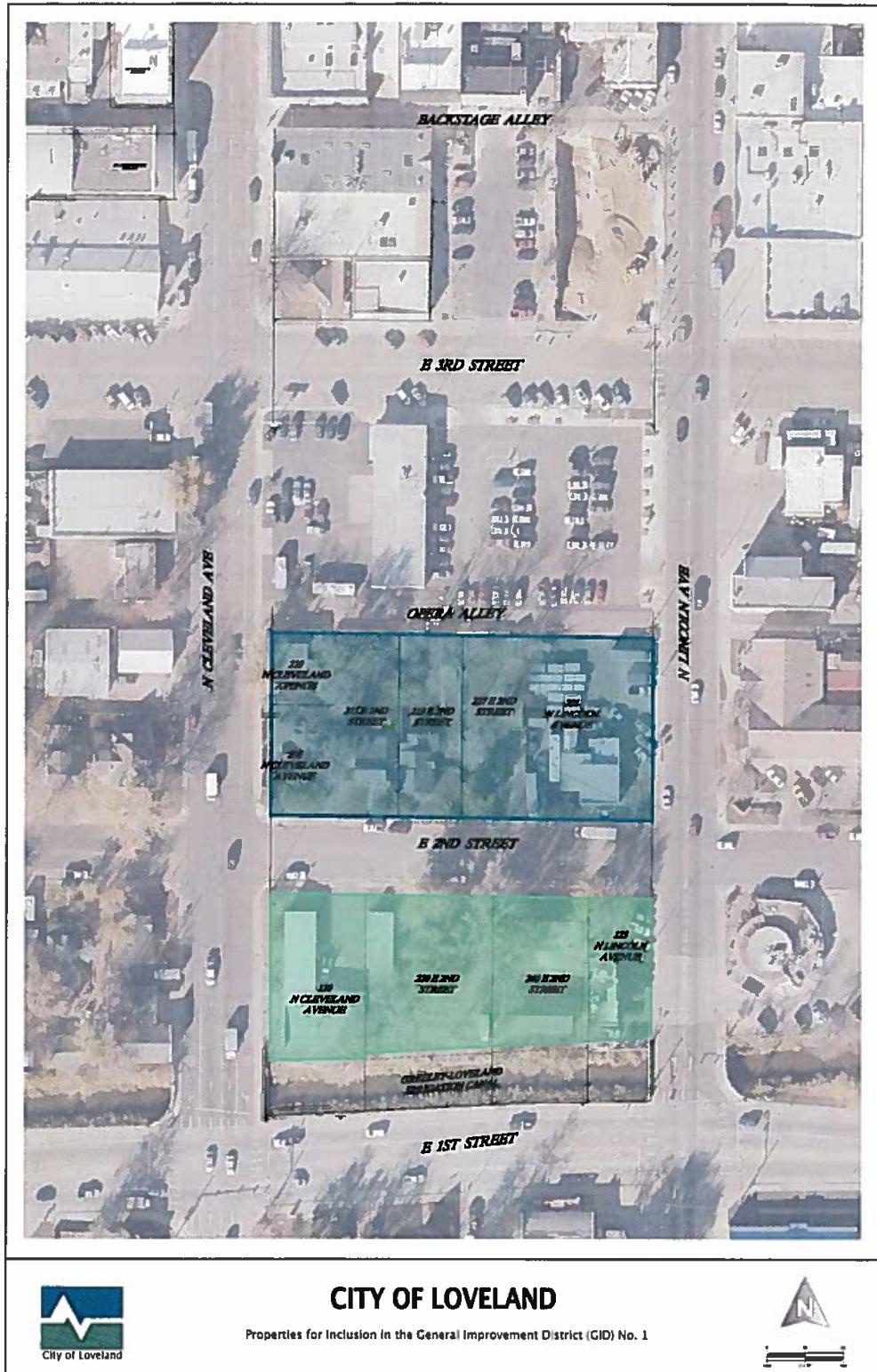


EXHIBIT A

EXHIBIT A

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MEMORANDUM

SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



PAGE 1

DATE: June 10, 2016; **FINAL June 16, 2016**

TO: Mr. Scott Ranweiler

COMPANY: Brinkman Partners

ADDRESS: 3528 Precision Drive, Suite 100

CITY/STATE: Fort Collins, Colorado

PREPARED BY: David Jay Lieb

CC: Robert Stanley

HARD COPY TO FOLLOW: No

PROJECT NAME: South Catalyst, Loveland

PROJECT NUMBER: 23-7635.00

SUBJECT: Shared-Parking Demand Analysis

5350 S. Roslyn Street, Suite 220
Greenwood Village, CO 80111

Office: 303.694.6622
Fax: 303.694.6667
www.walkerparking.com

INTRODUCTION

Walker Parking Consultants is pleased to provide the following *Shared-Parking Demand Analysis* for the proposed South Catalyst mixed-use development to be located in Loveland, Colorado.

STATEMENT OF QUALIFICATIONS

Walker Parking Consultants ("Walker") was founded in 1965 and operates offices in 16 U.S. cities and has two international offices in the U.A.E. Walker is a qualified professional engineering and consulting firm specializing in parking planning, design, restoration, and studies, including shared-use analysis. We have a strong track record of projects similar to this study in both the Front Range region and nationally. Walker staff members were the lead authors for Urban Land Institute's publication entitled *Shared Parking, Second Edition*, which is considered the primary industry resource for shared parking methodology.

The approach used in this analysis is increasingly becoming industry-standard for mixed-use projects. The base parking ratios and hourly adjustments applied in our model are research-driven and supported by hundreds of case studies compiled by Urban Land Institute, Institute of Traffic Engineers, and other planning organizations. Many successful projects have been developed in Colorado that make use of the shared parking approach. Shared use parking encourages greater development density, more walkable and sustainable communities, and more efficient use of land and capital resources.

SUMMARY OF FINDINGS AND CONCLUSIONS

The following are our primary findings and conclusions:

- Based upon our analysis of the South Catalyst mixed-use development and City of Loveland parking requirements, Walker anticipates that the project would have an adjusted code

EXHIBIT B

MEMORANDUM

SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



PAGE 2

requirement for roughly **519 stalls**. This requirement includes the allowable 20-percent adjustment for shared use parking, per section 18.42.040.C of the City of Loveland Zoning Code.

- As an alternative approach, Walker has developed a shared parking model for the site and projects that during intervals of peak parking demand, South Catalyst will generate a need for roughly **451 weekday parking spaces** and **419 weekend parking spaces**.
- The peak occurs in late December; the 12-month average demand is **415 weekday parking spaces**.
- Based on our analysis—and the late December peak—we recommend a shared use reduction of **68 spaces** in addition to the initial adjusted code requirements.

PROJECT DESCRIPTION AND GENERAL ASSUMPTIONS

Brinkman Partners is currently working on a development plan for a proposed mixed-use project to be located in downtown Loveland, Colorado. The project is currently referred to as "South Catalyst" and is expected to include a mix of multi-family residential, office, retail, and entertainment uses. The property is anticipated to include one garage, plus on-street parking spaces. The project is bounded by East 1st Street on the south, Backstage Alley on the north, North Cleveland Avenue on the west and North Lincoln Avenue on the east.

Our shared-parking demand analysis models the aggregate, peak, shared demand for all uses on the site. It is a point of negotiation between South Catalyst and the City of Loveland as to how much street parking will be credited to the project's needs and how many spaces (on- and off-street) removed as a consequence of construction must be replaced by the project.

The diagram and table below summarize the South Catalyst program data by use.

EXHIBIT B

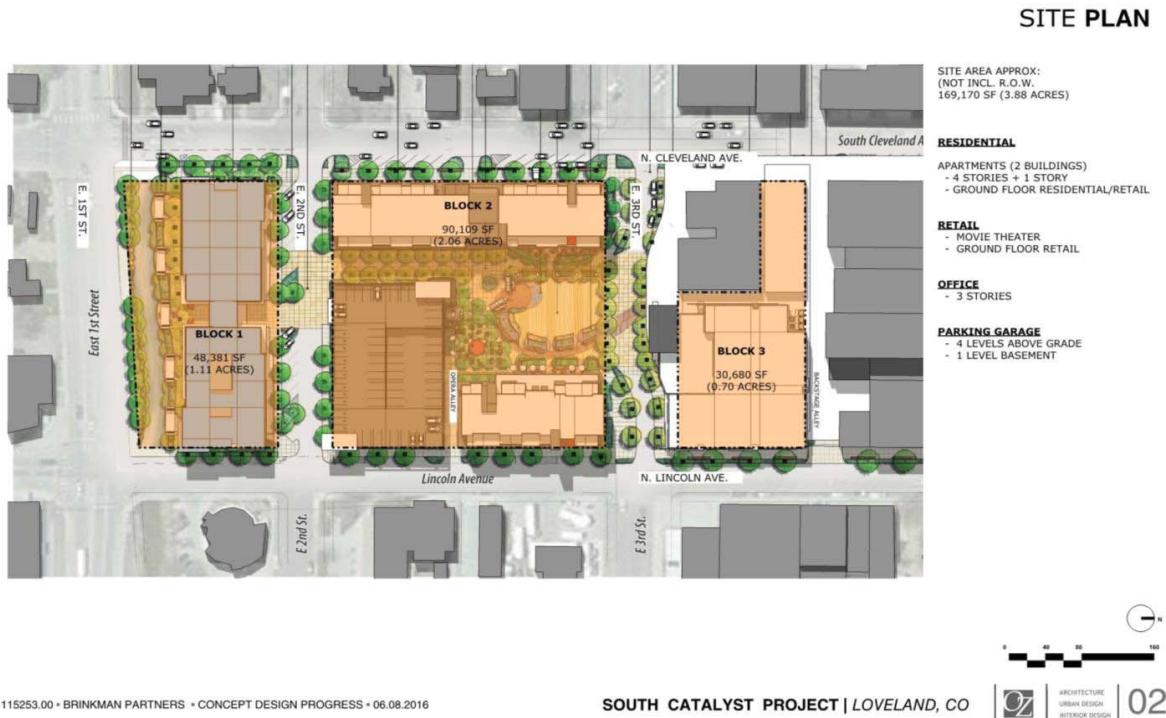
MEMORANDUM

SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



PAGE 3

Figure 1: South Catalyst - Conceptual Site Plan



Source: Brinkman Partners and OZ Architecture, 2016

EXHIBIT B

MEMORANDUM

SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



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Figure 2: South Catalyst – Project Program

Block 1	Office Building	
	Office	56,932 sf
<hr/>		
Block 2 West Apartments*		
	Apartments	
	Studio	13 units
	1 BR	49 units
	2 BR	32 units
	Retail	5,532 sf
<hr/>		
Block 2 East Apartments**		
	Apartments	
	Studio	13 units
	1 BR	18 units
	2 BR	14 units
	Retail	6,392 sf
<hr/>		
Block 3 Retail		
	Movie Theater	625 seats
	Retail	5,625 sf

* West Apartments has 13,995 sf of common amenity areas and circulation, for the use of residents, which does not factor into parking demand calculations

** East Apartments has 9,116 sf of common amenity areas and circulation, for the use of residents, which does not factor into parking demand calculations

Source: Brinkman Partners and OZ Architecture, 2016

Brinkman Partners has chosen Walker as their parking consultant to address projected shared parking demand based on anticipated modal split and captive adjustments appropriate for this site. The following general assumptions are applied to this analysis based on conversations with Brinkman Partners and OZ Architecture, and subsequent research:

1. Walker's shared-use methodology is based on the Second Edition of *Shared Parking*, a co-publication of the Urban Land Institute and the International Council of Shopping Centers and on other industry standards and research data. Walker Parking Consultants served as the lead consultant in developing this body of work. The recommended parking capacity presented herein is designed in most cases to represent the 85th or 90th percentile conditions, consistent with the recommendations contained within *Shared Parking*.
2. It is assumed that on average 91% of all employees working at South Catalyst will bring a car to work, based upon City of Loveland census data.

EXHIBIT B

MEMORANDUM

SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



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3. The program data used in this memorandum were provided by Brinkman Partners and OZ Architecture. As the program data are still in development, minor variances in total floor space may occur. Overall, minor variances are not likely to significantly increase or decrease the metrics used in this memorandum to project parking demand.

REQUIRED PARKING PER LOVELAND ZONING

Applying City of Loveland Zoning requirements to the program elements, yields the following results.

Figure 3: Estimate of City of Loveland Zoning Requirements for Parking at South Catalyst

Land Use	Quantity	Metric	Requirement	Unadj Parking Spaces	Shared Parking Adjustment	Adjusted Parking Spaces
Retail	8,775	Square feet	1/300 sf	30	20%	24
Restaurant (sit-down)	4,387	Square feet	1/200 sf	22	20%	18
Restaurant (fast food)	4,387	Square feet	1/150 sf	30	20%	24
Cineplex	625	Seats	1/3 seats	207	20%	166
Office <25,000sq ft	56,932	Square feet	1/250 sf	228	20%	183
Residential						
Studio/Efficiency	26	Units	0.7 per BR	130	20%	104
1 bedroom	67					
2 bedroom	46					
TOTAL				647		519

Source: *City of Loveland Zoning Requirements, Chapter 18.42.040.C*

The breakdown above is subject to some interpretation. Based upon conversations with Brinkman Partners and OZ Architecture, the retail space (totaling 17,549 square feet) is split evenly between retail and dining. The dining is further split into 50 percent fast-food/counter-service (to include deli, coffee shop, etc.) and 50 percent sit-down (in turn, divided evenly between casual and fine dining). The requirement for residential parking has been negotiated between South Catalyst and the City of Loveland at 0.7 parking spaces per bed; this number is used in lieu of the City's standard requirements in both the zoning example above, and in Walker's shared parking calculations.

Based on Walker's interpretation of City requirements, we estimate that South Catalyst's unadjusted vehicle parking requirement would be roughly 647 parking stalls. Assuming the maximum shared-use reductions apply, the required parking under zoning would be **519 spaces**.

SHARED PARKING OVERVIEW

Shared-use parking is a concept in which land uses in close proximity share a pool of available spaces in order to reduce the overall parking needs for the site. The concept works well in situations where parking demand for different uses peaks at different times of the day. For example, an office and a restaurant can share parking effectively because an office will experience peak demand during the weekday

EXHIBIT B

MEMORANDUM

SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



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morning/afternoon, while a restaurant will experience peak demand in the evenings and on weekends. Reductions to the parking system are also made based on local factors such as transit ridership percentages and captive market percentages.

A captive market occurs when a user group has already parked in an area for a primary use and then patronizes another establishment without generating any new car trips or parking demand. For example, a restaurant adjacent to an office building may be very busy at lunch, but is unlikely to generate nearly as many cars as a stand-alone restaurant because most of its business will come from the "captive" market of people who work in the building or in the area. The effects of a captive market vary greatly, depending on the size of the market, the type of commercial space, and the characteristics of surrounding land uses.

For the proposed project, we anticipate a large weekday daytime adjustment for captive restaurant and retail patrons to account for the number of patrons already parked in spaces associated with South Catalyst. A small drive ratio adjustment is made for non-captive employees working at the office, retail shops, and restaurants to account for alternative modes of transportation (transit, carpool, dropped off, walking, cycling, etc.).

WALKER'S SHARED-USE PARKING MODEL

Generally, Walker uses an approach that is similar to the method outlined in the Urban Land Institute's (ULI) Shared Parking (Second edition) publication for calculating shared-use parking demand. (Note that Walker was involved in much of the core research for this publication). This methodology takes into account the number of cars generated by various land-use components and adjusts the "peak demand" to reflect the presence of people parking for that land use at different times of the day.

When detailed planning data is available, Walker's model is specific enough to provide a breakdown of parking demand generated by different user groups, weekday versus weekend demand patterns, and the fluctuations in this demand at different times of the year. Walker updates the model periodically with its own internal research. For mixed-use developments, the shared use methodology is preferable over City/Town code requirements, which tend to miscalculate parking demand by assuming that demand from all components of a development peak at the same time. If viewed individually, these land uses create an unadjusted parking demand which is typically only applicable for projects that consist of a single land use and are developed in a low density area with no transit and no pay parking.

Our model uses base parking ratios assuming stand-alone land uses, but adjusts them for time of day, month, drive ratio, and non-captive adjustments. The base ratios used in the model vary for a weekday and weekend and are split between patron/visitor and employees/residents. For example, the base ratio for a small-sized office (<25ksf) ranges from 3.80 to 0.38 per ksf GFA for a weekday and weekend respectively. This compares to 15.0 and 14.0 per ksf GLA for fast-food/counter-service restaurants for a weekday and weekend.

EXHIBIT B

MEMORANDUM

SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



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Our model evaluates the projected parking demand from 6:00 a.m. to midnight for each month of the year for a weekday and weekend.

SHARED PARKING PROJECTIONS FOR SOUTH CATALYST

Based on Walker's model, the peak-hour demand for South Catalyst is projected to occur on a weekday, in late December, around 2:00 p.m. and would require **451±** spaces. Peak hour demand on a weekend is projected to occur on a Friday or Saturday evening and require **419±** spaces. The weekday projection will be used for Walker's recommendation for an appropriate parking supply for South Catalyst. The tables below provide a summary of Walker's unadjusted parking demand, the City Zoning requirement, and Walker's peak shared parking demand projection.

Figure 4: Shared Parking Model Projections; Weekday Peak Parking

Land Use	Walker Model - Unadjusted Weekdays				City Zoning				Walker Model - Shared (Peak)	
	Quantity	Base Ratio	Unit	Unadj Parking Spaces	Base Ratio	Unadj Parking Spaces	Shared Parking Adjustment	Adjusted Parking Spaces	Type	Late December, Weekday, 2:00 PM
Community Shopping Center (<400 ksf)										
Employee	8,775	2.90	/ksf GLA	25	1/300 sf	30	20%	24	Customer/Guest All Uses	159
Employee		0.70		6	1/200 sf	11	20%	9	Employee, All Uses	182
Fine/Casual Dining	2,194	15.25	/ksf GLA	33	1/200 sf	11	20%	9	Reserved Resident	110
Employee		2.75		6	1/150 sf	30	20%	24		451
Family Restaurant	2,194	9.00	/ksf GLA	20	1/3 seats	207	20%	166		
Employee		1.50		3	0.7 per BR	130	20%	104		
Fast Casual/Fast Food	4,387	12.75	/ksf GLA	56						
Employee		2.25		10						
Cineplex	625	0.19	/seat	119						
Employee		0.01		6						
Residential Guest	139	0.10	/unit	14						
Residential										
Studio/Efficiency	26	0.70	/unit	18						
1 bedroom	67	0.70	/unit	47						
2 bedroom	46	1.40	/unit	64						
>3 bedroom	0	2.10	/ksf GFA	0						
Office <25,000sq ft	56,932	0.30	/ksf GFA	17	1/250 sf	228	20%	183		
Employee		3.50		199						
Subtotal Customer/Guest				284						
Subtotal Employee/Resident				230						
Subtotal Reserved Resident - Rental		100%	resident	129						
				643						
TOTAL				643						451

Source: Walker Parking Consultants, 2016

EXHIBIT B

MEMORANDUM

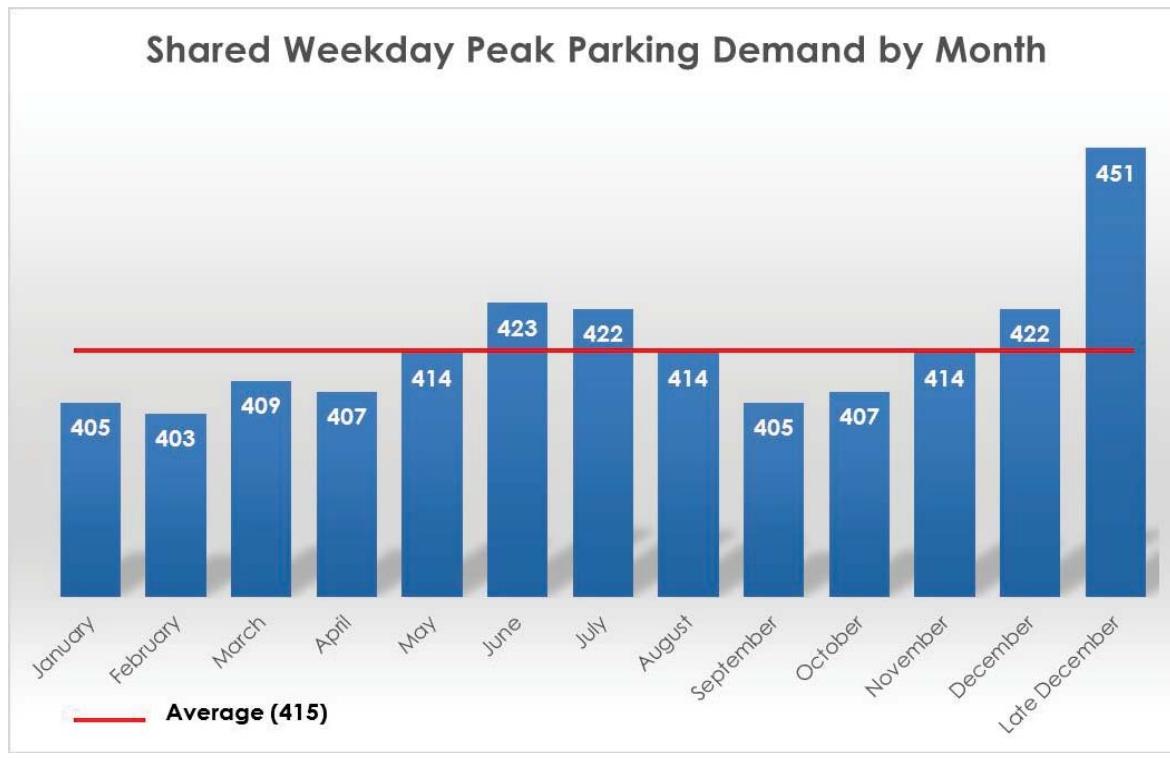
SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



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If a full year's peak demands are viewed by month, the average weekday peak demand is **415±** parking spaces, as illustrated in the following figure:

Figure 5: Shared Parking Model Projections; Weekday Peak Parking Demand by Month



Source: Walker Parking Consultants, 2016

The following figures, show the projected hourly distribution of parking demand for various user groups generated by South Catalyst upon full occupancy—at the annual peak demand in late December. The shared parking concept is clearly illustrated, showing where the different uses gain efficiency by generating peak demand for parking spaces at different times of the day. Weekend peak demand is projected to be lower. Therefore, we recommend parking the project based on the weekday projected needs.

EXHIBIT B

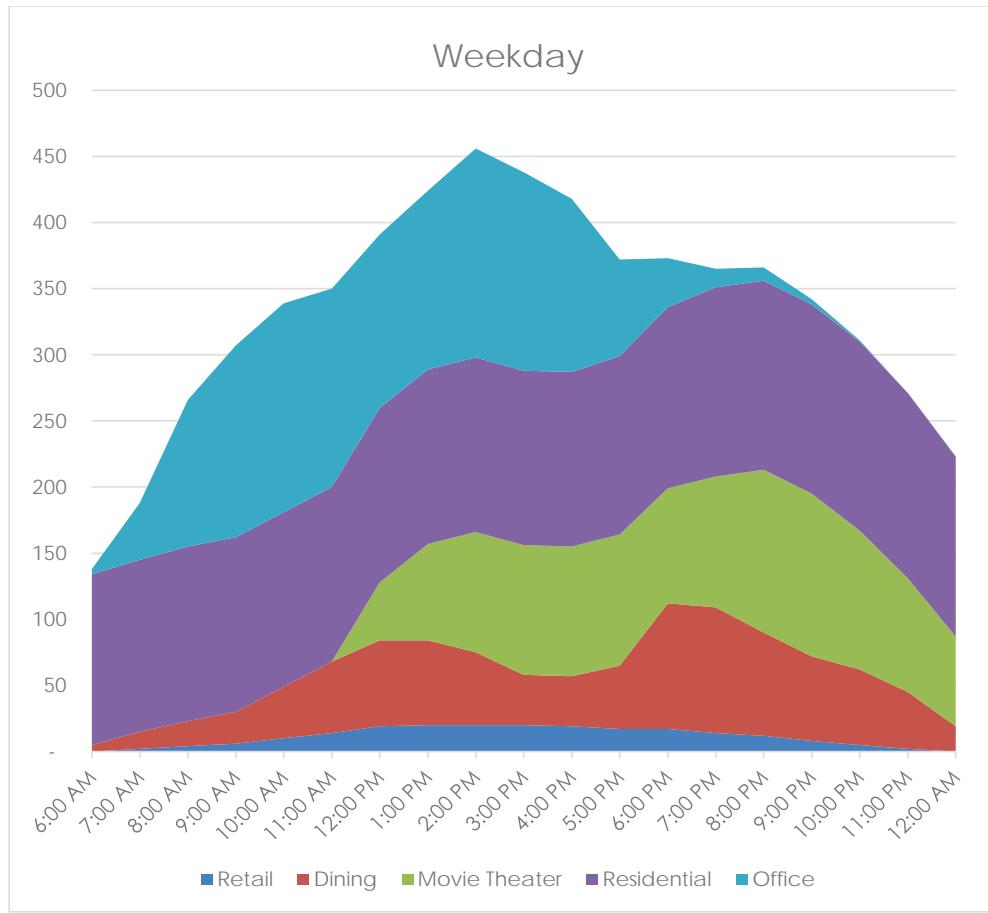
MEMORANDUM

SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



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Figure 6: Shared Parking Model Projections Peak Weekday



Source: Walker Parking Consultants, 2016

EXHIBIT B

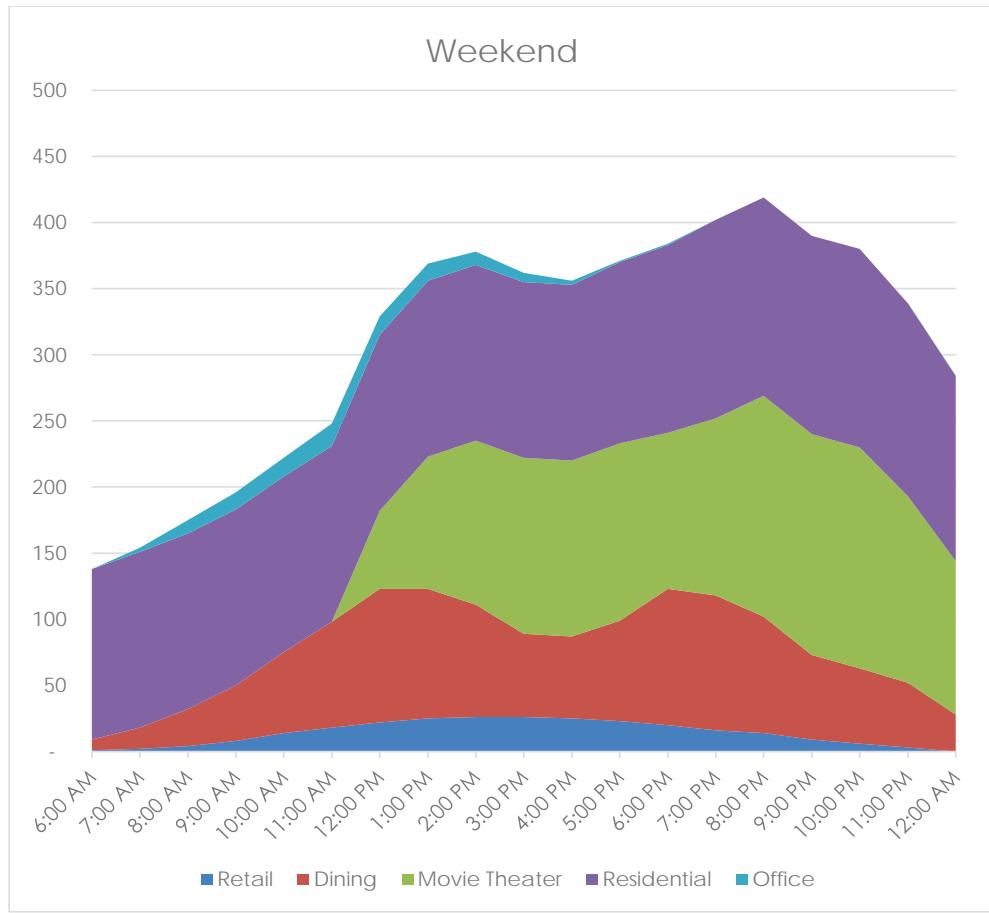
MEMORANDUM

SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



PAGE 10

Figure 7: Shared Parking Model Projections Peak Weekend



Source: Walker Parking Consultants, 2016

SHARED-USE PARKING RECOMMENDATION – SOUTH CATALYST

Based on Walker's model and the adjustments and assumptions discussed above, we recommend that the development provide a minimum of **roughly 456** parking spaces to satisfy the needs of weekday residential, office, retail, and restaurant demand from the proposed new uses. This may include on-street parking spaces, as determined through negotiations with the City of Loveland. The recommended parking is lower than the minimum required under City zoning which would require **519 total stalls**, after allowable shared parking reductions are applied.

EXHIBIT B

MEMORANDUM

SOUTH CATALYST – TASK A: SHARED-PARKING DEMAND ANALYSIS



PAGE 11**NOTES****RESIDENTIAL PARKING**

Walker's projections assume 0.7 parking spaces per bedroom. The residential component modeled in this exercise is 139 units with a total of 185 bedrooms; at 0.7 spaces per bedroom, the demand is projected at 130 parking spaces. At the request of Brinkman Partners/OZ, these 110 (85 percent) parking spaces are assumed to be reserved for residents only, and are not shared within the model. If, all of the parking spaces *were* shared, with none reserved for specific purposes, the peak demand would drop from **451 spaces** to **417 spaces**.

Walker typically models one space per studio apartment, 1.5 spaces per one-bedroom apartment, and 1.75 spaces per two-bedroom apartment; this may be more than is needed for an urban project. However, to illustrate a slightly more conservative approach than the ratio of 0.7 spaces per bedroom, Walker projected 0.7 spaces per studio apartment, one space per one-bedroom apartment, and 1.5 spaces per two-bedroom apartment. This yielded a total demand for South Catalyst of **473 spaces**, if 85 percent residential parking is reserved; or **434 spaces**, if all parking is shared.

PARKING GARAGE

While Walker has projected the intensity of parking demand, under a shared parking scenario, at 456 parking spaces, this does not necessarily indicate the required capacity of the parking garage planned to be constructed on Block Two of the South Catalyst project. If the City requires the 127 on- and off-street parking spaces displaced by the project to be replaced in a parking structure, the number of stalls needed could increase from **451** to **578**. Conversely, adjacent street parking could offset either the 127 spaces lost, or could be used to reduce the number of spaces needed in a parking garage.

Due to the number of variables, Walker is unable to project the size of a parking structure at this time. The modeling of demand, however, is presented with a high level of confidence, given the information provided.

EXHIBIT B

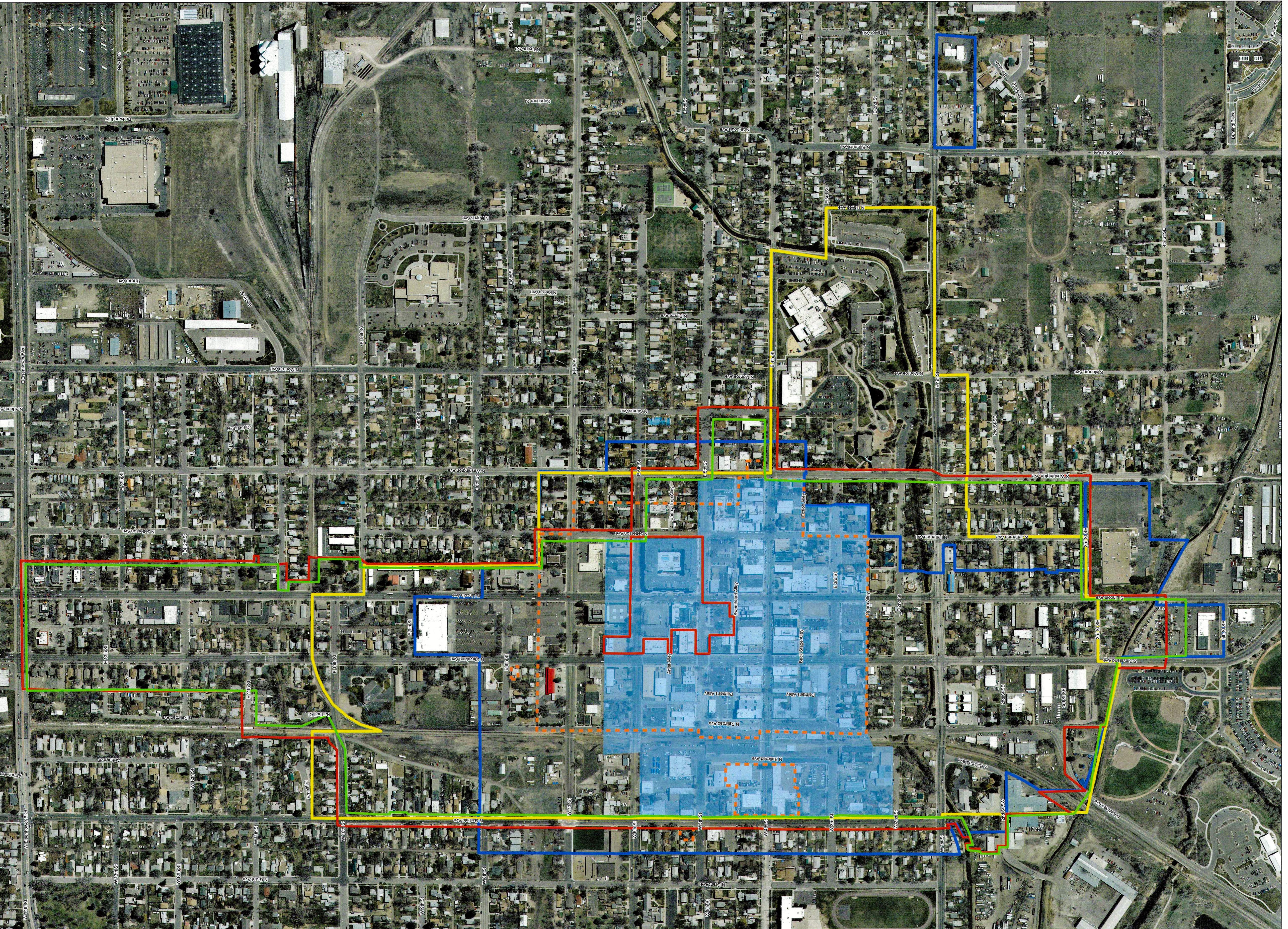


EXHIBIT C



City of Loveland

1,000 Feet

Date: 1/24/2014

Page 34 of 313

Jim and Shanna Vernon
3432 Atwood Court
Loveland, CO 80538

September 20, 2016

Dear Loveland City Council Members,

We attended the August 8, 2016 Planning Commission meeting to express our firm opposition to the proposed amendment to the Lee Farm Community Development Plan. We were very disappointed with the Planning Commission's decision, as well as the process by which the Planning Commission reached its conclusions. We write to you to request that you reject the Planning Commission's recommendation and that you reject the proposed amendment to the CDP.

Simply put, the proposed amendment will substantially reduce our property values and represents a fundamental – and detrimental – change to our community. We bought our property in 2012, when the current CDP indicated that the Lee Farm development would place single family homes opposite our property – on the northern boundary of Hunter's Run. We live on a cul-de-sac, and the existing plan would place single family homes, facing ours, on their own cul-de-sac streets. This clearly represents the principle of "like-to-like".

The proposed amendment, as you probably already know, would place a high-traffic "collector road" directly facing our backyard. This clearly violates the "like-to-like" principle. During the meeting, several planning commissioners claimed that the proposed amendment would still preserve the "like-to-like" principle. They gave no basis for this claim, and the proposed amendment clearly contradicts this claim. While the most obvious contraction is the collector road, the proposed amendment also moves multi-family and higher-density housing much closer to the Hunter's Run Boundary. Furthermore, the proposed amendment places this multifamily and higher density housing without the buffers that the existing CDP provides us. We cannot stress enough, how "unlike" our neighborhood these changes would be. We purchased our home with the assurance that we would have the backyards of single family homes facing our backyard. The proposed amendment would instead run a high-traffic road, and on the other side of that road, would place higher density and multi-family housing in direct view of our backyard. The negative impact on our property value should be obvious from these facts.

During the August 8, 2016 meeting, the developer and the commissioners – with the exception of Patrick McFall – made multiple statements that completely ignore these facts. Several commissioners and the developer commented that the proposed amendment would not change the general location of the multifamily and higher density housing. A comparison of the concept maps for the existing CDP and the proposed amendment shows that their claims simply are not accurate.

The commissioners also emphasized repeatedly how the proposed amendment would "solve" drainage problems. Where we live has no drainage problems. The drainage problems do affect Hunters Run, but primarily on the Northwest corner, including the townhomes, which are nowhere near the majority of the northern border. Furthermore, the drainage "problem" does not really exist without the Lee Farm development. To claim that this "solution" offsets our concerns does not offer us a trade-off of any value. We have no drainage problem today. Creating additional drainage problems and then addressing them with a proposed amendment that would drastically reduce our property value is disingenuous, at best. It implies that we are receiving additional value with the proposed amendment, when we are not.

Jim and Shanna Vernon
3432 Atwood Court
Loveland, CO 80538

Essentially, this argument tries to claim that the proposed amendment will add value by solving one problem, when the proposed amendment causes several problems and only partially addresses one of them. If the existing CDP creates additional drainage problems, this amendment is the wrong way to solve those additional problems. The developer should solve those problems at their own cost – or at the cost of the new homeowners – and not shift the cost of the solution to existing homeowners, who did not create any of these problems.

We would like to thank Planning Commission Member Patrick McFall for advocating for our concerns. Unfortunately, he was the only member of the commission to do so. We believe the commissions first obligation in approving new development is to protect the investments that existing residents have made. The commission has instead explicitly threatened our investment in our homes, for those of us who live on the norther border of Hunter's Run. Several commissioners even suggested that we should accept these changes "for the good of the larger community". You should not require us to sacrifice our life savings, which our home equity value mostly represents, for the sake of these vague notions of value. Lee Farm can be developed in a smart way that protects existing residential values. Instead, the Planning Commission has recommended an amendment that is unnecessary, simple to satisfy the developer, without considering the very real harm this amendment will create.

We ask you, as our last resort, to protect our investment value and reject the proposed amendment. According to residents who have lived here longer than we have, the City Council previously considered and rejected a similar plan to change the CDP. We hope that you will use the same logic in rejecting this proposed amendment.

Sincerely,

Jim and Shanna Vernon

AGENDA ITEM: 2.4
MEETING DATE: 10/4/2016
TO: City Council
FROM: Leah Browder, Public Works Director
PRESENTER: Chris Carlson, Civil Engineer II

**TITLE:**

An Ordinance Enacting a Supplemental Budget Appropriation to the 2016 City of Loveland Budget for Construction of the Wilson to Taft Avenue Flood Recovery Project.

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. The project's construction would not be funded.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration. The project will be delayed accordingly.

SUMMARY:

This project contains all remaining flood recovery work between Wilson Avenue and Centennial Park, including the following: replacement of the pedestrian bridge crossing the Big Thompson River downstream of Wilson Avenue; repair and realignment of several sections of concrete pedestrian trail between Wilson and Taft Avenue; repairs, utility protection, trail realignment, and erosion protection north of the Cottonwood Meadows Subdivision at an avulsion area; repair of three damaged storm sewer outfalls; repair and restoration of a pre-flood stormwater quality treatment pond; and construction of a trail connection to the west sidewalk on Taft Avenue. The first reading of the ordinance was unanimously approved by the City Council at the September 20, 2016 Council meeting.

The overall project budget is \$1,125,000. The Parks and Recreation Department currently has \$600,000 appropriated for this flood recovery work. The Open Lands and Trails Division will contribute \$50,000 already appropriated from recreation trail CEF's. This provides a total of \$650,000 from the Parks and Recreation Department's existing appropriated funds. The Public Works Department currently has \$192,903 appropriated for this flood recovery work. The Public Works and Parks & Recreation Department 2016 budget appropriations combined together equal \$842,903. This requires a supplemental appropriation request of \$282,097 to cover the anticipated \$1,125,000 project budget. Based on a percentage split in types of eligible work, \$209,020 will be appropriated from the Stormwater Utility Capital Fund and \$73,077 from the General Fund. Therefore, \$282,097 in supplemental appropriation is requested. This project is eligible for partial reimbursement from FEMA.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The appropriation uses existing balances within the General Fund and Stormwater Utility Capital fund. The existing working cash balance of the Stormwater Utility Capital fund is \$7,379,642. It

will be reduced by \$209,020 to a new balance of \$7,170,622. The General Fund balance will be reduced by \$73,077.

BACKGROUND:

On March 2, 2014, City Council originally appropriated funding for the engineering costs of numerous flood recovery projects. That included funding for the multiple projects generally within the Wilson to Taft Avenue reach of the Big Thompson River. Projects within this reach include replacement of the Wilson Avenue pedestrian bridge, trail realignment and repairs, storm sewer outfall and stormwater quality pond replacement, utility protection, bank protection, and flood hazard mitigation. Initial engineering analysis and conceptual design was completed for the projects, which led to a scope change request being submitted to FEMA for approval in July 2015. Final design and construction was then postponed pending FEMA approval.

By December 2015 FEMA had not responded to the City's request for a scope change so staff decided to move forward with final design and environmental permitting in order to construct the project during the next available river construction window of the winter of 2016/2017. On March 15, 2016, City Council approved a re-appropriation and early rollover of funds into the 2016 budget for the final design work with the anticipation of construction beginning in late fall 2016. Staff would request a supplemental appropriation for construction costs once final design and a detailed cost estimate was completed. It was staff's understanding that FEMA review of the proposed scope changes would also occur in the spring or summer of 2016. Unfortunately, FEMA is months to years behind in their review process and has not yet reviewed the request. Staff has been told that FEMA is working on it but it is uncertain when a formal response will be received.

In order to not lose another year's construction window and further postpone repairs, Public Works will now proceed with the construction of these flood recovery projects. It is still our desire to receive FEMA approval of the scope changes prior to construction; however, we recommend moving forward with construction without further delay even if FEMA does not respond. Therefore, the project was advertised to bidders on September 2. It is anticipated that construction bids will be opened on September 29, a construction contract will be brought to City Council for award on October 18, and construction will start on approximately November 7, pending receipt of environmental permits. If that schedule remains, construction will occur throughout the winter with final completion expected by late May 2017.

Much of the funding for this project's construction has already been appropriated. The Parks and Recreation Department currently has \$600,000 appropriated for this flood recovery work, which includes \$70,000 in CIRSA insurance payment for the bridge damages and upfront funds of \$134,415 that will be reimbursed by a GOCO grant. The Open Lands and Trails Division will contribute \$50,000 already appropriated from recreation trail CEF's. This provides a total of \$650,000 from the Parks and Recreation Department's existing appropriated funds.

The Public Works Department currently has \$192,903 appropriated for this flood recovery work. The Public Works and Parks & Recreation Department 2016 budget appropriations combined together equal \$842,903. This requires a supplemental appropriation request of \$282,097 to cover the anticipated \$1,125,000 project budget. Based on a percentage split in types of eligible work, \$209,020 will be appropriated from the Stormwater Utility Capital Fund and \$73,077 from the General Fund.

Original approved FEMA project worksheets state that up to \$332,000 of work within the project is eligible for Public Assistance reimbursement. The City's scope change requests, if approved as submitted, would allow for up to \$644,000 to be eligible for FEMA reimbursement. There is also the possibility that some components of the project could be designated by FEMA to receive

hazard mitigation funds as additional reimbursement, however, staff does not believe that can be counted on at this time.

REVIEWED BY CITY MANAGER:
SCA

LIST OF ATTACHMENTS:

1. Ordinance

FIRST READING: September 20, 2016

SECOND READING: October 4, 2016

ORDINANCE NO. 6051

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR CONSTRUCTION OF THE WILSON TO TAFT AVENUE FLOOD RECOVERY PROJECT

WHEREAS, the City has received reserved funds not anticipated or appropriated at the time of the adoption of the 2016 City budget for construction of the Wilson to Taft Avenue flood recovery project; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2016 City budget for construction of the Wilson to Taft Avenue flood recovery project, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That reserves in the amount of \$209,020 from fund balance in the Stormwater Utility Fund are available for appropriation. That reserves in the amount of \$73,077 from fund balance in the General Fund are available for appropriation. Such revenues in the total amount of \$282,097 are hereby appropriated to the 2016 City budget for construction of the Wilson to Taft Avenue flood recovery project. 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

Total Revenue

73,077

73,077**Appropriations**

100-91-999-0000-47120

Transfers to Capital Projects Fund

73,077

Total Appropriations**73,077**

**Supplemental Budget
Capital Projects Fund 120**

Revenues

120-00-000-0000-37100

Transfers from General Fund

73,077

120-00-000-0000-37345

Transfers from Stormwater Utility Fund

209,020

Total Revenue**282,097****Appropriations**

120-23-280-0000-49352

Transfers to Capital Projects Fund

282,097

Total Appropriations**282,097**

**Supplemental Budget
Stormwater Utility Fund 345**

Revenues

Fund Balance

Total Revenue

209,020

209,020**Appropriations**

345-23-280-0000-47120

Transfers to Capital Projects Fund

209,020

Total Appropriations**209,020**

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

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

ADOPTED this 4th day of October, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

Ordinance # 6051

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on September 20, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on September 24, 2016 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on October 8, 2016.

City Clerk

Effective Date: October 4, 2016

AGENDA ITEM: 2.5
MEETING DATE: 10/4/2016
TO: City Council
FROM: Brett Limbaugh, Development Services Director
PRESENTER: Kerri Burchett, Current Planning



TITLE:

1. An Ordinance Approving The Annexation Of Certain Territory To The City Of Loveland, Colorado, To Be Known And Designated As "Mirasol Second Addition" To The City Of Loveland
2. An Ordinance Amending Section 18.04.060 Of The Loveland Municipal Code, The Same Relating To Zoning Regulations For "Mirasol Second Addition" To The City Of Loveland

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motions for City Council action as recommended by the Planning Commission:

1. Move to approve on second reading the ordinance annexing the Mirasol Second Addition to the City of Loveland; and
2. Move to approve on second reading the ordinance zoning the Mirasol Second Addition to the City of Loveland to Mirasol Community Planned Unit Development.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. The property would remain outside city limits and the applicant could request development in unincorporated Larimer County.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration. This would delay the applicant in proceeding to the additional city applications necessary for development of the property.

SUMMARY:

This is a consideration of the following items on second reading:

- Adoption of an ordinance to annex 6.8 acres of property to be known as the Mirasol Second Addition; and
- A quasi-judicial action to zone the 6.8 acres to Mirasol Community Planned Unit Development.

The property is located at the southeast corner of 4th Street SE and St. Louis Avenue. The applicant is the Housing Authority of the City of Loveland.

The City Council public hearing was held on September 20, 2016. After receiving public testimony, the Council voted unanimously to approve the annexation and zoning ordinances. After annexation and zoning, the next step in the process is a preliminary development plan that requires a Planning Commission hearing. This will provide the neighborhood with another opportunity to participate and comment on the site plan and building design.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

BACKGROUND:

The proposal is to annex the property and incorporate it into the Mirasol Community senior housing development. The zoning for the property would allow the construction of a 60 unit, 3 story senior apartment building and 10 single family or paired dwellings. Both the apartment and residential units would match the architecture theme and streetscape established in the Mirasol development. The property is designated as medium density residential in Create Loveland and the requested density and building height in the GPD complies with the density range and heights identified in the plan.

The Planning Commission held a public hearing regarding the proposal on August 22, 2016. Nine neighborhood residents spoke at the hearing; two neighbors were in support of the project and seven were in opposition. Concerns were voiced over the massing of the apartment building not fitting in with the rural character of the area, existing traffic speeds on St. Louis Avenue, and the lack of sidewalks connecting Mirasol to downtown Loveland. The Planning Commissioners voted unanimously (8-0) to recommend approval of the annexation and zoning. After the hearing, the Housing Authority hosted an informal neighborhood meeting on September 15, 2016 to discuss alternative building location and designs.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. Ordinance approving the annexation
2. Ordinance relating to zoning
3. Annexation agreement

FIRST READING: September 20, 2016

SECOND READING: October 4, 2016

ORDINANCE NO. 6052

AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS THE "MIRASOL SECOND ADDITION" TO THE CITY OF LOVELAND

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

Section 1. That a Petition for Annexation, together with copies of the map of said territory as required by law, was filed with the City on July 29, 2016, by more than fifty percent (50%) of the owners who own more than fifty percent (50%) of the area of the territory hereinafter described, exclusive of public streets and alleys. The Council, by resolution at its regular meeting on September 20, 2016, found and determined that the proposed annexation complies with and meets the requirements of the applicable parts of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S. and further determined that an election was not required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S. and further found that no additional terms and conditions were to be imposed upon said annexation except those set out on said Petition.

Section 2. That the annexation to the City of Loveland of the following described property to be designated as the "**MIRASOL SECOND ADDITION**" to the City of Loveland, Larimer County, Colorado is hereby approved:

A parcel of land, being that parcel as described in the Quit Claim Deed recorded April 25, 1994 at Reception No. 94035703 of the records of the Larimer County Clerk and Recorder (LCCR), the abutting Right of Way of Fourth Street Southeast, the abutting Right of Way of South Saint Louis Avenue and the Right of Way of South Saint Louis Avenue abutting Mirasol Second Subdivision as recorded April 12, 2011 at Reception No. 20110021993 of the LCCR, located in the Northeast Quarter (NE1/4) of Section Twenty-four (24), Township Five North (T. 5N.), Range Sixty-nine West (R.69W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Northeast Sixteenth corner of said Section 24 and assuming the West line of the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) as bearing South 00°12'50" West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 1320.21 feet and with all other bearings contained herein relative thereto;

THENCE South 00°12'50" West along said West line a distance of 355.89 feet to the Northwest corner of said Mirasol Second Subdivision and to the POINT OF BEGINNING;

THENCE South 00°12'50" West continuing along said West line and along the West line of said Mirasol Second Subdivision and along the East Right of Way line of South Saint Louis Avenue a distance of 358.63 feet to the most Northerly Southwest corner of Mirasol Second Subdivision;

THENCE North 89°47'10" West a distance of 60.00 feet to a line parallel with and 60.00 feet West of, as measured at a right angle, the West line of the SE1/4NE1/4 of said Section 24 and to the East line of Ballard Place Subdivision as recorded at Reception No. 65143 of the LCCR said line being the West Right of Way line of South Saint Louis Avenue;

THENCE North 00°12'50" East along said parallel line and along said East line of Ballard Place a distance of 743.80 feet to the Southeast corner of Lot 8, Block 3, Ballard Place and to an extension of a line parallel with and 30.00 feet North of, as measured at a right angle, the North line of the SE1/4NE1/4 said line being the North Right of Way line of Fourth Street Southeast;

THENCE North 89°31'31" East along said North line a distance of 722.03 feet to the Northwest corner of Hamm Estates Subdivision as recorded January 14, 1992 at Reception No. 92002377 of the LCCR;

THENCE South 00°18'41" West along the West line of said Hamm Estates Subdivision a distance of 386.19 feet to the Southwest corner of said Hamm Estates Subdivision and to the North line of Mirasol First Subdivision as recorded February 28, 2006 at Reception No. 20060014474 of the LCCR;

THENCE South 89°33'00" West along said North line of said Mirasol First Subdivision and along the North line of said Mirasol Second Subdivision a distance of 661.36 feet to the POINT OF BEGINNING;

Said described parcel of land contains 300,068 Square Feet or 6.889 Acres, more or less.

Section 3. That the annexation of said territory is subject to the conditions set forth in Paragraph (14) of the Petition for Annexation of said territory filed with the City of Loveland.

Section 4. That the annexation of said territory shall be subject to the conditions set forth in an annexation agreement filed with the City of Loveland in substantially the form of **Exhibit "A"**, attached hereto and incorporated by reference, which agreement the City Manager is hereby authorized and directed to execute, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Ordinance or to protect the interests of the City.

Section 5. That the City Council hereby consents to the inclusion of the annexed territory in the Municipal Subdistrict of the Northern Colorado Water Conservancy District pursuant to Section 37-45-136 (3.6), C.R.S.

Section 6. Should any court of competent jurisdiction determine that any portion of the land annexed in this Ordinance was unlawfully annexed, then it is the intent of the City Council that the remaining land lawfully annexed to the City of Loveland should be so annexed and the City Council affirmatively states that it would have annexed the remaining land even though the court declares the annexation of other portions of the land to have been unlawfully annexed.

Section 7. 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 8. 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 4th day of October, 2016.

ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:



Teresa G. Andrews
Assistant City Attorney

Ordinance # 6052

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on September 20, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on September 24, 2016 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on October 8, 2016.

City Clerk

Effective Date: October 18, 2016

Exhibit A

**ANNEXATION AGREEMENT PERTAINING TO THE
MIRASOL SECOND ADDITION
TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

THIS ANNEXATION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2016, by and between the HOUSING AUTHORITY OF THE CITY OF LOVELAND, COLORADO, a Colorado non-profit corporation (the "Developer"); and the CITY OF LOVELAND, COLORADO, a home rule municipality (the "City").

RECITALS

WHEREAS, the Developer owns 6.8 acres, more or less, of real property located in Larimer County, Colorado, which are included within a parcel of land that includes public right of way, together more particularly described in **Exhibit "A"** attached hereto and by this reference incorporated herein (the "Property");

WHEREAS, the Developer is requesting that the City annex and zone said Property to allow for the coordinated development of the Property to the benefit of the parties, including the City; and

WHEREAS, the City is unable to annex the Property under the terms and conditions of this Agreement without the consent of the Developer.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Consent to annexation. Developer has petitioned for the annexation of the Property described in the attached Exhibit A. The Developer hereby consents to the annexation of the Property subject to the terms and conditions of the Petition for Annexation and this Agreement. In the event the City enters into this Agreement prior to approval by the City Council of the annexation, the parties agree that the binding effect of this Agreement and the effectiveness of the annexation and zoning of the Property in accordance with the Developer's application is expressly conditioned upon such approval by the City Council and the execution and delivery of this Agreement by all parties thereto.

2. Terms of annexation.

A. Current Planning

- i. Healthy mature trees shall be incorporated into the preliminary development plan (PDP) to the extent possible. Tree mitigation shall be included in the PDP for any healthy trees proposed to be removed. An evaluation of the trees from a professional arborist shall be submitted with the preliminary development plan.
- ii. Grading, tree removal and construction activities shall comply with the federal Migratory Bird Treaty Act. No such activities shall occur near an occupied bird nest during the songbird nesting season (March through July). If grading, tree removal or construction activities are proposed to occur March 1st through July 31st, a letter from a wildlife specialist shall be submitted to the Planning Division documenting that there are no active nests on the site.

B. Transportation Development Review

- i. All public improvements shall comply with the Larimer County Urban Area Street Standards (LCUASS).
- ii. The developer agrees to acquire and dedicate, at no cost to the City, any rights-of-way necessary for the required street improvements associated with this development.
- iii. Prior to the issuance of any building permits for development in Mirasol Second Addition, pursuant to the provisions in Section 16.40.010.B of the Loveland Municipal Code, the Developer shall design and construct the following public improvements unless already designed and constructed by others:
 - a. The ultimate adjacent street improvements on St. Louis Avenue including pavement widening, curb & gutter, landscaped parkway and sidewalk.
 - b. The ultimate adjacent street improvements on 4th Street SE including pavement widening, curb & gutter and sidewalk.
 - c. The extension of Finch Street between Bunting Place and 4th Street SE including pavement curb to curb and sidewalks on both sides.
 - d. Bunting Place from St. Louis Avenue to Finch Street including roadway pavement curb to curb and sidewalk improvements on the north side.
- iv. Any other off-site improvements required will be determined by the findings of the TIS at the time a development application is submitted for review.

GENERAL PROVISIONS

3. **Waiver of Damages.** In the future, the Developer may be granted vested property rights associated with the approval of a site specific development plan within the Property. In the event that such vested property rights are granted, and the City applies an initiated or referred measure to the property which would (a) change any term of this Agreement, (b) impose a moratorium on development within the Property, or otherwise materially delay the development of the Property, or (c) limit the number of building or utility permits to which the Developer would otherwise be entitled, the Developer agrees to waive any right to damages against the City to which Developer may otherwise be entitled under the Vested Rights Statute.
4. **Incorporation.** The terms and conditions of this Agreement shall be deemed to be incorporated into the Developer's Petition for annexation of the Property.
5. **Integration and Amendment.** This Agreement represents the entire Agreement between the parties with respect to the Property and supersedes all prior written or oral agreements or understandings with regard to the obligations of the parties with regard to the Property. If conflicts between the Annexation Conditions listed in the Staff Report for City Council on September 20, 2016, and the terms and conditions of this Annexation Agreement occur, this Annexation Agreement shall prevail. This Agreement may only be amended by written agreement signed by the Developer and the City. Only the City Council, as a representative of the City, shall have authority to amend this Agreement.
6. **Remedies.** In the event that a party breaches its obligations under this Agreement, the injured party shall be entitled only to equitable relief, including specific performance, and such other equitable remedies as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party, whether plaintiff or defendant, shall be entitled to recover costs and reasonable attorneys' fees.
7. **Effective Date.** This Agreement shall become effective on the date that it is executed and delivered and has been approved by the City Council. If the City does not annex the Property, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the Property, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to the potential annexation of the Property.
8. **Binding Effect and Recordation.** The parties agree to execute a memorandum of this Agreement that the City shall record with the Clerk and Recorder for Larimer County, Colorado. It is the intent of the parties that their respective rights and obligations set forth in this Agreement shall constitute equitable servitudes that run with the Property and shall benefit and burden any successors to the parties. The Final Annexation Map for the Property shall be recorded by the Developer within sixty (60) days of final

adoption of the ordinance annexing the Property, such Map shall contain a note that the Property is subject to this Agreement.

9. **Notices.** Whenever notice is required or permitted hereunder from one party to the other, the same shall be in writing and shall be given effect by hand delivery, or by mailing same by certified, return receipt requested mail, to the party for whom it is intended. Notices to any of the parties shall be addressed as follows:

To City: **City Clerk
City of Loveland
500 E. Third Street
Loveland, CO 80537**

To Developer: Sam Betters
Housing Authority of the City of Loveland
375 W 37th Street #200
Loveland, CO 80537

A party may at any time designate a different person or address for the purposes of receiving notice by so informing the other party in writing. Notice by certified, return receipt requested mail shall be deemed effective as of the date it is deposited in the United States mail.

10. **Waiver.** No waiver by the City or Developer of any term or condition of this Agreement shall be deemed to be or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.
11. **Applicable Law/Severability.** This Agreement shall be construed in accordance with the laws of the State of Colorado and venue for any dispute shall be in Larimer County. The parties to this Agreement recognize that there are legal restraints imposed upon the City by the constitution, statutes and laws of the State of Colorado, and that, subject to such restraints, the parties intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement. Provided, however, if any obligation of this Agreement is declared invalid, the party deprived of the benefit thereof, shall be entitled to an equitable adjustment in its corresponding obligations and/or benefits and, in that event, the parties agree to negotiate in good faith to accomplish such equitable adjustment.

12. **Paragraph or Section Headings.** Paragraph or section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

CITY: CITY OF LOVELAND, Colorado, a home rule municipality

By: _____
Stephen C. Adams, City Manager

ATTEST:

City Clerk

APPROVED AS TO SUBSTANCE:

Brett Limbaugh, Development Services Director

APPROVED AS TO FORM:

Assistant City Attorney

**DEVELOPER: HOUSING AUTHORITY OF
THE CITY OF LOVELAND, a Colorado non-profit
corporation**

By: _____
Sam Betters

The foregoing Agreement was executed before me this _____ day of _____, 2016 by

the City of Loveland.
(Title)

WITNESS my hand and official seal.

My commission expires _____.

SEAL

Notary Public

ANNEXATION AGREEMENT PERTAINING TO THE GATORWEST ADDITION TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO

EXHIBIT A**PROPERTY DESCRIPTION**

A parcel of land, being that parcel as described in the Quit Claim Deed recorded April 25, 1994 at Reception No. 94035703 of the records of the Larimer County Clerk and Recorder (LCCR), the abutting Right of Way of Fourth Street Southeast, the abutting Right of Way of South Saint Louis Avenue and the Right of Way of South Saint Louis Avenue abutting Mirasol Second Subdivision as recorded April 12, 2011 at Reception No. 20110021993 of the LCCR, located in the Northeast Quarter (NE1/4) of Section Twenty-four (24), Township Five North (T. 5N.), Range Sixty-nine West (R.69W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Northeast Sixteenth corner of said Section 24 and assuming the West line of the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) as bearing South 00°12'50" West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 1320.21 feet and with all other bearings contained herein relative thereto;

THENCE South 00°12'50" West along said West line a distance of 355.89 feet to the Northwest corner of said Mirasol Second Subdivision and to the POINT OF BEGINNING;

THENCE South 00°12'50" West continuing along said West line and along the West line of said Mirasol Second Subdivision and along the East Right of Way line of South Saint Louis Avenue a distance of 358.63 feet to the most Northerly Southwest corner of Mirasol Second Subdivision;

THENCE North 89°47'10" West a distance of 60.00 feet to a line parallel with and 60.00 feet West of, as measured at a right angle, the West line of the SE1/4NE1/4 of said Section 24 and to the East line of Ballard Place Subdivision as recorded at Reception No. 65143 of the LCCR said line being the West Right of Way line of South Saint Louis Avenue;

THENCE North 00°12'50" East along said parallel line and along said East line of Ballard Place a distance of 743.80 feet to the Southeast corner of Lot 8, Block 3, Ballard Place and to an extension of a line parallel with and 30.00 feet North of, as measured at a right angle, the North line of the SE1/4NE1/4 said line being the North Right of Way line of Fourth Street Southeast;

THENCE North 89°31'31" East along said North line a distance of 722.03 feet to the Northwest corner of Hamm Estates Subdivision as recorded January 14, 1992 at Reception No. 92002377 of the LCCR;

THENCE South 00°18'41" West along the West line of said Hamm Estates Subdivision a distance of 386.19 feet to the Southwest corner of said Hamm Estates Subdivision and to the North line of Mirasol First Subdivision as recorded February 28, 2006 at Reception No. 20060014474 of the LCCR;

THENCE South 89°33'00" West along said North line of said Mirasol First Subdivision and along the North line of said Mirasol Second Subdivision a distance of 661.36 feet to the POINT OF BEGINNING;

Said described parcel of land contains 300,068 Square Feet or 6.889 Acres, more or less (\pm).

FIRST READING: September 20, 2016

SECOND READING: October 4, 2016

ORDINANCE NO. 6053

**AN ORDINANCE AMENDING SECTION 18.04.060 OF THE
LOVELAND MUNICIPAL CODE, THE SAME RELATING TO
ZONING REGULATIONS FOR "MIRASOL SECOND ADDITION" TO
THE CITY OF LOVELAND**

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

Section 1. That Section 18.04.060 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That the following described property recently annexed to the City of Loveland and within the area known as "MIRASOL SECOND ADDITION" to the City of Loveland, Colorado, shall be included as an addition to and within the boundaries of the **MIRASOL COMMUNITY PLANNED UNIT DEVELOPMENT** district:

A parcel of land, being that parcel as described in the Quit Claim Deed recorded April 25, 1994 at Reception No. 94035703 of the records of the Larimer County Clerk and Recorder (LCCR), the abutting Right of Way of Fourth Street Southeast, the abutting Right of Way of South Saint Louis Avenue and the Right of Way of South Saint Louis Avenue abutting Mirasol Second Subdivision as recorded April 12, 2011 at Reception No. 20110021993 of the LCCR, located in the Northeast Quarter (NE1/4) of Section Twenty-four (24), Township Five North (T. 5N.), Range Sixty-nine West (R.69W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Northeast Sixteenth corner of said Section 24 and assuming the West line of the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) as bearing South 00°12'50" West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 1320.21 feet and with all other bearings contained herein relative thereto;

THENCE South 00°12'50" West along said West line a distance of 355.89 feet to the Northwest corner of said Mirasol Second Subdivision and to the POINT OF BEGINNING;

THENCE South 00°12'50" West continuing along said West line and along the West line of said Mirasol Second Subdivision and along the East Right of Way line of South Saint

Louis Avenue a distance of 358.63 feet to the most Northerly Southwest corner of Mirasol Second Subdivision;

THENCE North 89°47'10" West a distance of 60.00 feet to a line parallel with and 60.00 feet West of, as measured at a right angle, the West line of the SE1/4NE1/4 of said Section 24 and to the East line of Ballard Place Subdivision as recorded at Reception No. 65143 of the LCCR said line being the West Right of Way line of South Saint Louis Avenue;

THENCE North 00°12'50" East along said parallel line and along said East line of Ballard Place a distance of 743.80 feet to the Southeast corner of Lot 8, Block 3, Ballard Place and to an extension of a line parallel with and 30.00 feet North of, as measured at a right angle, the North line of the SE1/4NE1/4 said line being the North Right of Way line of Fourth Street Southeast;

THENCE North 89°31'31" East along said North line a distance of 722.03 feet to the Northwest corner of Hamm Estates Subdivision as recorded January 14, 1992 at Reception No. 92002377 of the LCCR;

THENCE South 00°18'41" West along the West line of said Hamm Estates Subdivision a distance of 386.19 feet to the Southwest corner of said Hamm Estates Subdivision and to the North line of Mirasol First Subdivision as recorded February 28, 2006 at Reception No. 20060014474 of the LCCR;

THENCE South 89°33'00" West along said North line of said Mirasol First Subdivision and along the North line of said Mirasol Second Subdivision a distance of 661.36 feet to the POINT OF BEGINNING;

Said described parcel of land contains 300,068 Square Feet or 6.889 Acres, more or less.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 3. 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 the 4th day of October, 2016.

ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:



Teresa G. Andrews
Assistant City Attorney

AN ORDINANCE AMENDING SECTION 18.04.060 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR "MIRASOL SECOND ADDITION" TO THE CITY OF LOVELAND

Ordinance # 6053

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on September 20, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on September 24, 2016 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on October 8, 2016.

City Clerk

Effective Date: October 18, 2016



DEVELOPMENT SERVICES Current Planning

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

MEMORANDUM

TO: City Council
FROM: Kerri Burchett, Principal Planner
DATE: September 20, 2016
RE: Mirasol Second Addition Annexation and Zoning

I. EXHIBITS

1. Planning Commission minutes dated August 22, 2016
2. Planning Commission staff report, including:
 - A. Project Description provided by the Applicant
 - B. GDP Findings provided by the Applicant
 - C. Environmental Sensitive Areas Report
 - D. [Annexation Map](#)
 - E. [General Development Plan Amendment](#)

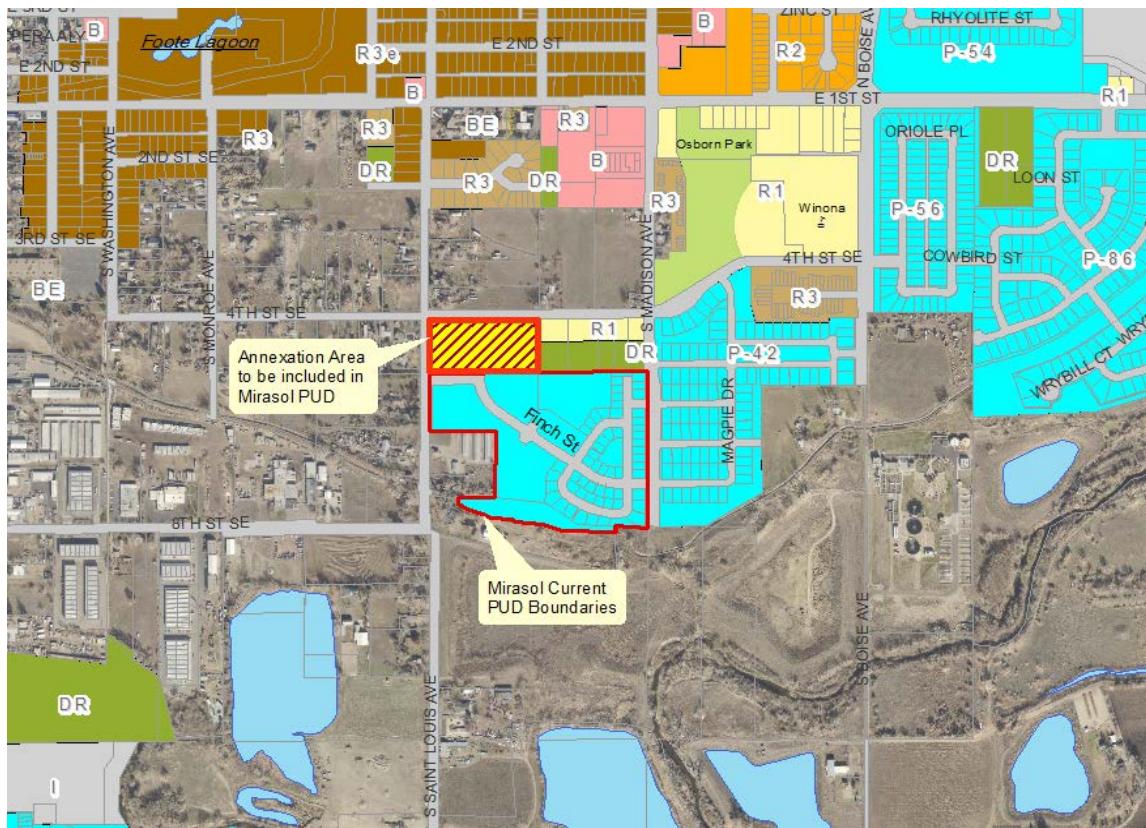
II. EXECUTIVE SUMMARY

A. Project Description

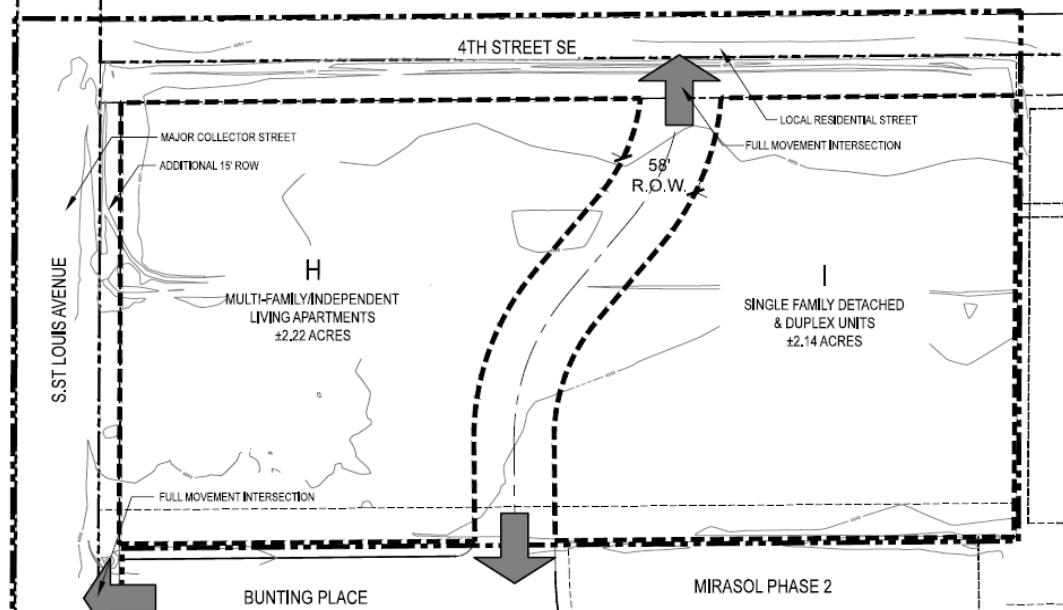
The City Council public hearing is to consider a proposal to annex 6.8 acres of land owned by the Housing Authority of the City of Loveland and zone the property to be part of the Mirasol Community senior development. The property is located at the southeast corner of 4th Street SE and S. St. Louis Avenue, directly north of Mirasol (see vicinity map on page 2). The general development plan for Mirasol would be amended to incorporate the property into the PUD. The zoning would allow the construction of a 60 unit, 3 story senior apartment building on the west side of the property and a combination of 10 single family or paired dwellings on the east. Both the apartment building and residential units would match the architecture and streetscape theme established in the Mirasol development, which consists of stucco and stone combinations and detached sidewalks with tree lawns. The property is designated as medium density residential in Create Loveland, the city's comprehensive master plan which targets a density range between 4-10 units per acre. With the inclusion of the property, the Mirasol Community PUD would have a density of 9.5 units per acre.

The zoning request to situate the apartment building on the west side of the property, oriented towards St. Louis Avenue, was proposed to lessen the impacts of the use on the existing large lot single family uses directly to the east (see Map 2). The proposed single family/paired homes on the eastern portion of the site would be used to provide a transition in use and scale to the existing homes. A conceptual plan has been included on page 3 that shows an illustrative concept of the development. The location of the apartment building will create a visual change in the character of the intersection of St. Louis Avenue and 4th Street SE. The city's vision for this area as identified in Create Loveland is for redevelopment with greater mixed densities than currently existing. The Plan identifies the neighborhood as a specific opportunity area to develop new mixed use and mixed density neighborhoods (see Map 4 on page 4). A 3-story apartment building was constructed with the last phase of Mirasol on Finch Street and the proposed building will match the scale of that building.

Map 1. Vicinity Map



Map 2. Zoning Map

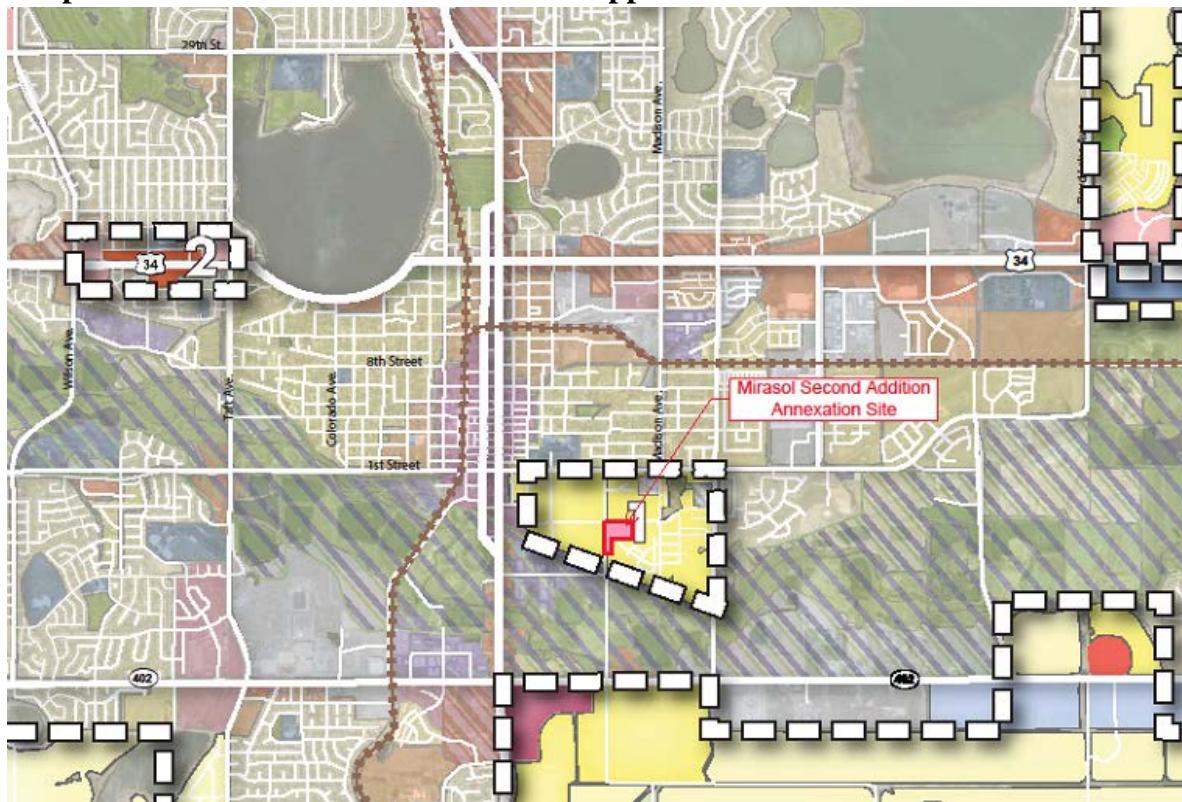


Map 3. Conceptual Plan

The concept plan is for illustrative purposes only and is not part of the annexation and zoning review.



Map 4. Create Loveland: Land Use Plan Opportunities



Annexation and zoning is the first of three steps in developing a residential planned unit development in the city. Annexation requires findings of compliance with State Statutes regarding contiguity with municipal boundaries, an intent to develop at an urban level and an indication that the property can be served with infrastructure. Additionally, annexations are subject to compliance with the Intergovernmental Agreement with Larimer County which requires the annexation of properties located within the city's growth management area that are eligible for annexation. In determining appropriate zoning, the city's comprehensive master plan and associated philosophies describe the city's vision for development.

The second planning step for a residential development in a PUD is a preliminary development plan (PDP). This step is where the specific site, architecture and infrastructure design is planned. Detailed studies are performed with the PDP, including a traffic study, drainage report and environmental report. A neighborhood meeting and a public hearing with the Planning Commission are required for approval. The last planning step is the final development plan (FDP) and plat, which is administratively reviewed and approved, and includes the final detailed site and infrastructure design. As the Mirasol Second Addition application is in the annexation and zoning stage, detailed studies on traffic and infrastructure have not been completed.

B. Public Outreach and Planning Commission Hearing

- A. Neighborhood Meeting:** A neighborhood meeting was held at 5:30 p.m. on July 21, 2016 at the Mirasol Community Event Center. The meeting was attended by 66 neighbors and interested parties along with City staff and consultants. At the meeting, concerns voiced regarding development of the property included the change the proposal represented to the rural pattern of development currently existing on 4th Street SE, the 3-story height of the building being too tall for the area, lack of sidewalk connections to downtown, traffic speeds on Finch Street going through Mirasol, parking concerns and landscaping questions.
- B. Planning Commission Public Hearing:** The Planning Commission held a public hearing regarding the proposal on August 22, 2016. Nine neighborhood residents spoke at the hearing. Concerns were voiced over the massing of the apartment building not fitting in with the rural character of the area, traffic speeds on St. Louis Avenue, and the lack of sidewalks connecting Mirasol to downtown Loveland. Two of the neighborhood residents spoke in support of the project. The Planning Commissioners voted unanimously to recommend approval of the annexation and zoning. The Commission believed that the property should be annexed into the City and they encouraged the Housing Authority to work with the neighborhood on the apartment building location and scale. Minutes from the Planning Commission hearing are included as **Exhibit 2** to this memorandum.

III. RECOMMENDED CONDITIONS

The following conditions are recommended by City Staff and the Planning Commission. These conditions have been incorporated into the annexation ordinance.

Planning

1. Healthy mature trees shall be incorporated into the preliminary development plan (PDP) to the extent possible. Tree mitigation shall be included in the PDP for any healthy trees proposed to be removed. An evaluation of the trees from a professional arborist shall be submitted with the preliminary development plan.
2. Grading, tree removal and construction activities shall comply with the federal Migratory Bird Treaty Act. No such activities shall occur near an occupied bird nest during the songbird nesting season (March through July). If grading, tree removal or construction activities are proposed to occur March 1st through July 31st, a letter from a wildlife specialist shall be submitted to the Planning Division documenting that there are no active nests on the site.

Transportation Development Review

3. All public improvements shall comply with the Larimer County Urban Area Street Standards (LCUASS).
4. The developer agrees to acquire and dedicate, at no cost to the City, any rights-of-way necessary for the required street improvements associated with this development.

5. Prior to the issuance of any building permits for development in Mirasol Second Addition, pursuant to the provisions in Section 16.40.010.B of the Loveland Municipal Code, the Developer shall design and construct the following public improvements unless already designed and constructed by others:
 - a. The ultimate adjacent street improvements on St. Louis Avenue including pavement widening, curb & gutter, landscaped parkway and sidewalk.
 - b. The ultimate adjacent street improvements on 4th Street SE including pavement widening, curb & gutter and sidewalk.
 - c. The extension of Finch Street between Bunting Place and 4th Street SE including pavement curb to curb and sidewalks on both sides.
 - d. Bunting Place from St. Louis Avenue to Finch Street including roadway pavement curb to curb and sidewalk improvements on the north side.
6. Any other off-site improvements required will be determined by the findings of the TIS at the time a development application is submitted for review.

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
August 22, 2016

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on August 22, 2016 at 6:30 p.m. Members present: Chairman Jersvig; and Commissioners Dowding, Molloy, Forrest, Ray, McFall, Roskie, and Cloutier. Members absent: Commissioner Meyers. City Staff present: Bob Paulsen, Current Planning Manager; Moses Garcia, Assistant City Attorney; Linda Bersch, Interim Planning Commission Secretary.

These minutes are a general summary of the meeting. A complete video recording of the meeting is available for two years on the City's web site as follows: <http://loveland.pegcentral.com>

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1. **Robert Paulsen**, Current Planning Manager, provided the Commissioners a copy of the Development Services Open House agenda and a brief overview of each item listed. This open house will be held August 23, 2016 beginning at 7:30 a.m. at the Development Center. It is primarily for members of the development community and will provide them an overview of the following:
 - a. The Comprehensive Plan (Create Loveland)
 - b. The proposal for amendments to Create Loveland future land use maps
 - c. The framework for the development code update
 - d. The provisions of the new flexible zoning overlay district
 - e. The new simplified process for issuing sign permits
 - f. An overview of the proposed Planned Unit Development (PUD) process
2. **Mr. Paulsen** alerted the commission that the agenda for the September 12, 2016 Planning Commission Meeting would include two public hearings:
 - a. North Taft Avenue Subdivision - Preliminary Plat
 - b. Wintergreen Townhomes – Preliminary Plat
3. **Permitting process for signs & electronic signs along I-25**
 After discussion with planning commission and council on this issue, it was decided to do a clean-up of the sign provisions for electronic signs along with staff doing more extensive work to bring changes to the entire sign permitting process. This issue will be brought to the Title 18 Committee in October and to the Planning Commission in a study session in November and public hearings beyond that.

COMMITTEE REPORTS

Commissioner Forrest had nothing to report from the Zoning Appeals Board.

Commissioner Molloy asked **Mr. Paulsen** to give an overview of the role the Title 18 committee will play in the development code update process. **Mr. Paulsen** noted that the Title 18 committee has for years worked with staff on incremental changes to the zoning and subdivision ordinances. This work will continue with several minor amendments. The committee will be updated each month on the code update process and be given the opportunity to provide input. In addition to their monthly meetings, the committee will be joining the stakeholder group (to be determined) as part of the community involvement in this process for the code update. This will include meeting at least once on each of the six components or portions of the update. The consultant, **Todd Messenger** of Fairfield and Woods, will be preparing updated portions of the code in increments. As each increment or portion is developed and reviewed, it will be brought to the Planning Commission and to the City Council in study sessions, after which there will be a Planning Commission hearing on these sections. But final approval by City Council will not occur until all of the sections have been approved by the Planning Commission. **Commissioner Jersvig** asked if the commission would receive an overall summary before each component is presented in a separate study session. **Mr. Paulsen** indicated that this will be the approach and by the September meeting he should have a full schedule of the process going forward. He also noted that some code will not change, however, there are several hundred pages of code to be updated; therefore, commissioners won't receive a strike out version of the changes as the new code will be very different in format. A clear account of substantive changes will be provided.

COMMISSIONER COMMENTS

- **Commissioner Jersvig** asked, in regard to the proposed PUD process, if there is data showing the success of the proposal in the other cities (Rapid City, SD and Commerce City, CO) that have implemented this change.
- **Commissioner Molloy** also asked for data in regard to this process. How has this improved process for those cities from a public standpoint? He is concerned because of the engineering work that is not yet done at the PUD level.
- **Commissioner Forrest** questioned if citizens are still being heard.
- **Mr. Paulsen** indicated that the proposed process will go faster and smoother. The biggest distinction between the current process and the proposed process is that there will be no public hearings on the site-specific plans. After the General Development Plan, there is no public hearing on the Preliminary Development Plan. Does this become a community concern?
- **Commissioner Jersvig** said there should be no rush on this.
- **Commissioner Ray** asked if there were model regulations on this process and on Title 18 Committees. **Mr. Paulsen** indicated that there are some best practices and generally, communities are looking for quicker processes and abandoning or modifying the PUD process because it is cumbersome. There are some standard or model codes adopted by smaller communities who don't have staff or funding to tailor codes to their communities, but there are a lot of different formats and approaches used by communities across the country
- **Commissioner Dowding** asked if empirical data could be obtained from the two cities such as: the number of days it took to process before and after this change; the number of man hours gained; what was the effect on staff load; are there cost savings in dollar

amounts? **Mr. Paulsen** said a contact would be made with the two cities to try obtain data as requested. If you have other ideas or concerns, please send him an e-mail.

- **Commissioner McFall** expressed concern that new does not always mean better.
- **Commissioner Jersvig** indicated he would like to see another study session on this issue.
- **Commissioner McFall** reported an update in regard to the award of recognition that Thompson School District wishes to present to the Planning Commission. The award will be presented on September 21, 2016 and 5:00 p.m. at the school district building. This is a celebration of the contribution the planning commission/department has made to the district. He received a request that **Mr. Paulsen** accompany him to this celebration.

APPROVAL OF THE MINUTES

Commissioner Dowding made a motion to approve the August 8, 2016 minutes; upon a second from Commissioner McFall, the minutes were approved as amended.

CONSENT AGENDA

There were no items on the consent agenda.

REGULAR AGENDA

1. Mirasol III Addition and PUD

Project Description: This is a public hearing for the purpose of considering an annexation and zoning of approximately 6.88 acres of land to be known as Mirasol Second Addition. The property is located at the southeast corner of the intersection of 4th Street SE and S. St. Louis Avenue. The application proposes to zone the property Mirasol Community Planned Unit Development and integrate the subject property into the Mirasol General Development Plan. The applicant is the Housing Authority of the City of Loveland. The Planning Commission must forward a recommendation to the City Council for final action.

Kerri Burchett, staff planner, presented the proposal to annex 6.8 acres of land owned by the Housing Authority of the City of Loveland and zone the property to be part of the Mirasol Community senior development. The property is located at the southeast corner of 4th Street SE and S. St. Louis Avenue, directly north of Mirasol. The general development plan for Mirasol would be amended to incorporate the property into the PUD. The zoning would allow the construction of a 60 unit, 3 story senior apartment building on the west side of the property and a combination of 10 single family or paired dwellings on the east. Both the apartment building and residential units would match the architecture and streetscape theme established in the Mirasol development, which consists of stucco and stone combinations and detached sidewalks with treelawns. The property is designated as medium density residential in Create Loveland, the city's comprehensive master plan which targets a density range between 4-10 units per acre. With the inclusion of the property, the Mirasol Community PUD would have a density of 9.5 units per acre.

The zoning request to situate the apartment building on the west side of the property, oriented towards St. Louis Avenue, was proposed to lessen the impacts of the use on the

existing large lot single family uses directly to the east. The proposed single family/paired homes on the eastern portion of the site would be used to provide a transition in use and scale to the existing homes. A conceptual plan has been included on page 3 that shows an illustrative concept of the development. The location of the apartment building will create a visual change in the character of the intersection of St. Louis Avenue and 4th Street SE. The city's vision for this area as identified in Create Loveland is for redevelopment with greater mixed densities than currently existing. The Plan identifies the neighborhood as a specific opportunity area to develop new mixed use and mixed density neighborhoods. A 3 story apartment building was constructed with the last phase of Mirasol on Finch Street and the proposed building will match the scale of that building. Staff is recommending approval of this annexation and GDP Amendment with the conditions listed in the staff report. The Planning Commission's action is a recommendation to the City Council for a hearing on September 19th. **Commissioner Jersvig** asked if the property had already been purchased. **Ms. Burchett** indicated that it has.

Mr. Jeff Feneis, Housing Authority of the City of Loveland, stated it is their mission to provide affordable housing. They currently have a waiting list of 3000 households and one-third of those are seniors looking for affordable housing. That is the reason for expanding the Mirasol Community. **Dave Lingle**, ALM2S Architects, provided a high level look at the design proposals as indicated in the above summary. This proposal is similar to Mirasol Phase 2. He discussed that the proposed placement of the Finch Street extension is to slow traffic and move it away from the intersection of S. St. Louis Avenue and 4th Street SW. Parking is at the same level as Mirasol 1 and 2.

COMMISSIONER QUESTIONS AND COMMENTS:

- **Commissioner Dowding** questioned if the five spaces shown for handicap parking at the 60 unit building was sufficient. **Mr. Lingle** indicated it was per code; however, **Commissioner Dowding** questioned if that was a good fit with the senior housing use. **Mr. Lingle** indicated they will look at an increase if possible. **Commissioned Molloy** asked about type of sidewalks. **Mr. Lingle** indicated perimeter sidewalks are detached but there could be some sidewalks that are adjacent to parking in the interior.

CITIZEN COMMENTS:

Commissioner Jersvig opened the public hearing at 7:17 p.m.

- **John Mielke**, resident, indicated that the project is not conducive or consistent with the neighborhood. He is concerned about what provisions have been made to get irrigation water to his nearby property and to other properties. He is currently experiencing problems with light pollution from the current building entrance lights and would like that to be addressed. Will there be more additions down the road and what is a citizens recourse if building is not according to plan? He is also concerned about citizens being asked to pay for curb/sidewalks along existing properties on 4th Street SE and is also concerned about increased traffic.

- **Shelly Porter**, resident, is concerned about the 3 level building not fitting in with rural surroundings in the area and with the density of the project. The big building at the intersection of two county roads with no shoulders is not fitting in. Views are gone and property value will go down.
- **Margaret Royale**, resident of Marisol Phase 2, supports the adjacent property owners. She presently has concerns with traffic and with the speed of traffic and this proposal will increase traffic. The wildlife population is greatly reduced. The 3 story building will destroy the character of the area.
- **Jill Scofield**, resident, owns a 5 acre property that is still in the county. She has an apple orchard that has been restored. The character of the neighbor will be changed for worse.
- **Lori Goebel**, resident Arbor Meadows, indicates Marisol has been a great neighbor. Development has been good fit for seniors. But, constructing a 3 story building on that corner will detract from neighborhood. Current apartment buildings are in the center of development. It is currently a challenge to get through the intersection and that will become more dangerous. The lack of sidewalks between Marisol and downtown is dangerous and needs to be taken into consideration. Turn lanes into and out of property and street parking needs to be addressed. Parking at the Green homes is insufficient. There is also a concern about parking on only one side of proposed apartment building. That is not conducive to seniors carrying items in from parking lot.
- **Roy Poole**, resident of Marisol, indicated that people are desperately seeking housing. He thinks Marisol buildings are beautiful. Marisol is well run. Any traffic problems are created by people cutting through the neighborhood.
- **Barbara Poole**, resident, thinks the 3 story building is beautiful and is so pleased that 60 residents will be able to afford housing there.
- **Dawn Mielke**, resident, is against a 3 story building. The size is overwhelming. Traffic does need to be addressed.
- **Patty Kennedy**, resident, agrees with neighbors, opposes the large building. The 60 unit building does not fit the area, part of which is still in the county. Traffic is also an issue.

Commissioner Jersvig closed the public hearing at 7:55 p.m.

COMMISSIONER COMMENTS:

- **Commissioner Jersvig** and **Molloy** questioned the applicant regarding the irrigation water. Mr. Feneis responded that they are aware of the requirement to maintain the water flow and do have a civil engineer working on a solution.
- **Commissioner Jersvig** asked about the light pollution. **Mr. Feneis** indicated the problem is with entry way lights that shine outward and the housing authority is currently working on solving the problem.
- **Commissioner Jersvig** asked **Mr. Paulsen** to address the concern about a neighbor's recourse if what was designed and approved was not what was built. **Mr. Paulsen** indicated that the hearing this evening concerned annexation and zoning, and not the design of the proposed building, and the plans provided by the applicant are preliminary and illustrative. But, they provide some idea of what is being considered. He explained the different processes the applicant goes through to get to a detailed final plan approval and that once that final approval is obtained the applicant must follow that plan.

- **Commissioner Jersvig** next addressed the traffic concerns of the neighborhood. **Randy Maizland**, Loveland Traffic Engineer, said the trip generation from this development is low and would not trigger turn lanes or traffic lights. If there is a speeding problem, it needs to be referred to law enforcement now. As proposed by the applicant, the realignment of the intersection of 4th Street and St. Louis should make the intersection safer.
- **Commissioner McFall** said he was in this area on Saturday and observed traffic cutting through there from a downtown special event. He suggested perhaps we should look at this diversion of traffic from downtown as an impact to the area regardless of standards. He also expressed concern about the height of the 3 story building.
- **Commissioner Jersvig** asked **Mr. Maizland** to explore the possibility of placing radar signs along St. Louis to slow traffic. **Mr. Maizland** indicated that Loveland has a program for speed surveys that could be set up and believes that process has already been started based on previous requests from the neighborhood. **Commissioner Jersvig** asked to see any data that is collected from that process.
- **Commissioner Molloy** questioned sidewalk extensions and if current property owners would be required to participate in paying for those extensions. **Mr. Maizland** indicated that anything triggered by this development would not require an existing property owner to provide sidewalk on their property. Public Works does have a program for fill in of sidewalks and has been contacted about providing some in this neighborhood; however, some of the property in this area remains under county jurisdiction.
- **Commissioner Jersvig** asked **Mr. Feneis** is there were any other concept designs for the 3 story building such as leaving the 4th Street SE frontage open. **Mr. Feneis** said they were definitely open to and had looked at other designs. **Ms. Burchett** indicated this concept suggested to move the apartment building away from adjacent rural properties to the east. She indicated that this is a concept and the preliminary plan design is not done. There will be greater feedback from the community and addition neighborhood meetings on that design in the next stage of the process.
- **Commissioner Ray** commented that this shows there are other opportunities for community members to provide input into the next development phase. This phase is just for annexation and community members need to stay involved and provide input through all phases.
- **Commissioner Cloutier** asked about the distance from eastern edge of development to the 3 story building. **Ms. Burchett** indicated that is about 660 feet. **Commissioner Cloutier** noted that the separation from high rise building and the neighborhood property is about a football field. **Ms. Burchett** also noted that S. St. Louis, all along the entire Mirasol development, is a county road and this annexation will bring that into the city.
- **Commissioner Forrest** asked how 60 units was settled on. Mr. Feneis said that is the number where the units become cost effective for construction and operation.
- **Commissioner Jersvig** asked about the demand for this type of property. Mr. Feneis indicated that the senior wait list is at about 1000. This will satisfy less than ten percent of need. Development of other properties (by the Housing Authority) are in the works.
- **Commissioner Dowding** expressed concerns about parking. Other phases of Mirasol have spaces for residents but there is insufficient parking for guest and seniors have more guests. Parking needs are greater than your guidelines require. She would also like to

see a design going forward that reflects the heritage of the area and fits into a more rural environment.

- **Commissioner Jersvig** asked **Mr. Paulsen** to explain the procedure going forward. **Mr. Paulsen** explained that tonight the Planning Commission can only make a recommendation to City Council regarding the annexation and zoning of this property. City Council will meet on September 20th to vote on this annexation and zoning. There will be an additional opportunity to speak to this issue at the Council meeting. If Council approves the annexation and zoning, there will be an additional neighborhood meeting on the preliminary development plan (PDP) which will include more detail than we saw tonight. That plan will then come back to the Planning Commission with a public hearing for approval which will offer another opportunity for neighborhood input on the details. The Planning Commission is the final authority at that point, barring appeal.
- **Commissioner McFall** thanked the applicant and staff for their presentations and for the concept plan. He commended the neighborhood citizens for speaking. He indicated that their comments didn't fall on deaf ears. He does like the idea of annexation into the city. There is more to be done along St. Louis as part of the city. He will be voting for the annexation.
- **Commissioner Forrest** commented that she lives in this area and shares the neighbors concern with the height of the building, etc. and hopes the applicant works through those things with them. Marisol is great addition to that area and serves a purpose for our seniors. She likes the annexation and supports Marisol coming to the area.
- **Commissioner Cloutier** echoes **Commissioner McFall's** comments and feels annexation will give the city more control over how it's developed and resolving the issues discussed tonight. He sees this as part of the long term vision of the city.
- **Commissioner Molloy** thinks this is a beneficial project for this property even though there are design issues. Marisol is a great community. There will be some scrutiny on the details going forward; however, there is some benefit to the concept design. He is for the annexation.
- **Commissioner Roskie** thanked the staff for the detail in the staff report. It does meet the Create Loveland Comprehensive Plan and meets a great need for senior housing. This development meets the requirement for recommendation of annexation and she will support it.
- **Commissioner Ray** agrees with other commissioner's comments. He stressed that it is difficult when new adjoins old and urges the community to ask about other concepts and impacts and to stay involved. This is annexation only and he will be voting for it.
- **Commissioner Dowding** supports this annexation. It is needed and well thought out. St. Louis needs to be brought into the city. There will be additional reviews going forward and she feels this will come down to something most people can live with.
- **Commissioner Jersvig** noted that this detailed concept plan creates expectations. He expressed concerns about that but notes that this detail brought out neighbors and urges them to stay involved while details are worked out. He again thanked the neighbors for attending and for their presentations. He will be supporting annexation.

Commissioner Jersvig asked **Mr. Feneis** if the conditions contained in the staff report were acceptable to the Housing Authority. Mr. Feneis replied affirmatively.

Commissioner Dowding moved to make the findings listed in Section VII of the Planning Commission staff report dated August 22, 2016 and, based on those findings, recommend that City Council approve the Mirasol Second Addition, subject to the conditions listed in Section VIII, as amended on the record, and zone the addition to Mirasol Community Planned Unit Development. Upon a second by **Commissioner McFall**, the motion was unanimously adopted.

Commissioner Dowding moved to make the findings listed in Section VII of the Planning Commission staff report dated August 22, 2016 and, based on those findings, recommend that City Council approve the Mirasol Community PUD General Development Plan Third Amendment. Upon a second by **Commissioner Forrest**, the motion was unanimously adopted.

ADJOURNMENT

Commissioner Dowding, made a motion to adjourn. Upon a second by **Commissioner Ray**, the motion was unanimously adopted.

Commissioner Jersvig adjourned the meeting at 8:38 p.m.

Approved by: _____
Jeremy Jersvig, Planning Commission Chair

Linda Bersch, Interim Planning Commission Secretary.



Current Planning Division

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Planning Commission Staff Report

August 22, 2016

Agenda #: Regular Agenda - 1

Title: Mirasol Second Addition and Mirasol Community PUD

Applicant: Housing Authority of the City of Loveland, Jeff Feneis

Request: **Annexation and PUD General Development Plan Amendment**

Location: Southeast corner of 4th Street SE and S. St. Louis Avenue.

Existing Zoning: County FA –Farming

Proposed Zoning: Mirasol Community PUD

Staff Planner: Kerri Burchett

Staff Recommendation

APPROVAL of the annexation and GDP Amendment.

Recommended Motions:

1. *Move to make the findings listed in Section VII of the Planning Commission staff report dated August 22, 2016 and, based on those findings, recommend that City Council approve the Mirasol Second Addition, subject to the conditions listed in Section VIII, as amended on the record, and zone the addition to Mirasol Community Planned Unit Development; and*
2. *Move to make the findings listed in Section VII of the Planning Commission staff report dated August 22, 2016 and, based on those findings, recommend that City Council approve the Mirasol Community PUD General Development Plan Third Amendment.*

Summary of Analysis

The public hearing is to consider the following items:

- Annexation of 6.8 acres of property owned by the Housing Authority.
- Amendment to the Mirasol Community PUD General Development Plan to expand the boundaries of the PUD to include the property proposed for annexation.

The proposal is to annex and incorporate the 6.8 acre property into the Mirasol Community senior housing development. The zoning for the property would allow the construction of a 60 unit, 3 story senior apartment building and 10 single family or paired dwellings. Both the apartment and residential units would match the architecture theme and streetscape established in the Mirasol development. The property is designated as medium density residential in Create Loveland, the city's comprehensive master plan, and the requested 9.5 units per acre density in the GDP complies with the 4-10 unit targeted density range identified in the plan.

Concerns regarding the development expressed by the neighbors generally include traffic speeds through Mirasol, change in the rural character of the area, and lack of pedestrian connections to downtown Loveland. The next step would be review of a preliminary development plan that includes building, landscaping and infrastructure design. The PDP requires a neighborhood meeting and a public hearing with the Planning Commission.

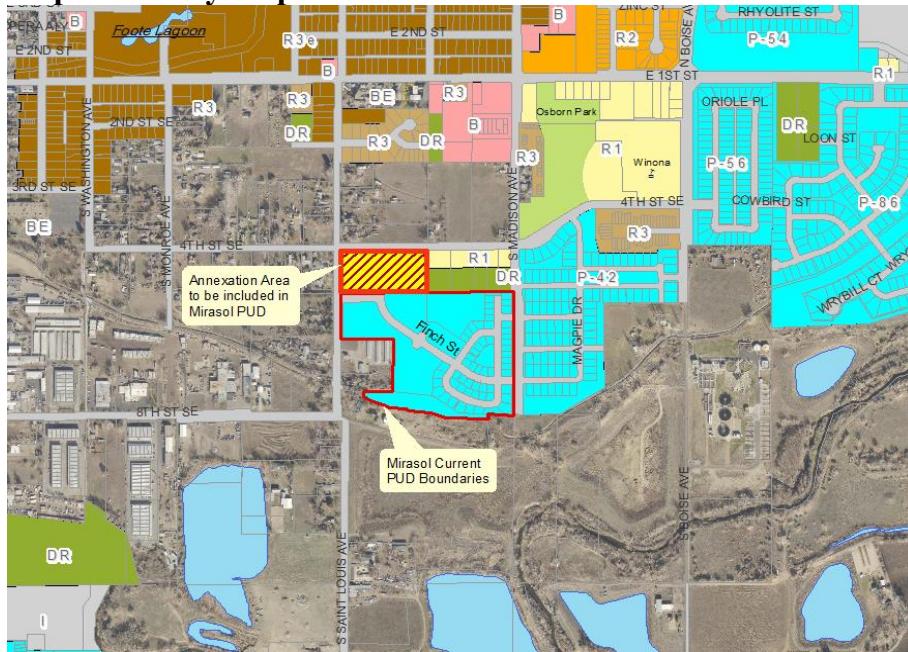
Staff is recommending approval of the annexation and GDP Amendment request.

I. SUMMARY

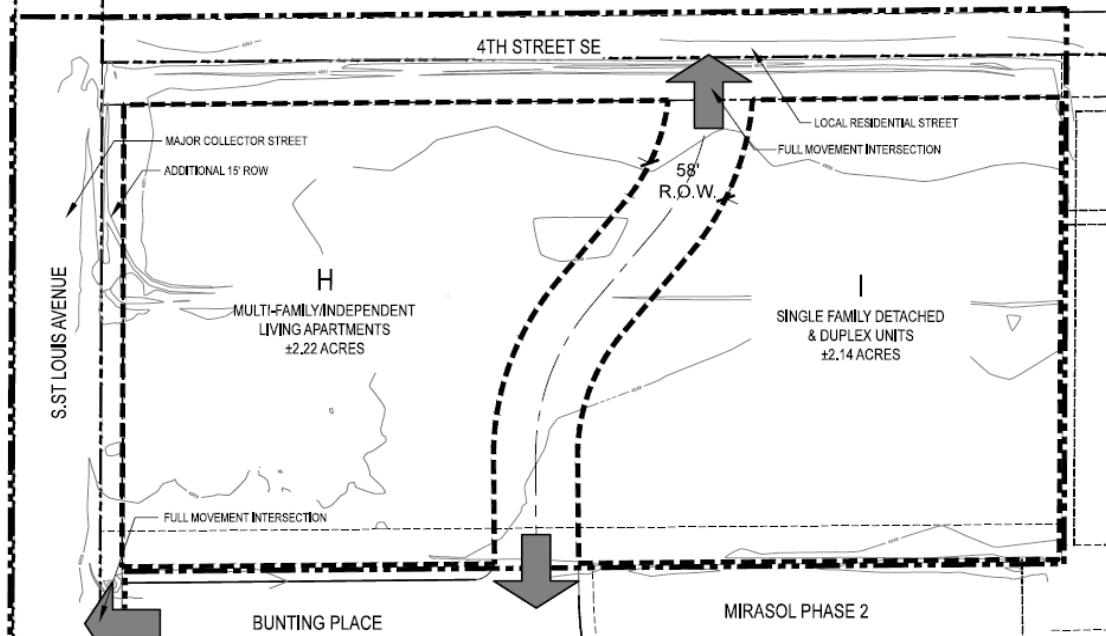
This proposal is to annex 6.8 acres of land owned by the Housing Authority of the City of Loveland and zone the property to be part of the Mirasol Community senior development. The property is located at the southeast corner of 4th Street SE and S. St. Louis Avenue, directly north of Mirasol (see vicinity map below). The general development plan for Mirasol would be amended to incorporate the property into the PUD. The zoning would allow the construction of a 60 unit, 3 story senior apartment building on the west side of the property and a combination of 10 single family or paired dwellings on the east. Both the apartment building and residential units would match the architecture and streetscape theme established in the Mirasol development, which consists of stucco and stone combinations and detached sidewalks with treelawns. The property is designated as medium density residential in Create Loveland, the city's comprehensive master plan which targets a density range between 4-10 units per acre. With the inclusion of the property, the Mirasol Community PUD would have a density of 9.5 units per acre.

The zoning request to situate the apartment building on the west side of the property, oriented towards St. Louis Avenue, was proposed to lessen the impacts of the use on the existing large lot single family uses directly to the east (see Map 2). The proposed single family/paired homes on the eastern portion of the site would be used to provide a transition in use and scale to the existing homes. A conceptual plan has been included on page 3 that shows an illustrative concept of the development. The location of the apartment building will create a visual change in the character of the intersection of St. Louis Avenue and 4th Street SE. The city's vision for this area as identified in Create Loveland is for redevelopment with greater mixed densities than currently existing. The Plan identifies the neighborhood as a specific opportunity area to develop new mixed use and mixed density neighborhoods (see Map 4 on page 4). A 3 story apartment building was constructed with the last phase of Mirasol on Finch Street and the proposed building will match the scale of that building.

Map 1. Vicinity Map



Map 2. Zoning Map

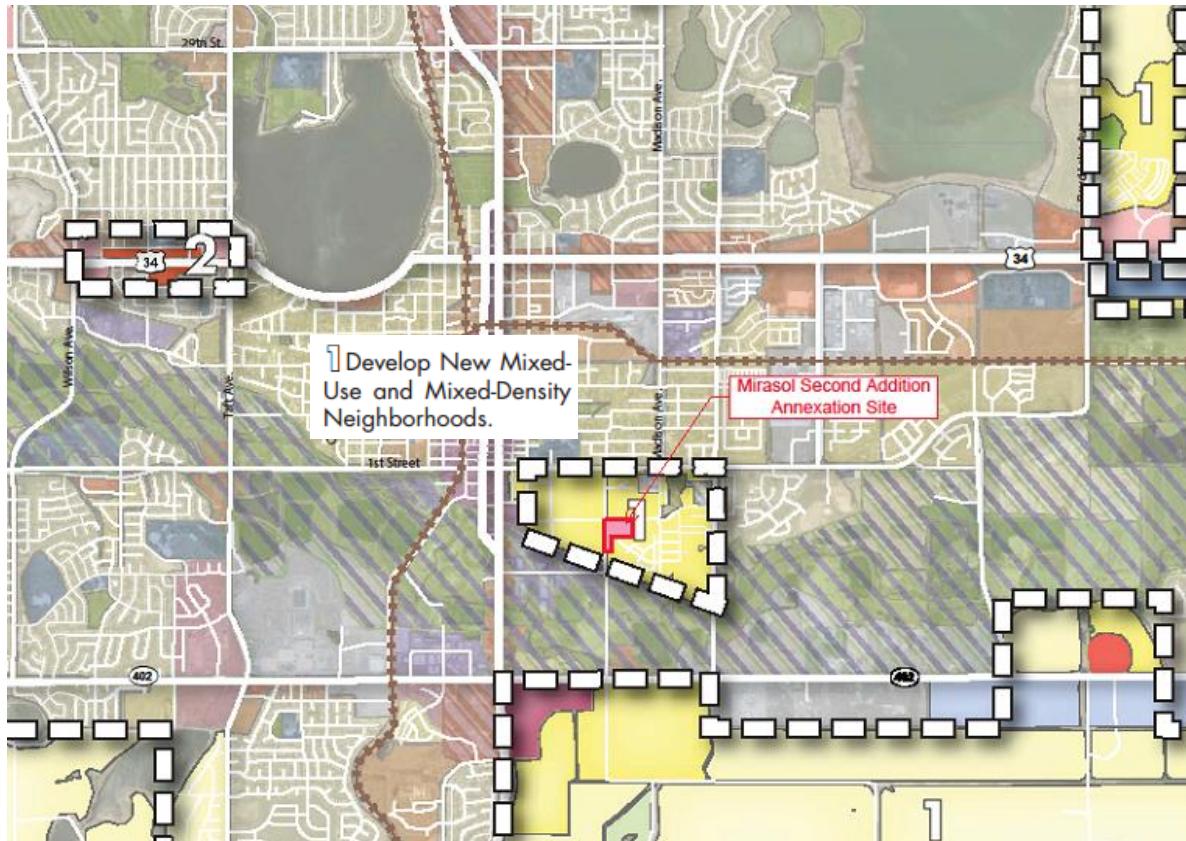


Map 3. Conceptual Plan

The concept plan is for illustrative purposes only and is not part of the annexation and zoning review.



Map 4. Create Loveland: Land Use Plan Opportunities



Annexation and zoning is the first of three steps in developing a residential planned unit development in the city. Annexation requires findings of compliance with State Statutes regarding contiguity with municipal boundaries, an intent to develop at an urban level and an indication that the property can be served with infrastructure. Additionally, annexations are subject to compliance with the Intergovernmental Agreement with Larimer County which requires the annexation of properties located within the city's growth management area that are eligible for annexation. In determining appropriate zoning, the city's comprehensive master plan and associated philosophies describe the city's vision for development.

The second planning step for a residential development in a PUD is a preliminary development plan (PDP). This step is where the specific site, architecture and infrastructure design is planned. Detailed studies are performed with the PDP, including a traffic study, drainage report and environmental report. A neighborhood meeting and a public hearing with the Planning Commission are required for approval. The last planning step is the final development plan (FDP) and plat, which is administratively reviewed and approved, and includes the final detailed site and infrastructure design. As the Mirasol Second Addition application is in the annexation and zoning stage, detailed studies on traffic and infrastructure have not been completed.

II. ATTACHMENTS

- A. Project Description provided by the Applicant
- B. GDP Findings provided by the Applicant
- C. Environmental Sensitive Areas Report
- D. Annexation Map
- E. General Development Plan Amendment

III. SITE DATA

ACREAGE OF SITE GROSS	6.8 AC
MASTER PLAN DESIGNATION	MEDIUM DENSITY RESIDENTIAL
EXISTING ZONING	LARIMER COUNTY FA FARMING
PROPOSED ZONING	MIRASOL COMMUNITY PLANNED UNIT DEVELOPMENT
EXISTING USE	1 SINGLE FAMILY HOME
PROPOSED USE.....	MULTIFAMILY, SINGLE FAMILY & PAIRED RES
EXIST ADJ ZONING & USE - NORTH	COUNTY FA - 4 TH STREET SE & SINGLE FAMILY RESIDENTIAL
EXIST ADJ ZONING & USE - SOUTH.....	PUD - MIRASOL COMMUNITY SENIOR DEVELOPMENT, MULTIFAMILY
EXIST ADJ ZONING & USE - WEST.....	COUNTY FA - S. ST. LOUIS AVENUE & SINGLE FAMILY RESIDENTIAL
EXIST ADJ ZONING & USE - EAST.....	R-1 RESIDENTIAL & DR DEVELOPING RESOURCE - SF RESIDENTIAL
UTILITY SERVICE – WATER, SEWER	CITY OF LOVELAND
UTILITY SERVICE – ELECTRIC	CITY OF LOVELAND

IV. KEY ISSUES

City staff believes that all technical issues have been addressed regarding the annexation and zoning. At the neighborhood meeting, concerns were voiced regarding the change to the rural character of the area, existing traffic speeds in Mirasol, parking concerns, and lack of safe pedestrian connections to downtown.

V. BACKGROUND

- A. Annexation Property: The 6.8 acre property is currently vacant with a single family house that is proposed to be removed. The property is zoned FA in Larimer County. The property previously also contained a small tree farm.
- B. Mirasol Community Planned Unit Development timeline:
 - April 5, 2005 City Council approval of the annexation and zoning for the Mirasol Community PUD. The PUD established zoning for a maximum of 200 residential units. The GDP created development standards designed for a senior housing community for individuals 55 years of age or older and offered a variety of qualified

affordable for-sale and for-rent single family, duplex and independent living apartments.

August 22, 2005 Planning Commission approval of the Preliminary Development Plan and Plat for Mirasol First Subdivision (Phase 1 of the PUD).

February 17, 2006 City approval of the Final Development Plan and Plat for Mirasol First Subdivision. Phase 1 of the development included forty-nine independent living apartment units, along with 11 single family homes and 44 duplex units. To date, the apartment units, community building and 37 of the single family/duplex homes have been constructed.

August 9, 2010 Planning Commission approval of a Preliminary Development Plan for Phase II of the development, which permitted the construction of a 60 unit independent living apartment building.

September 7, 2010 City Council approval of the first amendment to the GDP to increase the number of units, adjust parking ratios, modify building heights for Phase II of the development.

November 6, 2012 City Council approval of the second GDP amendment to increase the number of units and adjust parking ratios for Phase III of the PUD.

January 28, 2014 Planning Commission approval for a Preliminary Development Plan to construct 6 skilled nursing “Green House” homes.

VI. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

A. Notification: An affidavit was received from Jeff Feneis with the Housing Authority certifying that written notice was mailed to all property owners within 1,200 feet of the property on August 5, 2016 and notices were posted in prominent locations on the perimeter of the site at least 15 days prior to the date of the Planning Commission hearing. There were no mineral owners associated with the property. In addition, a notice was published in the Reporter Herald on August 6, 2016.

B. Neighborhood Response: A neighborhood meeting was held at 5:30 p.m. on July 21, 2016 at the Mirasol Community Event Center. The meeting was attended by 66 neighbors and interested parties along with City staff and consultants. At the meeting, concerns voiced regarding development of the property included the change the proposal represented to the rural pattern of development currently existing on 4th Street SE, the 3-story height of the building being too tall for the area, lack of sidewalk connections to downtown, traffic speeds on Finch Street going through Mirasol, parking concerns and landscaping questions.

VII. FINDINGS AND ANALYSIS

The chapters and sections cited below are from the Loveland Municipal Code.

1. Annexation and Zoning

Annexation Policies and Eligibility

1. **Create Loveland: Development Review and Consistency, Annexation:** *The annexation complies with the laws of the State of Colorado regarding annexation.*
2. **Loveland Municipal Code, Section 17.04.020:** *The annexation complies with the laws of the State of Colorado regarding annexation and the property proposed for annexation is otherwise eligible to be annexed because there is at least one-sixth contiguity between the City and the area seeking annexation and there is no evidence that two or more of the following conditions have been met:*
 - a. *Less than 50% of the adult residents of the area proposed to be annexed use some of the recreation, civic, social, religious, industrial or commercial facilities of the municipality and less than 25% of its adult residents are employed in the annexing municipality.*
 - b. *One-half or more of the land proposed to be annexed is agricultural, and the landowners of such agricultural land have expressed an intention under oath to devote the land to agricultural use for at least five years.*
 - c. *It is not physically practical to extend urban service which the municipality provides normally.*

Planning: Staff believes that this finding can be met, based on the following facts:

- The annexation complies with the Colorado State Statutes regarding annexation of lands and is within the City's Growth Management Area (GMA).
- No enclaves will be created by this annexation and there is no evidence that two or more of the conditions listed in Section 17.04.020 of the Municipal Code, cited above, have been met.
- The development of the property will encourage a compact pattern of urban development. The land is immediately contiguous to the Mirasol development to the south and single family residential to the east that are within the city limits and are already receiving City services.
- The annexation complies with the Intergovernmental Agreement with Larimer County to annex property within the City's GMA that are eligible for annexation.

B. City Utilities/Services and Transportation

1. Loveland Municipal Code

a. Section 17.04.040:

(i) Whether certain public facilities and/or community services are necessary and may be required as a part of the development of any territory annexed to the City in order that the public needs may be served by such facilities and services. Such facilities include, but are not limited to, parks and recreation areas, schools, police and fire station sites, and electric, water, wastewater and storm drainage facilities. Such services include, but are not limited to, fire and police protection, provision of water, and wastewater services.

- (ii) Whether the annexation and development pursuant to the uses permitted in the zone district will create any additional cost or burden on the existing residents of the City to provide such facilities and services in the area proposed for annexation.*
- (iii) The annexation complies with the water rights requirements set forth in Title 19 of the Loveland Municipal Code.*
- b. Section 17.04.040,:** *Whether all existing and proposed streets in the newly annexed property are, or will be, constructed in compliance with City street standards, unless the City determines that the existing streets will provide proper access during all seasons of the year to all lots and that curbs, gutters, sidewalks, bike lanes, and other structures in compliance with City standards are not necessary to protect public health, safety, and welfare.*
- c. Section 18.04.010:** *The zoning, as proposed, would: lessen congestion in the streets; secure safety from fire, panic, and other dangers; and promote health and general welfare.*

Transportation: Staff believes that this finding can be met, based on the following facts:

- Annexing and zoning property does not warrant compliance with the City's Adequate Community Facilities (ACF) ordinance. A condition is recommended to clearly ensure that all future development or land application within this proposed property shall be in compliance with the City of Loveland Street Plan, the Larimer County Urban Area Street Standards and any updates to either in effect at the time of development application.
- As identified in the City Municipal Code Title 16, a Traffic Impact Study will be required with all future development or other land use applications. The annexation will also be required to dedicate, free and clear, all applicable right-of-way to the City, at no cost to the City, at the time of development.
- Pending future proposed development within this property, of which review and approval by the City is required, the Transportation Engineering staff does not object to the proposed annexation and zoning.

Fire: Staff believes that this finding can be met, based on the following facts:

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company.
- The proposed annexation/zoning will not negatively impact fire protection for the subject development or surrounding properties.
- Pending future proposed development within this property, of which review and approval by the Fire Authority is required, staff does not object to the proposed annexation and zoning.

Water/Wastewater: Staff believes that this finding can be met, based on the following facts:

- The subject annexation is situated within the City's current service area for both water and wastewater. The existing house at 510 S St. Louis Ave has an approved water tap to serve City water to the house. The existing house is assumed to be on a private septic system. Annexation water was paid at the time of the approval of the water tap.
- The Department finds that the annexation and zoning is consistent with the Department's Water and Wastewater master plan.
- Public water and wastewater facilities are available to serve the development with the extension of water and wastewater mains as identified in the general development plan.

Power: Staff believes that this finding can be met, based on the following facts:

- The Department finds that the annexation and zoning is consistent with the Department's Power master plan.
- The property is currently being served by the City of Loveland for power services.
- Public facilities are available to serve the development.

Stormwater: Staff believes that this finding can be met, based on the following facts:

- With the annexation and future development, the Developer will engineer certain Stormwater facilities that will adequately collect, detain, and release Stormwater runoff in a manner that will eliminate off-site impacts.
- Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and service master plans.

C. Land Use

1. Create Loveland Comprehensive Master Plan: Development Review and Consistency

- a. *The proposal is consistent with the Policies and Supporting Strategies in Chapter 2: Our Future*

Planning: Staff believes that this finding can be met, based on the following facts:

- Create Loveland identifies the area proposed for annexation as being in a designated opportunity area that encourages complete neighborhoods and a revitalization of the corridors. Specifically the plan calls out the potential for development of new mixed density neighborhoods at a greater density than currently existing in the neighborhood.
- The development supports policies contained in Create Loveland including:
 - Providing housing needs of low and moderate income households and the development of diverse housing types;
 - Responding to trends in Loveland's demographics by encouraging housing diversity, accessibility, and affordability; and
 - Work to ensure housing affordability for existing residents, particularly for the elderly, to allow for aging within the community.
- A preliminary development plan application, which is the next step in the development process, requires a neighborhood meeting and a public hearing with the Planning Commission. This will provide the neighborhood with an opportunity to participate and provide input on development of the property.

- b. *The proposal is consistent with the Land Use Plan and Land Use Designations contained in Chapter 3: Our Places*

Planning: Staff believes that this finding can be met, based on the following facts:

- The land use plan designates the site as medium density residential. This category allows for a variety of housing types at a moderate density. The targeted density range is 4-10 units per acre with building heights between 1-4 stories. With the annexation property, the Mirasol development would have a density of 9.5 units per acre, which is consistent with the plan.
- The highest priority mode of transportation in the medium density residential designation

emphasizes pedestrian movement with detached sidewalks, off-street trail systems and connections to neighborhoods and commercial centers. The GDP requires detached walks along all streets and emphasizes pedestrian movement through internal walks connecting to the Mirasol events center and looping through the development.

2. Loveland Municipal Code

a. Section 18.04.010:

- (i) *Whether the zoning will provide adequate light and air; prevent overcrowding of land; avoid undue concentration of population; and facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements.*
- (ii) *The character of the district and the particular uses permitted by right in the district will preserve the value of buildings and encourage the most appropriate use of land.*

Planning: Staff believes that this finding can be met, based on the following facts:

- Development of the property will provide adequate light and air and prevent overcrowding of the land. The density of the development aligns with the city's vision established in the land use plan. While the apartment building will be 3 stories, street side bufferyards and interior landscaping will be provided.
- The zoning for the property proposed for annexation will match the character of the Mirasol development and encourages the most appropriate use of the land, based on the city's vision in Create Loveland. The plan further identifies the neighborhood as an area targeted for change with mixed density development.
- As the project is contiguous to existing developments receiving city services, an extension of infrastructure services is practical. The existing house is already served by city water and power.

D. Miscellaneous

1. Loveland Municipal Code, Section 17.04.040.F: *Whether the annexation is in the best interest of the citizens of the City of Loveland.*

Planning: Staff believes that this finding can be met, based on the following facts:

- The development supports policies in the comprehensive plan.
- The proposal aligns with the city's vision for redevelopment.
- The property is within the city's growth management area and complies with the city's Intergovernmental Agreement with Larimer County.

2. Loveland Municipal Code, Section 18.41.050.D.4.c: *Whether the GDP incorporates environmentally sensitive areas into the project design. Environmentally sensitive areas include, but are not limited to, wetlands, wildlife habitat and corridors, slopes in excess of 20%, flood plain, soils classified as having high water table, stream corridors, and mature stands of vegetation.*

Planning: Staff believes that this finding can be met, based on the following fact:

- An environmentally sensitive areas report was submitted with the annexation and GDP and was prepared by Cedar Creek Associates (see **Attachment C**). The report indicates that the only unique habitat within the project area is the woodland habitat created by the historic tree farm area and adjacent residential trees. The environmental report recommends that the larger, healthy trees be preserved to the extent possible and outlines

timing restrictions for tree removal based on the songbird nesting season. Conditions of approval are recommended in this staff report in alignment with the environmental report.

F. Mineral Extraction Colorado Revised Statute: *The proposed location and the use of the land, and the conditions under which it will be developed, will not interfere with the present or future extraction of a commercial mineral deposit underlying the surface of the land, as defined by CRS 34-1-3021 (1) as amended.*

Planning: Staff believes that this finding can be met, due to the following facts:

- There are no severed mineral leasehold owners on the property.
- A geologic hazards and mineral extraction evaluation report was submitted with the annexation and was prepared by Earth Engineering Consultants, LLC. The report indicated that no apparent significant geologic hazards exist on the property. Additionally the report indicates that due to the existing surrounding developments, small parcel size, depth of overburden clay and relatively thin sand and gravel lens, the deposit would not classify as “a commercial resource” under Colorado House Bill –HB 1529.

III. RECOMMENDED CONDITIONS

The following annexation conditions are recommended by City Staff.

Planning

1. Healthy mature trees shall be incorporated into the preliminary development plan (PDP) to the extent possible. Tree mitigation shall be included in the PDP for any healthy trees proposed to be removed. An evaluation of the trees from a professional arborist shall be submitted with the preliminary development plan.
2. Grading, tree removal and construction activities shall comply with the federal Migratory Bird Treaty Act. No such activities shall occur near an occupied bird nest during the songbird nesting season (March through July). If grading, tree removal or construction activities are proposed to occur March 1st through July 31st, a letter from a wildlife specialist shall be submitted to the Planning Division documenting that there are no active nests on the site.

Transportation Development Review

3. All public improvements shall comply with the Larimer County Urban Area Street Standards (LCUASS).
4. The developer agrees to acquire and dedicate, at no cost to the City, any rights-of-way necessary for the required street improvements associated with this development.
5. Prior to the issuance of any building permits for development in Mirasol Second Addition, pursuant to the provisions in Section 16.40.010.B of the Loveland Municipal Code, the Developer

shall design and construct the following public improvements unless already designed and constructed by others:

- a. The ultimate adjacent street improvements on St. Louis Avenue including pavement widening, curb & gutter, landscaped parkway and sidewalk.
- b. The ultimate adjacent street improvements on 4th Street SE including pavement widening, curb & gutter and sidewalk.
- c. The extension of Finch Street between Bunting Place and 4th Street SE including pavement curb to curb and sidewalks on both sides.
- d. Bunting Place from St. Louis Avenue to Finch Street including roadway pavement curb to curb and sidewalk improvements on the north side.

6. Any other off-site improvements required will be determined by the findings of the TIS at the time a development application is submitted for review.

Mirasol GDP Third Amendment Project Description

Mirasol Phase III will be developed as an extension of the existing Mirasol senior housing community, owned and operated by the Loveland Housing Authority. The approximate 6.5 acre annexation will be developed in two stages. The first stage, targeted for ground breaking in early 2017, will contain a three-story 60 unit apartment building constructed on the west half of the parcel. The second stage, to be completed at a later date, will consist of 5 paired homes totaling 10 housing units constructed on the east half of the parcel. All housing units will be age restricted to persons 55 years of age and older.

Attachment A

Mirasol GDP Third Amendment Findings Statement

A. The GDP conforms to the requirements of Municipal Code Section 18.41.050.D.4 to the City's master plans and to any applicable area plan.

The proposed Mirasol Third Amendment GDP conforms to the comprehensive master plan outlined by the City. The density and layout of the site will complement adjacent land uses by continuing the look and feel of the existing Mirasol Community to the south. City of Loveland staff has indicated that they envision this area of Loveland becoming more urban in character as the development pattern shifts from small residential acreages in the county to residential and mixed-use development in the City.

B. The proposed development will not negatively impact traffic in the area, city utilities, or otherwise have a detrimental impact on property that is in sufficient proximity to the proposed development to be affected by it.

The proposed development will not negatively impact traffic, city utilities or be a detriment to adjacent land uses.

Traffic patterns will be consistent with the adjacent Mirasol community by directing traffic to the north by continuing Finch Street as it meets 4th Street SE. In addition, the connection to 4th Street SE and South St Louis traffic will be disperse traffic evenly onto the adjacent road network.

The project will not negatively impact city utilities by utilizing utilities that are close in proximity and offered by the City. The owner will also be doing all that is necessary to improve utility connections for this particular project.

C. The proposed development will be complementary to and in harmony with existing development and future development plans for the area in which the proposed development is to take place by:

a. Incorporating natural physical features into the development design and providing sufficient open spaces considering the type and intensity of use;

The proposed project will provide ample open space through building setbacks, creating open space opportunities adjacent to the multi-family building and duplex/single family buildings. These will include ample foundation planting, a community garden and buffer planting for the existing residential use to the east.

ATTACHMENT B

b. Incorporating site planning techniques that will foster the implementation of the City's master plans, and encourage a land use pattern that will support a balanced transportation system, including auto, bike and pedestrian traffic, public or mass transit, and the cost effective delivery of other municipal services consistent with adopted plans, policies and regulations of the city;

As mentioned above the City of Loveland has indicated an interest in creating a more urban growth pattern in this area. This plan includes a balanced transportation system that connects to and disperses traffic, supports bike and pedestrian traffic by providing detached sidewalks and creates opportunities to connect to public transit.

c. Incorporating physical design features in the development that will provide a transition between the project and adjacent land uses through the provision of an attractive entryway, edges along public streets, architectural design, and appropriate height and bulk restrictions on structures;

The project is providing transition between adjacent land uses by placing the smaller duplex/single family use to the east, adjacent to the existing residential use. The project will create a gateway by placing the larger multi-family building at the corner of 4th Street SE and South St Louis. The building architecture at this corner is programmed to contain the reception lobby, elevator, a large living room/lounge with fireplace and smaller lounge areas on the second and third floors. An ample building setback along all edges adjacent to public and private land uses is accomplished by providing detached sidewalks with a tree lawn and buffer yard planting.

d. Incorporating identified environmentally sensitive areas, including, but not limited to, wetlands and wildlife corridors, into the project design;

There are no environmentally sensitive areas located on site.

e. Incorporating elements of community-wide significance as identified in the town image map;

f. Incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed

ATTACHMENT B

development will not negatively impact the levels of service of the City's services and facilities; and

The project is planning to provide all necessary public improvements so that the project does not negatively impact City services.

g. Incorporating an overall plan for the design of the streetscape within the project, including landscaping, auto parking, bicycle and pedestrian circulation, architecture, placement of buildings and street furniture.

An overall plan has been included to show the look and feel of the project. This includes detached sidewalks with street trees, auto and bike parking and placement of buildings that complement and are compatible with adjacent land uses.

A description and discussion of all aspects of the GDP that do not comply with the regulations for the comparable zone district in the Municipal Code

There are no aspects of the project that do not comply with the zone district outlined in the Municipal Code

ATTACHMENT B

**ENVIRONMENTAL AND NATURAL AREAS ASSESSMENT REPORT
FOR THE 510 S. SAINT LOUIS AVENUE DEVELOPMENT PARCEL**

Prepared
by
Cedar Creek Associates, Inc.
Fort Collins, Colorado

Prepared
for
Jeff Feneis
Loveland Housing Authority
Loveland, Colorado

June 21, 2016

**CEDAR CREEK
ASSOCIATES, INC.**

916 Willshire Ave., Fort Collins, CO 80521 • (970) 493-4394

ATTACHMENT C

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Appendix A - Resume of Preparer

510 S. Saint Louis Avenue ESAR

INTRODUCTION

This report documents the evaluation of environmental conditions on the proposed 510 S. Saint Louis Avenue development parcel in accordance with City of Loveland Planning Department Guidelines (March 2013) for preparation of an Environmentally Sensitive Areas Report (ESAR). The project area consists of approximately 5 acres located in southeast Loveland, Colorado located on the east side of S. Saint Louis Avenue between 4th Street SE and Bunting Place in the Southeast 1/4 of the Northeast 1/4 of Section 24 (T. 5 N. R. 69 W.). The proposed development of the property would be an expansion of the existing Mirasol Senior Housing project, which currently abuts the south property boundary. The property location is shown on the attached Figure 1.

METHODOLOGY

Cedar Creek completed a habitat evaluation for the 510 S. Saint Louis Avenue property (project area) on June 17, 2016. The habitat evaluation survey was conducted to characterize existing wildlife habitats, as well as to identify any unique or sensitive natural resource features. Observations recorded during the field evaluation included: major vegetation communities / wildlife habitats present within the property; dominant vegetation associated with each community / habitat; unique habitat features; and observations of wildlife species and/or definitive sign. Photographs showing representative views of existing habitats were also taken to document site conditions. Wildlife presence and habitat use was based on on-site observations and habitat presence in conjunction with the known habitat requirements of potential wildlife species. Existing habitats were also evaluated regarding their ability to support populations of threatened, endangered, and other sensitive plant and wildlife species. Finally, Natural Resources Conservation Service (NRCS) soils mapping was reviewed to determine if any known hydric (wetland) soil units are located on the property.

510 S. SAINT LOUIS AVENUE SITE INVENTORY

Habitats supported on the project area are non-native grass/hayfield, a historic tree farm area, and residential (see Figure 1). Non-native grass/hayfield is dominated by smooth brome (*Bromus inermis*) and the only woody vegetation in this habitat are a few ponderosa (*Pinus ponderosa*¹) and Scots pine (*Pinus sylvestris*) trees. The current resident on the property indicated the historic tree farm area had been planted to provide the City of Loveland with landscape trees, but the trees were never harvested. This area is now dominated by mature eastern cottonwoods (*Populus deltoides*) with a number of other tree and shrub species in the understory. The residential portion of the property contains a number of mature landscape trees, turf grass areas, a house, garage and outbuilding, and driveways.

The following sections address the ESAR information elements required by City of Loveland Planning Department guidelines (March 2013).

Mature Stands of Vegetation

The majority of the project area has been cultivated to non-native grassland for hay production and stands of mature, woody vegetation present in this habitat only include isolated ponderosa pine, Scots pine, and Siberian elm (*Ulmus pumila*) trees shown on Figure 1. Siberian elm and Scots pine are non-native trees, and Siberian elm is classified as an undesirable, nuisance tree.

The former tree farm area contains more than 70 mature eastern cottonwoods as well as few mature blue spruce (*Picea pungens*) and smaller Russian olives (*Elaeagnus angustifolia*), silver maple (*Acer saccharinum*), Rocky Mountain juniper (*Juniperus scopulorum*), and northern catalpa (*Catalpa speciosa*)

¹ Scientific nomenclature for plant follows USDA, NRCS Plants Database. Available online at: <http://plants.usda.gov/java/>

510 S. Saint Louis Avenue ESAR

trees. Some of the eastern cottonwoods in the tree farm area are partially decadent or are dead standing trees. Understory shrubs observed in the historic tree farm area included chokecherry (*Prunus virginiana*) and cotoneaster (*Cotoneaster* sp.). Photo 1 provides a representative view of a stand of eastern cottonwoods in the historic tree farm area.

The residential area also supports a number of large, mature trees, including eastern cottonwood, blue spruce, and green ash (*Fraxinus pennsylvanica*). One of the eastern cottonwoods, near the southwest property corner, is a particularly large specimen measuring nearly 8 feet dbh (diameter at breast height).

Jurisdictional or Non-jurisdictional Wetlands

According to NRCS soils mapping for the property (<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>), the only soil contained within the project area is Fort Collins loam, 0 to 3 percent slopes. The NRCS does not classify this soil-mapping unit as a hydric (wetland) soil, and no other evidence of wetland vegetation, soils, or hydrology was found on the project area.

Wildlife Habitat Areas and Corridors

Non-native grass/hayfield habitat has been cleared of native vegetation and most woody species, and as a result, does not support any natural habitat features and has relatively low wildlife habitat value. Seasonal mowing for hay production also limits overall habitat value. Non-native grass/hayfield habitat in the project area is dominated by smooth brome with lesser amounts of orchard grass (*Dactylis glomerata*) and alfalfa (*Medicago sativa*). All three species are introduced non-natives.

Less common weedy species observed at scattered locations throughout non-native grass/hayfield habitat were: Canada thistle (*Cirsium arvense*), field bindweed (*Convolvulus arvensis*), prickly lettuce (*Lactuca serriola*), and common dandelion (*Taraxacum officinale*). Photos 2 and 3 provide representative views of non-native grass/hayfield habitat and tree stands in the project area.

Mice, voles, pocket gopher, and eastern cottontail are the principal mammal species likely to establish resident populations in non-native grass/hayfield habitat. Songbirds such as western meadowlark, Brewer's blackbird, common grackle, and black-billed magpie may also occasionally use non-native grass/hayfield habitat. Red fox, coyote, raccoon, striped skunk, and open-country raptors such as red-tailed hawk, Swainson's hawk, and ferruginous hawk can hunt non-native grass/hayfield habitat. Although the very tall grass cover (3 to 4 feet), observed at the time of the field survey, would restrict hunting of the area by open-country raptors. Tall grass cover would also restrict use of this area by Canada goose and black-tailed prairie dog since both of these species prefer grassland with low cover and unobstructed views of surrounding areas. The project area's relative small size also may restrict use of the project area by wide-ranging mammals and raptor species. No wildlife species were observed in non-native grass/hayfield habitat during the field survey.

The tree farm habitat area and nearby trees in residential development create an isolated pocket of woodland habitat in an area dominated by upland grasslands and residential development. Shrubs in the understory of the tree farm area also provide additional habitat diversity, cover, and food sources for wildlife. Trees provide nesting and foraging habitat for a variety of urban-adapted bird species, and larger trees and snags in wooded habitats provide important foraging and/or nesting habitat for woodpeckers, variety of songbirds, and urban adapted raptors such as red-tailed hawk and great horned owl. No raptor nests were located during the field survey, but the current residents indicated owls (likely great horned owl) occasionally use the tree stand for perching or roosting. Other bird species likely to use urban woodlands include mourning dove, northern flicker, blue jay, black-capped chickadee, and house finch. No songbird nests were located by the survey, but locating smaller stick nests was difficult because of height of many of the large trees and their fully leafed out condition.

510 S. Saint Louis Avenue ESAR

None of the habitats within project area provide suitable habitat conditions for listed Threatened or Endangered species.

City of Loveland Identified Natural Areas

There are no City of Loveland Natural Areas mapped near the project area.

Physical Linkages to Other Natural Areas or Open Space

The project area has no physical linkage to any Loveland Natural Areas.

Existing Drainage Patterns and Floodway and Flood Fringe Boundaries

The project area is essentially flat with no distinct drainage patterns. Floodway and flood fringe boundaries are addressed in other documents submitted for the project area.

Irrigation Canals, Ditches, and Water Courses

Dryland hay production is practiced on the project area, and there are no active irrigation canals or ditches present.

Existing Slopes Over Twenty Percent

The project area is nearly level and there are no slopes over 20 percent.

Soils With a High Water Table or Being Highly Erodible

The only soil contained within the project area is Fort Collins loam. The NRCS (<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>) indicates this is a well-drained soil. The runoff rating is slow and the hazards of wind and water erosion are slight to moderate. No problem erosion sites were noted on the property during the June 2016 field survey.

The NRCS indicates Fort Collins loam has a depth to water table greater than 80 inches.

Land Formerly Used for Landfill Operations or Hazardous Industrial Use

These topics are addressed in separate documents submitted for the for the project area.

Fault Areas and Aquifer Recharge and Discharge Areas

These topics are addressed in separate documents submitted for the for the project area.

ASSESSMENT OF POTENTIAL IMPACTS OF PROPOSED DEVELOPMENT

Although specific development plans are not available at this time, proposed senior housing development would occur in mostly in non-native grass/hayfield habitat. Project development would not result in any impacts to important wildlife corridors, environmentally sensitive areas, or potential habitat for federally listed threatened or endangered species. Development would result in displacement of wildlife using non-native grass/hayfield habitats, but this type of habitat is relatively common in the region. Therefore project development would only result in relatively minor reductions in local wildlife populations common to the region.

510 S. Saint Louis Avenue ESAR

The only unique habitat within the project area is woodland habitat created by the historic tree farm area and adjacent residential trees. It is recommended that the larger, healthy trees be preserved to the extent possible. There is one issue regarding the timing of property development and ecological features or wildlife use of the project area. If the development proposal includes removal of any trees on the property or if construction occurs near an occupied bird nest during the songbird nesting season (March through July), these activities could result in the loss or abandonment of a nest and may be in violation of the federal Migratory Bird Treaty Act.

RECOMMENDED PROTECTION MEASURES, MITIGATION, AND ENHANCEMENT

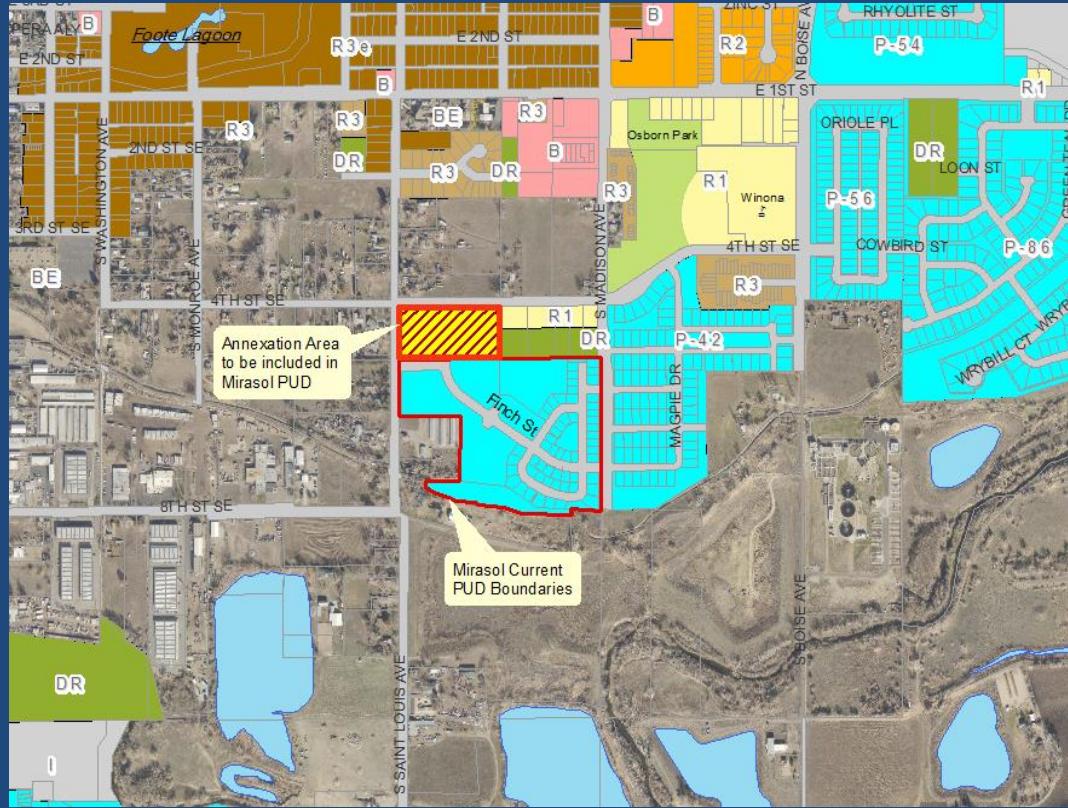
A professional arborist will need to evaluate the health of trees in the project area to assess the feasibility of saving existing trees. If mature trees need to be removed, plantings of replacement trees outside of development envelopes should be considered as mitigation for loss of existing trees. Since tree removal or construction near trees during the nesting season could result in the loss or abandonment of a nest, it is recommended that tree removal or construction near trees occur outside of the nesting season (March 1 – July 31), or trees in the project area be surveyed to ensure lack of nesting prior to removal or construction activities during the nesting season. This mitigation recommendation would preclude the possible incidental take or disturbance of occupied nests and a possible violation of the Migratory Bird Treaty Act.

One final mitigation recommendation is that plantings of native shrub and trees in undeveloped portions of the project area, could be used to enhance wildlife habitat at these sites.

Property Description:

- SE corner of 4th Street SE and St. Louis Ave.
- 6.8 acres & includes St. Louis and 4th Street ROW
- Within the City's Growth Management Area
- Zoning:
Mirasol Community PUD
- Applicant: Housing Authority of the City of Loveland

Mirasol Second Addition



City Council September 20, 2016

Exhibit 1

Development Process

Step 1: Annexation & Zoning

Neighborhood Meeting, Planning Commission, & City Council

Annexation & zoning map, annexation petition, annexation reports

Step 2: Preliminary Development Plan & Preliminary Improvement Drawings

Neighborhood Meeting & Planning Commission

Site plan, architecture, landscape plan, utility drawings

Step 3: Final Development Plan, Final Plat & Final Improvement Drawings

Administrative Approval

Final site plan, landscape plan, final utility drawings

Step 4: Public Infrastructure & Building Construction

Administrative Approval

Annexation & Zoning

Annexation Request Findings & Considerations:

- Contiguous to City limits (1/6th perimeter)
- Can be served by the City
- Best interest of City citizens, consideration of additional cost or burden to provide services
- Compliance with Intergovernmental Agreements
- Compliance with vision in Create Loveland, the City's Comprehensive Master Plan

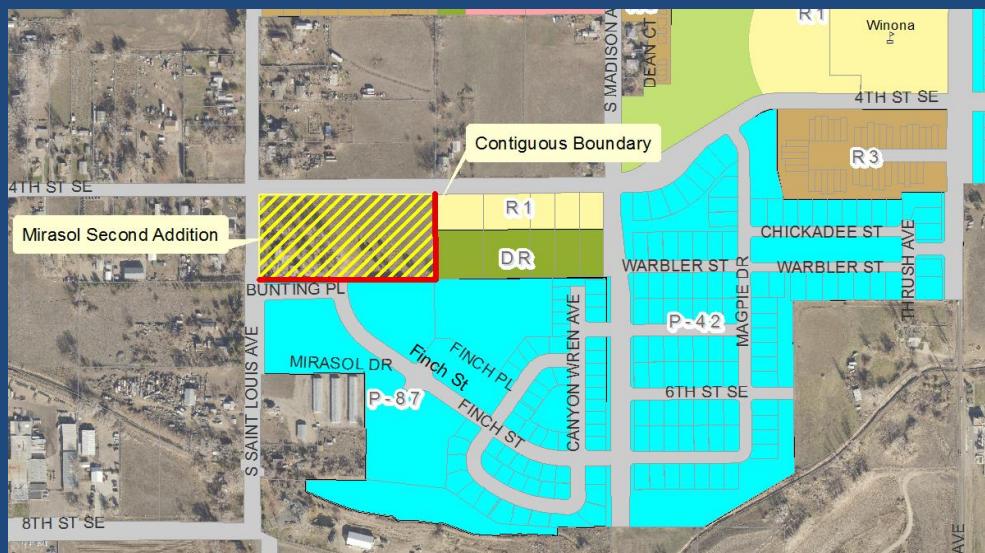


Exhibit 1

Create Loveland & Zoning

- Comprehensive Plan Designation:
Medium Density Residential
 - 4-10 units per acre
 - Building height 1-4 stories
- Opportunity Area for new mixed use and mixed density neighbors
- Requested zoning: 60 units in Area H, 10 units in Area I
- Mirasol PUD density 9.5 units/acre

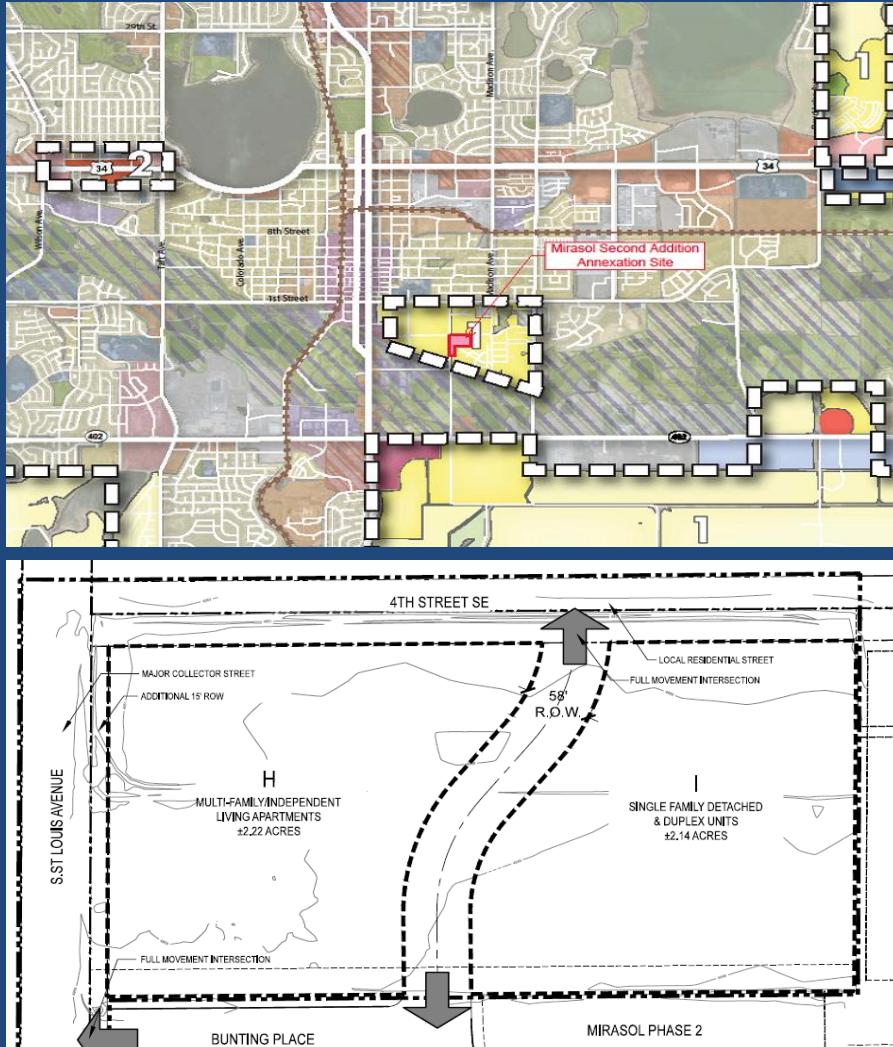


Exhibit 1

Neighborhood Comments

- Neighborhood meeting: 66 neighbors and Mirasol residents.
Concerns: Traffic speeds (existing on St. Louis and through Mirasol), change in character of area, lack of sidewalk connections to downtown, parking and landscaping in Mirasol.

Planning Commission: 9 neighbors and residents spoke.

Concerns: Traffic, massing of building and lack of sidewalks.

Staff & Planning Commission Recommendation

- Approval of annexation and GDP Amendment with the annexation conditions listed in the staff report.



Exhibit 1



AGENDA ITEM: 2.6
MEETING DATE: 10/4/2016
TO: City Council
FROM: Economic Development Department
PRESENTER: Mike Scholl, Economic Development Manager

**TITLE:**

An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget for Edison Welding Institute (EWI) Incentive.

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

OPTIONS:

1. Adopt the action as recommended. EWI would go forward with the build out and development at the RMCIT
2. Deny the action. Staff would need to revisit and possibly terminate the agreement with EWI.
3. Adopt a modified action. Council could direct staff to modify the appropriation which may impact the agreement with EWI.
4. Refer back to staff for further development and consideration. Council could provide feedback and direction for a different approach.

SUMMARY:

City Council approved an agreement with EWI on October 20, 2015 to fund EWI operations at the Rocky Mountain Center for Innovation and Technology (RMCIT). The agreement called for the City to invest \$2 million, and EWI would identify an additional \$4 million for the project. The total development cost is \$6 million including the City's contribution. The initial appropriation for \$500,000 was approved at the October 2015 meeting and was paid to EWI. In accordance with the terms of the agreement, EWI has requested the next installment of \$1 million. EWI has met the performance measures as defined in the agreement that includes execution of RMCIT lease, contracts with financing partners, Colorado Advanced Manufacturing Alliance (CAMA) and the Colorado State Office of Economic Development and International Trade (OEDIT), and hiring of four staff including a director, business development, technology leader, and engineer.

Based on feedback from Council at the 1st reading of the appropriation ordinance, staff will work with EWI to develop a reporting system to insure the City's investment is tracked and used in accordance with the terms of the agreement. The first reading of the ordinance was approved unanimously by the City Council at the September 20, 2016 Council meeting.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

As defined at the October 20, 2015 meeting, the funding sources are:

\$500,000 will be appropriated from the Incentive Fund leaving a balance of \$420,108.

\$500,000 will be appropriated from the Council Special Project Fund leaving a balance of \$1,108,388.

BACKGROUND:

Staff brought a proposal to Council in the fall of 2014 to partner with EWI to complete a statewide manufacturing assessment and determine the feasibility of developing an EWI Colorado site. The positive results from the assessment led to a proposal to City Council in October 2015 to fund \$2 million for the execution of the business plan and the construction of an EWI Colorado operation at Rocky Mountain Center for Innovation and Technology (RMCIT). The overall project budget is \$6 million with the additional funding being provided through the Four Front initiative, CAMA and the OEDIT. Rick Gardner, Director of EWI Colorado, has confirmed that all contracts are in place with these financial partners (see attached EWI Project Update).

EWI anticipates completing the tenant finish for the EWI space and the Colorado Advanced Manufacturing Alliance Center at RMCIT in late October 2016. They continue work on establishing a Founders Council, rolling out a marketing campaign specific to Colorado, and engagement efforts with nonprofit and community partners.

REVIEWED BY CITY MANAGER:**SCA**

LIST OF ATTACHMENTS:

1. Ordinance
2. EWI Request Letter dated September 2, 2016
3. EWI Project Update
4. EWI Agreement dated October 21, 2016
5. Press Release (4/22/16): <https://ewi.org/ewi-opening-new-applied-research-center-in-colorado/>

FIRST READING: September 20, 2016

SECOND READING: October 4, 2016

ORDINANCE NO. 6054

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR EDISON WELDING INSTITUTE (EWI) INCENTIVE

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the 2016 City budget for Edison Welding Institute (EWI) incentive; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2016 City budget for Edison Welding Institute (EWI) incentive, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That reserves in the amount of \$500,000 from fund balance in the Economic Incentives Fund are available for appropriation. That reserves in the amount of \$500,000 from fund balance in the Council Special Projects Fund are available for appropriation. Such revenues in the total amount of \$1,000,000 are hereby appropriated to the 2016 City budget for Edison Welding Institute (EWI) incentive. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Council Special Projects Fund**

Revenues		
Fund Balance		500,000
Total Revenue		500,000
Appropriations		
100-91-999-0000-47106	Transfers to Economic Incentives	500,000
Total Appropriations		500,000

**Supplemental Budget
Economic Incentives Fund 106**

Revenues		
Fund Balance		500,000
106-00-000-0000-37100	Transfers from Council Special Projects Fund	500,000
Total Revenue		1,000,000
Appropriations		
106-18-180-1500-43155 EDEWI	Economic Incentives	1,000,000
Total Appropriations		1,000,000

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

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

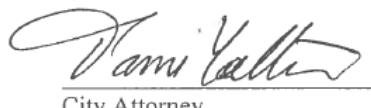
ADOPTED this 4th day of October, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Tammy Yaltta
City Attorney

Ordinance # 6054

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on September 20, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on September 24, 2016 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on October 8, 2016.

City Clerk

Effective Date: October 4, 2016



We Manufacture Innovation

815 14th Street SW, Loveland, CO 80537
970.573.1675 • ewi.org

Steve Adams
City Manager
City of Loveland
500 E. 3rd Street
Loveland, CO 80537

September 2, 2016

Dear Steve,

EWI is making great progress on our new facility at the Rocky Mountain Center of Innovation and Technology. We look forward to opening later this fall and I am excited to have joined the team as Director.

We sincerely appreciate the City of Loveland's partnership in this endeavor as we work to support Advanced Manufacturing in Loveland, the region, and across the state. Included in the packet, is a fulfilled Scope of Work as part of the original contract and associated with the first appropriation in the fall of 2015. As you can see, we accomplished all of our objectives. Along with it, you will find a new Scope of Work that accompanies this letter of request and identifies our next set of priorities and goals as we work towards sustainability.

Per the agreement, EWI respectfully requests the next installment of \$1,000,000 towards the EWI-Colorado operation. We look forward to continuing to provide, through City Leadership, ongoing updates to City Council, staff and the community and are looking forward to showcasing our amazing new facility at the Grand Opening.

This is an exciting time in manufacturing and we are pleased to be part of this important ecosystem.

Sincerely,

Rick Gardner
Director, EWI- Colorado



We Manufacture Innovation

815 14th Street SW, Loveland, CO 80537
970.573.1675 • ewi.org

Scope of Work- First Appropriation 2015

EWI- Colorado

1. Execution of Lease- EWI has entered into a five year lease with CW for 12,000 sq ft in Lower D
2. Execution of matching funds- Contracts are in place with all financial partners, including the \$2MM Advanced Industries grant from the Colorado Office of Economic Development and International Trade as well as the \$2MM CAMA grant, Colorado Advanced Manufacturing Alliance.
3. Initial facility plan- The building permit was issued at the end of June and the tenant finish will be completed in late October.
4. A Director is in place along with a Business Development Specialist, the Non-Destructive Evaluation Technology leader and an additional NDE engineer.
5. Execution of contract with Next Street- the contract is signed and work is being done at a national level to pursue additional funding sources across national philanthropies and Economic Development organizations. Recently funding was acquired by Next Street for a specific project at our Buffalo facility. Once open, we will work with them on similar projects.
6. Progress towards securing additional funds- In addition to our work with Next Street, we are meeting with partners across the state to explore other funding mechanisms such as social impact investing and financing models for small company projects.
7. Founders Council engagement- the EWI team has met with six prospects to date and are in active conversations with them about participation. Additional companies are being identified and meetings scheduled for September.
8. Nonprofit partnerships- Over a dozen meetings have been taken with a variety of nonprofit and community partners to provide updates and explore opportunities for engagement from Southern to Northern Colorado. A trip to the western portion of the state is being investigated for September.
9. Marketing campaign- A marketing campaign specific to Colorado has been created and has been rolling out since May. This includes a monthly e-newsletter, technology capabilities presentations across the Front Range, business magazine articles, collateral materials, inclusion on the EWI website, direct email campaign, inclusion on partner websites, and upcoming participation in multiple trade shows.
10. Equipment purchases- furnishings and fixtures have been purchased for the facility including flexible conference/meeting/training space, FUSE Center technology room, offices and the lab. Several capital expenditures have been made on quality measurement equipment which will be fully operational when the facility opens. The Colorado team is already exploring several private projects that would use this equipment.



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Scope of Work- 2016 Appropriation

EWI-Colorado

1. Host Facility Premier/Ribbon Cutting
2. Continue establishment of Founders Council- 10-15 members total
3. Work with Founders Council to assess next round of equipment purchases and technical priorities
4. Initial work on a consortium focused on NDE
5. Ongoing work with membership campaign
6. Solicit meetings across the state and the Rocky Mountain region with company prospects for projects- i.e. currently working on a trip to Utah to present at a gathering of medical device companies along with statewide outreach
7. Project management for Colorado and other EWI facilities
8. Engage with the EWI Business Development Team for coordinated marketing effort around Non-destructive evaluation and Quality measurement
9. Participation and presentations at trade shows, events, conferences, industry meetings throughout Colorado and the country, i.e. an abstract was submitted for the Defense Manufacturing Conference in December 2016
10. Propose and develop IR&D projects utilizing initial equipment purchases to create IP and project opportunities
 - a. In-line monitoring of additive manufacturing
 - b. advanced ultrasonic imaging
11. Build a series of technical demonstrations for our offerings to potential partners

AGREEMENT

This agreement ("Agreement") is made and entered into this 21st day of October, 2015, by and between the **CITY OF LOVELAND, COLORADO**, a home rule municipality (the "City"), and **EDISON WELDING INSTITUTE, INC. d/b/a EWI**, an Ohio non-profit corporation ("EWI"), both of which may also be referred to herein individually as a "Party" or collectively as the "Parties."

WHEREAS, EWI is a non-profit corporation and is the leading engineering and technology organization in North America, providing research, manufacturing support, and strategic services to leaders in the aerospace, automotive, consumer products, electronics, medical, energy and chemical, government, and heavy manufacturing industries; and

WHEREAS, after completion of a statewide manufacturing assessment, EWI desires to establish an EWI Colorado business operations site at the Rocky Mountain Center for Innovation and Technology, located at 815 14th Street SW in Loveland, Colorado ("Project Location") at the Project Location in Loveland, Colorado ("Project"); and

WHEREAS, the Colorado Office of Economic Development and International Trade ("OEDIT") and Colorado Advanced Manufacturing Alliance ("CAMA") have given their verbal commitment to endorse funding of the Project through two distinct avenues: infrastructure funding through the Advanced Industries Accelerator Program in the amount of Two Million Dollars (\$2,000,000) over two years, and funding through the Department of Defense's FourFront Initiative in the minimum amount of Two Million Dollars (\$2,000,000); and

WHEREAS, EWI has requested financial assistance from the City to execute its business plan and help capitalize initial operations, with such City incentive to fund a portion of the Project in an amount not to exceed \$2,000,000 (the "Incentive") to assist with the Project at the Project Location; and

WHEREAS, the City desires to provide assistance in the form of the Incentive for the Project at the Project Location, and finds that such assistance is in the best interests of the City and serves the public purposes of providing significant economic, cultural, and social benefits to the citizens of Loveland, in the form of (i) economic development; (ii) stimulating development and attracting capital investment; (iii) additional jobs; and (iv) increased sales and property tax revenues.

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

1. Incentive

Subject to the conditions and upon the terms provided for in this Agreement, the City agrees to provide the Incentive to EWI for the Project at the Project Location in an aggregate amount not to exceed \$2,000,000.00 for the actual costs of the Project in accordance with the following:

21948544v11
 CAO Rev. 10-5-15
 V/Executive Legal/Business Economic Development/EWI

- a. "Project Costs" associated with the Project shall include the following:
 - i. Execution of lease at Project Location;
 - ii. Contracts to secure matching funds with CAMA and OEDIT for infrastructure funding through the Advanced Industries Accelerator Program in the amount of Two Million Dollars (\$2,000,000) over two years, and funding through the Department of Defense's FourFront Initiative in the minimum amount of Two Million Dollars (\$2,000,000) ("Matching Fund Agreements");
 - iii. Initial facility design plans and building permit application fees submitted for the Project as the Project Location;
 - iv. Conducting a search for a Project Director;
 - v. Execution of a contract with Next Street for program development;
 - vi. Progression towards securing additional grants and funding sources;
 - vii. Engagement with potential Founder's Council members for the Project;
 - viii. Establishment of partnerships with selected Colorado non-profits corporations;
 - ix. Developed and current marketing campaigns, including, but not limited to marketing materials, creation of new website and new marketing materials specific to EWI Colorado and direct market plan for private company contracts;
 - x. Equipment purchases, furnishings and tenant finish; and
 - xi. Other related Project Costs as approved by the City Manager.
- b. The City agrees to pay Five Hundred Thousand Dollars (\$500,000.00) of the Incentive ("Initial Incentive Payment") to EWI within fifteen (15) business days of execution of this Agreement by the City and EWI. EWI shall make a good faith effort to substantially achieve, by no later than December 31, 2016, those Project Costs identified in paragraph a. subsection i thought ix, above, of this Section 1. It is anticipated that the remaining \$1,500,000.00 of the Incentive will be paid to EWI not later than December 31, 2017, for actual approved Project Costs incurred and as requested by EWI in writing, for ongoing Project Costs identified in paragraph a., above, of this Section 1, which written request for payment will include a statement of Project Costs to be paid ("Requests for Payment"). Requests for Payment shall be made no more frequently than monthly by EWI. All Requests for Payment are subject to final review and approval by the City Manager within ten (10) business days of such request ("Approval of Request for Payment"), which approval shall not be unreasonably withheld, with payment to be made to EWI within fifteen (15) business days after receipt of the Approval of Request for Payment.
- c. An anticipated payment schedule will be as set forth in **Exhibit "A"** attached to this Agreement and incorporated by reference for the Incentive. After the Initial Incentive Payment, it is anticipated that there will be Requests for Payment equaling One Million Dollars (\$1,000,000) of the Incentive, not sooner than March 1, 2016, but not later than December 31, 2016, and a Request for Payment of the remaining Five Hundred Thousand Dollars (\$500,000) of the Incentive by December 31, 2017. Notwithstanding the foregoing provisions of paragraph

c. of this Section 1, after the Initial Incentive Payment, but not earlier than March 1, 2016, the Parties agree that EWI can draw down any amount of the remaining amount of the Incentive for Project Costs, at any time from March 1, 2016 through December 31, 2017, subject to paragraph b., above, of this Section 1.

d. EWI hereby indemnifies and agrees to hold the City, its Council members, employees, and agents harmless from and against any cost or liability whatsoever, including, but not limited to, any fines, penalties, attorneys' fees and other costs arising out of the Project, the City's payment of the Incentive, and/or EWI's characterization of such payments for tax purposes, it being the intent of the Parties that the City shall have no responsibility whatsoever for the characterization of such payments made pursuant to this Agreement.

e. As a condition of disbursing any portion of the Incentive requested under a Request for Payment, the appropriate parties shall furnish to the City the following documents:

i. Request for Payment shall specify the amount of the requested disbursement and the related Project Costs and certify, as of the date of the Request for Payment, that:

a) the total amount of each Request for Payment represents the actual amounts incurred or to be incurred by EWI for Project Costs;

b) no default, condition or event of which condition would constitute a default, exists under this Agreement; and

c) all proceeds of the Incentive disbursed to EWI to date have been applied to payment of the Project Costs.

f. For purposes of assuring compliance with this Agreement and the verification of Project Costs, representatives from the City shall have reasonable rights of access to the Project during normal work hours. Access shall include the right of inspection of documentation and field verification of Project Costs for which Requests for Payment are submitted. The City shall have the right to request reimbursement of Incentive amounts included in any Request for Payment if the City is unable to verify the existence or payment of reimbursed Project Costs. Representatives of the City shall be identified in writing to EWI.

g. The total Incentive from the City under this under this Agreement shall not exceed Two Million Dollars (\$2,000,000) for actual Project Costs incurred by EWI and approved by the City Manager. All costs in excess of the Incentive incurred by EWI in completion the Project shall be borne by EWI. Notwithstanding any provision in this Agreement to the contrary, the City shall not be obligated to pay EWI any amount of the Incentive in excess of the Initial Incentive Payment of \$500,000, until such time as EWI provides fully executed copies of its Matching Fund Agreements with CAMA and OEDIT for the Project.

2. EWI's Covenants

In consideration for the Incentive, EWI, in addition to any other obligation herein, covenants and agrees to:

- a. diligently pursue and use its best efforts to obtain agreements for all necessary funding for completion of the Project at the Project Location; and
- b. pay only approved Project Costs with Incentive funds; and
- c. use its best efforts to complete and operate the Project at the Project Location.

3. Applicable Law and Venue

This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, EWI acknowledges that there are legal constraints imposed upon the City by the constitutions, statutes, rules and regulations of the State of Colorado and of the United States, and the City's Charter and Code, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall any of the Parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall be in the District Court for Larimer County, Colorado.

4. Time is of the Essence

Time shall be of the essence for the performance of all obligations under this Agreement.

5. Assignment

EWI shall not assign or transfer this Agreement to any entity without the prior written consent of the City.

6. Construction

This Agreement shall be construed according to its fair meaning and as if it was prepared by both of the Parties and shall be deemed to be and contain the entire Agreement between the Parties. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations expressed or implied, concerning this Agreement, unless set forth in writing and signed by the City and EWI.

7. Headings

Section headings used in this Agreement are used for convenience of reference only and shall in no way define, control, or affect the meaning or interpretation of any provision of this Agreement.

8. Notices

Any written notice given under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three days after being sent by certified mail, return receipt requested, to the following addresses:

If to the City:

Bill Cahill
City Manager
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537

With a copy to:

City Attorney
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537

If to EWI:

With a copy to:

Either Party hereto may at any time designate a different address or person receiving notice by so informing the other Party in writing.

9. Binding Effect

This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the successors and assigns of the respective Parties hereto.

10. No Waiver

In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

11. Severability

If any provision of this Agreement, or the application of such provision to any person, entity, or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those in which it was held invalid, shall not be affected.

12. Additional Provisions

a. The City shall have the right to review and audit EWI's financial books and records related to the Project, the Project Costs, and EWI's financial statements at any time with a 30-day notice. The City shall exercise this clause reasonably.

b. EWI agrees to reimburse the City all amounts of the Incentive not expended by EWI in the event of the Project's destruction, in whole or in part, due to fire or any other casualty.

c. In the event that EWI is unable to come to agreement with CAMA and/or OEDIT regarding their funding of the Project, this Agreement shall automatically terminate and any unexpended amount from the Incentive as of the date of termination shall be returned to the City. EWI shall be under no obligation to reimburse the City for funds expended prior to such termination as described herein this Section 12(c).

13. Default

a. If EWI, subject to force majeure and any other delays beyond the reasonable control of EWI:

(i) fails to commence and pursue the Project as required in this Agreement for a period of ninety (90) days after written notice thereof from the City (or such longer period as is reasonably necessary provided EWI commences and pursues the same using commercially reasonable efforts); or

(ii) abandons or substantially suspends construction of improvements at the Project Location for a period of ninety (90) days after written notice thereof from the City; or

(iii) fails to obtain the Certificate of Occupancy for the Project Location, if required by the City pursuant to the City code; or

(iv) abandons or substantially suspends the Project at the Project Location for a period of ninety (90) days after written notice thereof from the City; or

(v) fails to perform any other obligation under this Agreement for a period of ninety (90) days after written notice thereof from the City (or such longer period as is reasonably necessary provided EWI commences and pursues the same using commercially reasonable efforts),

then any such occurrence shall constitute a material default and the City shall be entitled to all remedies available at law or in equity, including but not limited to reimbursement of all Incentive amounts. Failure to obtain necessary funding for completion of the Project at the Project Location shall not constitute a material default under this Agreement, provided EWI has complied with Section 2(a) herein.

b. In no event shall the City, its Council members, employees or agents be liable to EWI, in contract, tort or otherwise, with respect to any direct, indirect, consequential, special, exemplary or incidental damages arising from or relating to this Agreement or the Project.

c. If any Party commences an action to enforce or interpret any portion of this Agreement, the prevailing party in such action shall recover the prevailing party's costs and such reasonable attorneys' fees as may be awarded by the Court.

14. Multi-Year Fiscal Obligation

To the extent the City's obligation to provide the Incentive under this Agreement is considered a multi-year fiscal obligation under Article X, Section 20 of the Colorado Constitution and the City's Charter Section 11-6, such obligations are subject to annual appropriation by the Loveland City Council. The City shall have no obligation to make any payment sought or to be paid on or after December 31 of any year, unless the necessary appropriation has been made by the City Council to authorize such provision or payment in the subsequent year, provided that the City Manager will take all actions reasonably necessary to include any required appropriation in the annual budgets presented to Council for adoption. The City represents that it presently intends to present for appropriation the Incentive under this Agreement to the fullest extent permitted by law.

15. Signatures & Effective Date

For purposes of this Agreement, there may be any number of counterparts, each of which shall be deemed as originals. Facsimile and electronically transmitted signatures, for purposes of this Agreement, shall be deemed as original signatures. The "Effective Date" of this Agreement shall be the later of the date this Agreement is approved by City Council and signed by the City Manager and the date this Agreement is approved by the EWI board and signed by a person with signature authority for EWI, and until such approvals and signatures have been made, this Agreement is of no force or effect.

16. Delegation of Authority for City Approvals

The City Manager or his designee is hereby authorized to:

- a. review and approve or disapprove, as permitted by this Agreement, each Request for Payment and other matters to be approved by the City under this Agreement; and
- b. grant requests for extensions of time to satisfy requirements set forth in this Agreement, for good cause shown.

17. Third Party Beneficiaries

This Agreement is solely for the benefit of EWI and the City and their respective members, principals, partners and successors and no third party shall be entitled to the benefit of any provision of this Agreement.

18. Disclosure

EWI understands and acknowledges that under the Colorado Open Records Act, C.R.S. §§ 24-72-201 et al., ("CORA") this Agreement is subject to public inspection. In addition to the

public inspection requirements of CORA, EWI also understands and acknowledges that the Colorado Open Meetings Law, C.R.S. § 24-6-402, (“COML”) may also require a disclosure of the terms and conditions of this Agreement at public meetings of the City Council. Therefore, any such disclosures of the terms and conditions of this Agreement under CORA or COML are permitted under this Agreement and shall not be considered a breach of any provision of this Agreement. Additionally, EWI understands and acknowledges that if and to the extent the disclosure under CORA or COML requirements are in conflict with this Agreement, then the disclosure requirements under CORA and/or COML shall be deemed to control.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

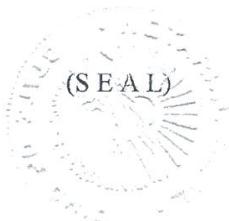
EDISON WELDING INSTITUTE, INC.
d/b/a EWI

By: H. J. Cialone
Its: President & CEO

STATE OF Ohio)
COUNTY OF Franklin) ss.

The foregoing instrument was acknowledged before me this 16th day of Oct., 2015, by Henry J. Cialone, as President + CEO of EDISON WELDING INSTITUTE, INC. d/b/a EWI, Ohio a non- profit corporation.

Witness my hand and official seal. My commission expires: 2-23-2017



Michelle R. Laverty
Notary Public

MICHELLE R. LAVERTY
Notary Public, State of Ohio
My Commission Expires 02-23-2017

CITY OF LOVELAND, COLORADO

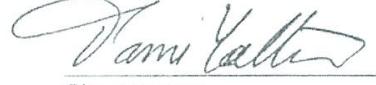
By:



William D. Cahill, City Manager

ATTEST:

 Deputy City Clerk

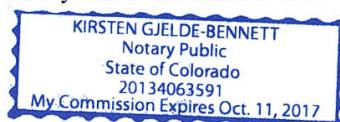
APPROVED AS TO FORM:

 City Attorney



STATE OF COLORADO)
) ss.
 COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 21st day of October, 2015, by William D. Cahill as City Manager of the City of Loveland, Colorado, and by Teresa Andrews as City Clerk of the City of Loveland, Colorado.

Witness my hand and official seal. My commission expires: 10 - 11-2017.



Kirsten Gjelde-Bennett
Notary Public

(S E A L)

EXHIBIT A
ANTICIPATED INCENTIVE SCHEDULE

Incentive Schedule:

Total Incentive Amount: \$2,000,000

Payment	
2015	\$500,000
2016	\$1,000,000
2017	\$500,000
TOTAL	\$2,000,000

AGENDA ITEM: 2.7
MEETING DATE: 10/4/2016
TO: City Council
FROM: Parks & Recreation
PRESENTER: Marilyn Hilgenberg, Parks & Recreation

**TITLE:**

An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget for the Namaqua West Property Open Lands Acquisition.

RECOMMENDED CITY COUNCIL ACTION:

Hold a public hearing and approve the ordinance on first reading

OPTIONS:

1. Adopt the action as recommended
2. Deny the action which will prohibit the acquisition of the open lands property
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration

SUMMARY:

A supplemental budget ordinance to appropriate adequate funding for the acquisition of the Namaqua West Open Lands Acquisition along the Big Thompson River in west Loveland.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

A supplemental appropriation for \$1,600,000 from the Open Space Tax Fund is required to supplement available funding for the acquisition of the Namaqua West Open Lands acquisition. The current Open Space Tax Fund balance is \$6,064,377. The new fund balance would be \$4,464,377 upon approval of the supplemental appropriation.

BACKGROUND:

Acquisition of the Namaqua West Property will provide public access to open lands while conserving riparian and upland habitats, water rights, irrigated farmland, and scenic views along the Big Thompson River corridor in west Loveland. The 55-acre acquisition is adjacent to Namaqua Park and Natural Area and protects valuable river frontage for wildlife and recreational opportunities. Trail connections for bicycle and pedestrian access to adjacent open lands will also be made possible by this project, with the use of farm roads and ditch access throughout the property. In addition, this project could be a catalyst to preserve additional property in the Big Thompson River corridor.

The Big Thompson River corridor is identified as a priority area for Open Land conservation in the 2014 Parks and Recreation Master Plan. The Open Lands Advisory Commission ranked the Namaqua West Property as its number one priority acquisition in 2016.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. Ordinance
2. Real Estate Contract
3. Map

FIRST READING: October 4, 2016

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR THE NAMAQUA WEST PROPERTY OPEN LANDS ACQUISITION

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the 2016 City budget for the full funding of the Namaqua West Property Open Lands acquisition; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2016 City budget for the Namaqua West Property Open Lands acquisition, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That reserves in the amount of \$1,600,000 from fund balance in the Open Lands Fund are available for appropriation. Such revenues in the total amount of \$1,600,000 are hereby appropriated to the 2016 City budget for the Namaqua West Property Open Lands acquisition. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Open Lands Fund 202**

Revenues

Fund Balance	1,600,000
Total Revenue	1,600,000

Appropriations

202-51-590-0000-49010	Land	1,600,000
Total Appropriations		1,600,000

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

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

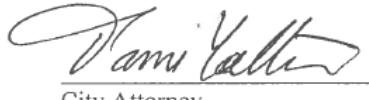
ADOPTED this 18th day of October, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Tami Yaltin

City Attorney



LC Real Estate Group, LLC
 1712 Topaz Drive Loveland, CO 80537
 Nathan Klein Partner / Commercial Brokerage Manager
 Ph: 970-667-7000 Fax: 970-635-2514

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS4-6-15) (Mandatory 1-16)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE

(LAND)

(Property with No Residences)
 Property with Residences-Residential Addendum Attached)

Date: 8/2/2016

AGREEMENT

1. **AGREEMENT.** Buyer agrees to buy and Seller agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. **PARTIES AND PROPERTY.**

2.1. **Buyer.** Buyer, *City of Loveland, a Municipal Corporation*, will take title to the Property described below as

Joint Tenants Tenants In Common Other Municipal Corporation.

2.2. **No Assignability.** This Contract Is Not assignable by Buyer unless otherwise specified in Additional Provisions.

2.3. **Seller.** Seller, *Paul Ehrlich Revocable Trust*, is the current owner of the Property described below.

2.4. **Property.** The Property is the following legally described real estate in the County of Larimer, Colorado:

LOT 1 SLOAN ADDITION, FIRST SUBDIVISION, (20100023255)

and

PT NE 1/4 16-5-69 DESC: BEG AT SW COR NE 1/4, TH N 64 54` 15" E 623.17 FT TO WRLY ROW CO RD, TH ALG SD WRLY ROW S 15 9` W 159.49 FT TPOB, TH LEAV SD ROW N 80 15` 10" W 25.1 FT, S 70 25` 30" W 147.98 FT, N 77 7` 40" W 35 FT M/L TO C/L IRR DITCH, TH ALG SD C/L S 2 14` W 65.27 FT, N 89 16` E 168.43 FT TO PT ON WRLY ROW CO RD, SD PT ON CUR, C/A 5 57` 20", RAD 925 FT, L/C N 18 7` 40" E 96.11 FT, TH NERLY ALG ARC SD CUR AND WRLY ROW 96.15 FT, TH TANG N 15 9` E 9.6 FT TPOB (C41S8942E)

and

BEG AT SW COR OF NE 1/4 16-5-69, TH S 89 42` E 116.09 FT ALG S LN NE 1/4, TH S 3 15` W 54.55 FT, N 89 16` E 383 FT, N 22 22` E 46.64 FT, S 89 42` E 786.04 FT, N 31 30` W 49.4 FT, N 8 49` W 208.6 FT, N 1 37` E 118.5 FT, N 63 4` W 65.4 FT, N 79 13` W 754.3 FT, N 79 45` W 427.77 FT, N 13 27` W 107.86 FT, S 73 28` W 8.56 FT, N 18 34` E 175.5 FT, N 15 16` W 279.8 FT, S 84 24` W 416.7 FT, S 71 24` W 453.3 FT, S 73 24` W 450.8 FT, S 69 42` W 267.9 FT, S 58 28` W 215.4 FT, S 38 7` W 166.9 FT, S 16 36` W 290.5 FT, S 12 38` W 129.4 FT, S 0 31` W 77.7 FT, S 89 42` E 1953.4 FT TPOB, EX 1010-200, 1186-213, 1425-938, 1010-38, 1583-481, 817-477, EX BEG AT SW COR NE 1/4, TH N 64 54` 15" E 623.17 FT TPOB, N 82 6` 10" W 101.03 FT, N 53 43` 40" W 69.55 FT, S 80 18` 50" W 66.2 FT, N 5 51` 24" E 217.84 FT, S 79 45` E 78.69 FT, S 79 13` E 182.48 FT, S 15 9`

Initials JCA

71 **W 220.1 FT M/L TPOB**
72

73 known as No. 729, 731, 755, N Namaqua Avenue, Loveland, CO 80537,
74 together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant
75 thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded
76 (Property).

77
78 **2.5. Inclusions.** The Purchase Price includes the following items (Inclusions):
79
80 **2.5.1. Inclusions.** The following items, whether fixtures or personal property, are included in the
81 Purchase Price unless excluded under **Exclusions:**

82 **Manufactured Home (Vin #: ID610879COLO), buried irrigation lines, priming pump, 40 HP**

83 **Diesel Water Pump.** If any additional items are attached to the Property after the date of this Contract, such
84 additional items are also included in the Purchase Price.

85 **2.5.2. Personal Property - Conveyance.** Any personal property must be conveyed at Closing by
86 Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and
87 encumbrances, except **None**.

88 Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

89 **2.6. Exclusions.** The following items are excluded (Exclusions): **Any Personal Property**
90 **owned by the Seller or tenants including above ground irrigation pipe and sprinkler heads**

91
92 **2.7. Water Rights, Well Rights, Water and Sewer Taps.**

93 **2.7.1. Deeded Water Rights.** The following legally described water rights:

95" of Mariana Ditch Water Rights

94 Any deeded water rights will be conveyed by a good and sufficient **Special Warranty** deed at Closing.

95 **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in
96 **SS 2.7.1, 2.7.3, 2.7.4 and 2.7.5, will be transferred to Buyer at Closing: n/a**

97 **2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well.
98 Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water
99 Well," used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in
100 Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water
101 Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing
102 well form for the well and pay the cost of registration. If no person will be providing a closing service in
103 connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The
104 Well Permit # is **75261**.

105 **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing
106 are as follows: **n/a**

107 **2.7.5. Water and Sewer Taps.** The parties agree that water and sewer taps listed below for
108 the Property are being conveyed as part of the Purchase Price as follows: **All water taps servicing the**
109 **Property shall be included in the sale.**

110 **If any water or sewer taps are included in the sale, Buyer is advised to obtain, from the provider,
111 written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer
112 and use of the taps.**

113 **2.7.6. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other
114 Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey
115 such rights to Buyer by executing the applicable legal instrument at Closing.

116 **2.8. Growing Crops.** With respect to growing crops, Seller and Buyer agree as follows:
117 **All 2016 crops shall be handled as per the lease agreement with the tenant farmer.**

118
119 **3. DATES AND DEADLINES.**

Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	<u>3 days after MEC</u>

141 Initials SCA

Title			
2	§ 8.1	Record Title Deadline	10 days after MEC
3	§ 8.2	Record Title Objection Deadline	75 days after MEC
4	§ 8.3	Off-Record Title Deadline	10 days after MEC
5	§ 8.3	Off-Record Title Objection Deadline	75 days after MEC
6	§ 8.4	Title Resolution Deadline	90 days after MEC
7	§ 8.6	Right of First Refusal Deadline	n/a
Owners' Association			
8	§ 7.3	Association Documents Deadline	n/a
9	§ 7.4	Association Documents Objection Deadline	n/a
Seller's Property Disclosure			
10	§ 10.1	Seller's Property Disclosure Deadline	10 days after MEC
Loan and Credit			
11	§ 5.1	Loan Application Deadline	n/a
12	§ 5.2	Loan Objection Deadline	n/a
13	§ 5.3	Buyer's Credit Information Deadline	n/a
14	§ 5.3	Disapproval of Buyer's Credit Information Deadline	n/a
15	§ 5.4	Existing Loan Documents Deadline	n/a
16	§ 5.4	Existing Loan Documents Objection Deadline	n/a
17	§ 5.4	Loan Transfer Approval Deadline	n/a
18	§ 4.7	Seller or Private Financing Deadline	n/a
Appraisal			
19	§ 6.2	Appraisal Deadline	85 days after MEC
20	§ 6.2	Appraisal Objection Deadline	90 days after MEC
21	§ 6.2	Appraisal Resolution Deadline	95 days after MEC
Survey			
22	§ 9.1	New ILC or New Survey Deadline	75 days after MEC
23	§ 9.3	New ILC or New Survey Objection Deadline	90 days after MEC
24	§ 9.4	New ILC or New Survey Resolution Deadline	95 days after MEC
Inspection and Due Diligence			
25	§ 10.3	Inspection Objection Deadline	90 days after MEC
26	§ 10.3	Inspection Resolution Deadline	95 days after MEC
27	§ 10.5	Property Insurance Objection Deadline	90 days after MEC
28	§ 10.6	Due Diligence Documents Delivery Deadline	10 days after MEC
29	§ 10.6	Due Diligence Documents Objection Deadline	90 days after MEC
30	§ 10.6	Due Diligence Documents Resolution Deadline	95 days after MEC
31	§ 10.6	Environmental Inspection Objection Deadline	90 days after MEC
32	§ 10.6	ADA Evaluation Objection Deadline	90 days after MEC
33	§ 10.7	Conditional Sale Deadline	n/a
34	§ 11.1	Tenant Estoppel Statements Deadline	n/a
35	§ 11.2	Tenant Estoppel Statements Objection Deadline	n/a
Closing and Possession			
36	§ 12.3	Closing Date	On or before December 10, 2016
37	§ 17	Possession Date	Date of Closing
38	§ 17	Possession Time	Delivery of Deed

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211	39	§ 28	Acceptance Deadline Date	8/5/2016	Friday
212	40	§ 28	Acceptance Deadline Time	5:00 PM MST	
213	41	n/a	n/a	n/a	
214	42	n/a	n/a	n/a	

218 **3.1. Applicability of Terms.** Any box checked in this Contract means the corresponding provision
 219 applies. Any box, blank or line in this Contract left blank or completed with the abbreviation "N/A", or the word
 220 "Deleted" means such provision, including any deadline, is not applicable and the corresponding provision of
 221 this Contract to which reference is made is deleted. If no box is checked in a provision that contains a selection
 222 of "None", such provision means that "None" applies.

223
 224
 225
 226 The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have
 227 signed this Contract.

228
 229 **4. PURCHASE PRICE AND TERMS.**

230 **4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as
 231 follows:

235 Item No.	236 Reference	237 Item	238 Amount	239 Amount
240 1	241 § 4.1	242 Purchase Price	243 \$2,880,000.00	
244 2	245 § 4.3	246 Earnest Money		247 \$50,000.00
248 3	249 § 4.5	250 New Loan		
251 4	252 § 4.6	253 Assumption Balance		
254 5	255 § 4.7	256 Private Financing		
257 6	258 § 4.7	259 Seller Financing		
260 7	261 n/a	262 n/a		
263 8	264 n/a	265 n/a		
266 9	267 § 4.4	268 Cash at Closing		269 \$2,830,000.00
270 10		271 TOTAL	272 \$2,880,000.00	273 \$2,880,000.00

274 **4.2. Seller Concession.** At Closing, Seller will credit to Buyer \$ n/a (Seller Concession). The
 275 Seller Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is
 276 allowed by the Buyer's lender and is included in the Closing Statement or Closing Disclosure, at Closing.
 277 Examples of allowable items to be paid for by the Seller Concession include, but are not limited to: Buyer's
 278 closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost, charge,
 279 expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer
 280 elsewhere in this Contract.

281 **4.3. Earnest Money.** The Earnest Money set forth in this section, in the form of a a check or
 282 certified funds, will be payable to and held by Land Title Guarantee Company (Earnest Money Holder),
 283 in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered, by
 284 Buyer, with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** for its
 285 payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing
 286 (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have
 287 interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable
 288 housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the
 289 Earnest Money deposited with the Earnest Money Holder in this transaction will be transferred to such fund.

290 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest
 291 Money, if other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money**
 292 **Deadline**.

293 **4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely
 294 terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is

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281 terminated as set forth in § 25 and, except as provided in § 24, if the Earnest Money has not already been
 282 returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker
 283 working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three days of
 284 Seller's receipt of such form.

285 **4.4. Form of Funds; Time of Payment; Available Funds.**

286 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan
 287 proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws,
 288 including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good
 289 Funds).

290 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be
 291 paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow
 292 disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer
 293 represents that Buyer, as of the date of this Contract, **Does** **Does Not** have funds that are immediately
 294 verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

295 **4.5. New Loan.** (Omitted as inapplicable)

301 **4.6. Assumption.** (Omitted as inapplicable)

303 **4.7. Seller or Private Financing.** (Omitted as inapplicable)

305 **TRANSACTION PROVISIONS**

310 **5. FINANCING CONDITIONS AND OBLIGATIONS.** (Omitted as inapplicable)

312 **5.3. Credit Information and Buyer's New Senior Loan.** (Omitted as inapplicable)

314 **5.4. Existing Loan Review.** (Omitted as inapplicable)

317 **6. APPRAISAL PROVISIONS.**

318 **6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified
 319 appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised
 320 Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs
 321 necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

322 **6.2. Appraisal Condition.** The applicable appraisal provision set forth below applies to the respective
 323 loan type set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

324 **6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value
 325 is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline**
 326 Buyer may, on or before **Appraisal Objection Deadline**, notwithstanding § 8.3 or § 13:

327 **6.2.1.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

328 **6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by
 329 either a copy of the Appraisal or written notice from lender that confirms the Appraisal Value is less than the
 330 Purchase Price.

331 **6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or
 332 before **Appraisal Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement
 333 thereof on or before **Appraisal Resolution Deadline** (§ 3), this Contract will terminate on the **Appraisal**
 334 **Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such
 335 termination, i.e., on or before expiration of **Appraisal Resolution Deadline**.

336 **6.3. Lender Property Requirements.** If the lender imposes any requirements, replacements,
 337 removals or repairs, including any specified in the Appraisal (Lender Requirements) to be made to the Property
 338 (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller has the
 339 Right to Terminate under § 25.1, (notwithstanding § 10 of this Contract), on or before three days following
 340 Seller's receipt of the Lender Requirements, in Seller's sole subjective discretion. Seller's Right to Terminate in
 341 this § 6.3 does not apply if, on or before any termination by Seller pursuant to this § 6.3: (1) the parties enter
 342

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351 into a written agreement regarding the Lender Requirements; or (2) the Lender Requirements have been
 352 completed; or (3) the satisfaction of the Lender Requirements is waived in writing by Buyer.

353
 354 **6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be
 355 timely paid by **Buyer** **Seller**. The cost of the Appraisal may include any and all fees paid to the appraiser,
 356 appraisal management company, lender's agent or all three.
 357

358
 359 **7. OWNERS' ASSOCIATION.** This Section is applicable if the Property is located within a
 360 Common Interest Community and subject to such declaration.

361 **7.1. Common Interest Community Disclosure.** THE PROPERTY IS LOCATED WITHIN A
 362 COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY.
 363 THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS'
 364 ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND
 365 REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND
 366 REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY,
 367 INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES
 368 NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND
 369 POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS
 370 OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY
 371 WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE
 372 ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN
 373 THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF
 374 MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION
 375 FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

376 **7.2. Owners' Association Documents.** Owners' Association Documents (Association
 377 Documents) consist of the following:

378 **7.2.1.** All Owners' Association declarations, articles of incorporation, bylaws, articles of
 379 organization, operating agreements, rules and regulations, party wall agreements;

380 **7.2.2.** Minutes of most recent annual owners' meeting;

381 **7.2.3.** Minutes of any directors' or managers' meetings during the six-month period
 382 immediately preceding the date of this Contract. If none of the preceding minutes exist, then the most recent
 383 minutes, if any (§§ 7.2.1, 7.2.2 and 7.2.3, collectively, Governing Documents); and

384 **7.2.4.** The most recent financial documents which consist of: (1) annual and most recent
 385 balance sheet, (2) annual and most recent income and expenditures statement, (3) annual budget, (4) reserve
 386 study, and (5) notice of unpaid assessments, if any (collectively, Financial Documents).

387 **7.3. Association Documents to Buyer.**

388 **7.3.1. Seller to Provide Association Documents.** Seller is obligated to provide to Buyer the
 389 Association Documents, at Seller's expense, on or before **Association Documents Deadline**. Seller
 390 authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's
 391 obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents,
 392 regardless of who provides such documents.

393 **7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents.
 394 Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Objection Deadline**,
 395 based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective
 396 discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer,
 397 at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on
 398 or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the
 399 Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller
 400 after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does
 401 not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association
 402 Documents as satisfactory, and Buyer waives any Right to Terminate under this provision, notwithstanding the
 403 provisions of § 8.6 (Right of First Refusal or Contract Approval).

404 **8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.**

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421 **8.1. Evidence of Record Title.**
422

423 **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the
424 title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record**
425 **Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title
426 Commitment), in an amount equal to the Purchase Price, or if this box is checked, an **Abstract of Title**
427 certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as
428 soon as practicable at or after Closing.

429 **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the
430 title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record**
431 **Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title
432 Commitment), in an amount equal to the Purchase Price.

433 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

434 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment **Will** **Will Not**
435 contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete
436 or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements,
437 (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time
438 of commitment to the date and time the deed is recorded), and (6) unpaid taxes, assessments and
439 unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid
440 by **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller** **Other n/a**.

441 Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or
442 delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require
443 a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance
444 Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.4 (Right to Object to Title,
445 Resolution).

446 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats,
447 declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other
448 documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in
449 the Title Commitment furnished to Buyer (collectively, Title Documents).

450 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**,
451 copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of
452 the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the
453 documents required in this Section will be at the expense of the party or parties obligated to pay for the
454 owner's title insurance policy.

455 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title
456 covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title**
457 **Deadline**.

458 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title
459 Commitment and any of the Title Documents as set forth in § 8.4 (Right to Object to Title, Resolution) on or
460 before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or
461 content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title
462 condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are
463 not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title
464 Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title
465 Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such
466 documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2)
467 any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title
468 Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2
469 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.4 (Right to Object to
470 Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required
471 by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title
472 Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the
473 Abstract of Title, Title Commitment and Title Documents as satisfactory.

474 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true

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491 copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all
 492 easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or
 493 other title matters (including, without limitation, rights of first refusal and options) not shown by public records,
 494 of which Seller has actual knowledge (Off-Record Matters). Buyer has the right to inspect the Property to
 495 investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded
 496 easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection
 497 of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding §
 498 8.2 and § 13), in Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title**
 499 **Objection Deadline**. If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer
 500 has until the earlier of Closing or ten days after receipt by Buyer to review and object to such Off-Record
 501 Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3
 502 (Off-Record Title), any title objection by Buyer and this Contract are governed by the provisions set forth in §
 503 8.4 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title
 504 Objection by the applicable deadline specified above, Buyer accepts title subject to such rights, if any, of third
 505 parties of which Buyer has actual knowledge.

506 **8.4. Right to Object to Title, Resolution.** Buyer's right to object to any title matters includes, but is
 507 not limited to those matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of Title), in
 508 Buyer's sole subjective discretion. If Buyer objects to any title matter, on or before the applicable deadline,
 509 Buyer has the following options:

510 **8.4.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any
 511 title matter (Notice of Title Objection) on or before the applicable deadline, and if Buyer and Seller have not
 512 agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on
 513 the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's
 514 Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to
 515 Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title
 516 Deadline or the Off-Record Title Deadline, or both, are extended to the earlier of Closing or ten days after
 517 receipt of the applicable documents by Buyer, pursuant to § 8.2 (Record Title) or § 8.3 (Off-Record Title), the
 518 Title Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after
 519 Buyer's receipt of the applicable documents; or

520 **8.4.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under
 521 § 25.1, on or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective
 522 discretion.

523 **8.5. Special Taxing Districts.** **SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**
 524 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES**
 525 **ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS**
 526 **MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF**
 527 **SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO**
 528 **DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS**
 529 **SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY**
 530 **CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE**
 531 **PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY**
 532 **COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**

533 Buyer has the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline**, based
 534 on any unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole
 535 subjective discretion.

536 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property
 537 or a right to approve this Contract, Seller must promptly submit this Contract according to the terms and
 538 conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to
 539 approve disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or
 540 expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly
 541 notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this
 542 Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.

543 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and

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561 should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the
 562 title, ownership and use of the Property, including, without limitation, boundary lines and encroachments,
 563 set-back requirements, area, zoning, building code violations, unrecorded easements and claims of
 564 easements, leases and other unrecorded agreements, water on or under the Property, and various laws and
 565 governmental regulations concerning land use, development and environmental matters.

566 **8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE
 567 PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND
 568 TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE
 569 MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS,
 570 OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE
 571 PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE
 572 PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.**

573 **8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE
 574 PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE
 575 AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE
 576 COUNTY CLERK AND RECORDER.**

577 **8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR
 578 ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING,
 579 WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES,
 580 PRODUCING WELLS, REWORKING OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING
 581 FACILITIES.**

582 **8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL
 583 INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY,
 584 INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE
 585 COLORADO OIL AND GAS CONSERVATION COMMISSION.**

586 **8.7.5. Title Insurance Exclusions.** Matters set forth in this Section, and others, may be
 587 excepted, excluded from, or not covered by the owner's title insurance policy.

588 **8.8. Consult an Attorney.** Buyer is advised to timely consult legal counsel with respect to all such
 589 matters as there are strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and
 590 **Off-Record Title Objection Deadline**).

591 **9. NEW ILC, NEW SURVEY.**

592 **9.1. New ILC or New Survey.** If the box is checked, a **New Improvement Location Certificate**
 593 (**New ILC**) **New Survey** in the form of Improvement Survey Plat or ALTA Survey is required and the
 594 following will apply:

595 **9.1.1. Ordering of New ILC or New Survey.** **Seller** **Buyer** will order the New ILC or New
 596 Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form,
 597 certified and updated as of a date after the date of this Contract.

598 **9.1.2. Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be
 599 paid, on or before Closing, by: **Seller** **Buyer** or: n/a

600 **9.1.3. Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or
 601 the provider of the opinion of title if an Abstract of Title), and n/a will receive a New ILC or New Survey on or
 602 before **New ILC or New Survey Deadline**.

603 **9.1.4. Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by
 604 the surveyor to all those who are to receive the New ILC or New Survey.

605 **9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a
 606 New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or
 607 change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective discretion,
 608 waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

609 **9.3. New ILC or New Survey Objection.** Buyer has the right to review and object to the **New ILC or**
 610 **New Survey**. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in
 611 Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**,
 612 notwithstanding § 8.3 or § 13:

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631 **9.3.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or
632 **9.3.2. New ILC or New Survey Objection.** Deliver to Seller a written description of any matter that
633
634 was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires
635 Seller to correct.

9.3.3. New ILC or New Survey Resolution. If a **New ILC or New Survey Objection** is received by Seller, on or before **New ILC or New Survey Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the New ILC or New Survey Objection before such termination, i.e., on or before expiration of **New ILC or New Survey Resolution Deadline**.

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE SOURCE OF WATER.

10.1. Seller's Property Disclosure. On or before **Seller's Property Disclosure Deadline**, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge, current as of the date of this Contract.

10.2. Disclosure of Latent Defects; Present Condition. Seller must disclose to Buyer any latent defects actually known by Seller. Seller agrees that disclosure of latent defects will be in writing. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an **“As Is”** condition, **“Where Is”** and **“With All Faults.”**

10.3. Inspection. Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before, **Inspection Objection Deadline:**

10.3.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or
10.3.2. Inspection Objection. Deliver to Seller a written description of any unsatisfactory

physical condition that Buyer requires Seller to correct.

10.3.3. Inspection Resolution. If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline**.

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the Property for Work performed on the Property. ~~Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney fees, legal fees and expenses.~~ The provisions of this section survive the termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection Resolution.

10.5. Insurability. Buyer has the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or

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701 before **Property Insurance Objection Deadline**, based on any unsatisfactory provision of the Property
 702 Insurance, in Buyer's sole subjective discretion.

703 **10.6. Due Diligence.**

704 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver
 705 copies of the following documents and information pertaining to the Property (Due Diligence Documents) to
 706 Buyer on or before **Due Diligence Documents Delivery Deadline**:

707 **10.6.1.1.** All contracts relating to the operation, maintenance and management of the
 708 Property;
 709 **10.6.1.2.** Property tax bills for the last 2 years;
 710 **10.6.1.3.** As-built construction plans to the Property and the tenant improvements,
 711 including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent
 712 Certificates of Occupancy, to the extent now available;
 713 **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;
 714 **10.6.1.5.** Operating statements for the past n/a years;
 715 **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;
 716 **10.6.1.7.** All current leases, including any amendments or other occupancy
 717 agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the
 718 Property that survive Closing are as follows (Leases): **Lease Agreement dated April 23, 2016 with**
 719 **Jonathan Moore relating to the farm, Real Estate Lease dated April 25, 2014 with Albert and**
 720 **Esther Quinonez relating to the 755 N. County Road 19E (modular home).**

721 **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete
 722 but has not yet been completed and capital improvement work either scheduled or in process on the date of
 723 this Contract;
 724 **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims
 725 which have been made for the past 2 years;
 726 **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the
 727 Property (if not delivered earlier under § 8.3);
 728 **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II
 729 environmental reports, letters, test results, advisories, and similar documents respective to the existence or
 730 nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or
 731 underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller
 732 warrants that no such reports are in Seller's possession or known to Seller;
 733 **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning
 734 the compliance of the Property with said Act;
 735 **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any
 736 governmental authority with jurisdiction over the Property and written notice of any violation of any such
 737 permits, licenses or use authorizations, if any; and
 738 **10.6.1.14.** Other documents and information:

739 **Any other documents related to the Property in Seller's possession, including, but not limited**
 740 **to construction plans, public improvement construction plans, environmental reports,**
 741 **engineering reports, surveys, soils reports, etc.**

742 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and
 743 object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are
 744 unsatisfactory in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents**
 745 **Objection Deadline:**

746 **10.6.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated;
 747 or

748 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description
 749 of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

750 **10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence Documents
 751 Objection is received by Seller, on or before **Due Diligence Documents Objection Deadline**, and if Buyer and
 752 Seller have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution**

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771 **Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller
 772 receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination, i.e., on
 773 or before expiration of **Due Diligence Documents Resolution Deadline**.

774 **10.6.3. Zoning**. Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence**
 775 **Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any
 776 governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

777 **10.6.4. Due Diligence – Environmental, ADA**. Buyer has the right to obtain environmental
 778 inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable.
 779 **Seller** **Buyer** will order or provide **Phase I Environmental Site Assessment, Phase II Environmental Site**
 780 **Assessment** (compliant with most current version of the applicable ASTM E1527 standard practices for
 781 Environmental Site Assessments) and/or n/a, at the expense of **Seller** **Buyer** (Environmental
 782 Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether the Property
 783 complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations must
 784 be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's
 785 tenants' business uses of the Property, if any.

786 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site
 787 Assessment, the **Environmental Inspection Objection Deadline** will be extended by 45 days (Extended
 788 Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection
 789 Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such
 790 event, **Seller** **Buyer** must pay the cost for such Phase II Environmental Site Assessment.

791 Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this §
 792 10.6.5, Buyer has the Right to Terminate under § 25.1, on or before **Environmental Inspection Objection**
 793 **Deadline**, or if applicable, the Extended Environmental Inspection Objection Deadline, based on any
 794 unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

795 Buyer has the Right to Terminate under § 25.1, on or before **ADA Evaluation Objection Deadline**,
 796 based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

797 **10.7. Conditional Upon Sale of Property**. This Contract is conditional upon the sale and closing of
 798 that certain property owned by Buyer and commonly known as n/a. Buyer has the Right to Terminate under §
 799 25.1 effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if
 800 such property is not sold and closed by such deadline. This § 10.7 is for the sole benefit of Buyer. If Seller
 801 does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right
 802 to Terminate under this provision.

803 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only)**.
 804 Buyer **Does** **Does Not** acknowledge receipt of a copy of Seller's Property Disclosure or Source of
 805 Water Addendum disclosing the source of potable water for the Property. There is **No Well**. Buyer **Does**
 806 **Does Not** acknowledge receipt of a copy of the current well permit.

807 **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE**
 808 **GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED**
 809 **SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**

810 **10.9. Existing Leases; Modification of Existing Leases; New Leases**. Seller states that none
 811 of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions
 812 or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend,
 813 alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property
 814 without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.

815 **11. TENANT ESTOPPEL STATEMENTS.**

816 **11.1. Tenant Estoppel Statements Conditions**. Buyer has the right to review and object to any
 817 Estoppel Statements. Seller must obtain and deliver to Buyer on or before **Tenant Estoppel Statements**
 818 **Deadline**, statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant
 819 at the Property (Estoppel Statement) attached to a copy of the Lease stating:

820 **11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;**
 821 **11.1.2. That said Lease is in full force and effect and that there have been no subsequent**
 822 **modifications or amendments;**

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CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

12.1. Closing Documents and Closing Information. Seller and Buyer will cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing Company, in a timely manner, all required loan documents and financial information concerning Buyer's new loan. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller will sign and complete all customary or reasonably required documents at or before Closing.

12.2. Closing Instructions. Colorado Real Estate Commission's Closing Instructions Are Are Not executed with this Contract.

12.3. Closing. Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as designated by *mutual agreement of the parties*.

12.4. Disclosure of Settlement Costs. Buyer and Seller acknowledge that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

13. TRANSFER OF TITLE. Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller must execute and deliver a good and sufficient **Special Warranty** deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title will be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title will be conveyed subject to:

13.1. Those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with **Record Title**.

13.2. Distribution utility easements (including cable TV)

13.3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with **Off-Record Title** and **New ILC or New Survey**.

- 13.4. Inclusion of the Property within any special taxing district, and
- 13.5. Any special assessment if the improvements were not installed as of the date of Buyer's

signature hereon, whether assessed prior to or after Closing, and
13.6. Other n/a.

— — —

14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid will be paid at or before Closing from the proceeds of this transaction or from any other source.

15 CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES

911 **15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs
 912 and all other items required to be paid at Closing, except as otherwise provided herein.

913 **15.2. Closing Services Fee.** The fee for real estate closing services must be paid at Closing
 914 by **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller**
 915 **Other n/a.**

916 **15.3. Status Letter and Record Change Fees.** Any fees incident to the issuance of
 917 Association's statement of assessments (Status Letter) must be paid by **None** **Buyer** **Seller**
 918 **One-Half by Buyer and One-Half by Seller.** Any record change fee assessed by the Association including,
 919 but not limited to, ownership record transfer fees regardless of name or title of such fee (Association's Record
 920 Change Fee) must be paid by **None** **Buyer** **Seller** **One-Half by Buyer and One-Half by**
 921 **Seller.**

922 **15.4. Local Transfer Tax.** **The Local Transfer Tax of n/a % of the Purchase Price must be**
 923 **paid at Closing by** **None** **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller.**

924 **15.5. Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the Property,
 925 payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at
 926 Closing by **None** **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller.** The Private Transfer
 927 fee, whether one or more, is for the following association(s): n/a in the total amount of n/a% of the Purchase
 928 Price or \$ n/a.

929 **15.6. Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of
 930 this Contract, do not exceed \$ for:

931 **Water Stock/Certificates** **Water District**
 932 **Augmentation Membership** **Small Domestic Water Company** **n/a** and must be paid at Closing by
 933 **None** **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller**

934 **15.7. Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction
 935 must be paid when due by **None** **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller.**

936 **16. PRORATIONS.** The following will be prorated to the **Closing Date**, except as otherwise provided:

937 **16.1. Taxes.** Personal property taxes, if any, special taxing district assessments, if any, and
 938 general real estate taxes for the year of Closing, based on **Taxes for the Calendar Year Immediately**
 939 **Preceding Closing** **Most Recent Mill Levy and Most Recent Assessed Valuation**, **Other n/a.**

940 **16.2. Rents.** Rents based on **Rents Actually Received** **Accrued.** At Closing, Seller will
 941 transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful
 942 deductions, and notify all tenants in writing of such transfer and of the transferee's name and address. Seller
 943 must assign to Buyer all Leases in effect at Closing and Buyer must assume Seller's obligations under such
 944 Leases.

945 **16.3. Association Assessments.** Current regular Association assessments and dues
 946 (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the
 947 regular Association Assessments for deferred maintenance by the Association will not be credited to Seller
 948 except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be
 949 obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special
 950 assessment assessed prior to **Closing Date** by the Association will be the obligation of **Buyer** **Seller.**
 951 Except however, any special assessment by the Association for improvements that have been installed as of
 952 the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller.
 953 Seller represents that the Association Assessments are currently payable at approximately \$ n/a per n/a and
 954 that there are no unpaid regular or special assessments against the Property except the current regular
 955 assessments and n/a. Such assessments are subject to change as provided in the Governing Documents.
 956 Seller agrees to promptly request the Association to deliver to Buyer before **Closing Date** a current Status
 957 Letter.

958 **16.4. Other Prorations.** Water and sewer charges, propane, interest on continuing loan, and **Any**
 959 **other customary prorations..**

960 **16.5. Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

961 **17. POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at

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981 **Possession Time**, subject to the Leases as set forth in § 10.6.1.7.

If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer for payment of \$ **500.00** per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and **Possession Time** until possession is delivered.

GENERAL PROVISIONS

18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.

18.1. Day. As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

18.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included (e.g., three days after MEC). If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline Will Not be included in the period of days.

Will Not be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both will be

delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property Damage), and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date** if the Property is not repaired before **Closing Date** or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

19.2. Damage, Inclusions and Services. Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive Closing. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions.

19.3. Condemnation. In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer

1051 elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is
 1052 entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of
 1053 the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the
 1054 Purchase Price.

1055 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to
 1056 walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions
 1057 complies with this Contract.

1058 **19.5. Risk of Loss - Growing Crops.** The risk of loss for damage to growing crops by fire or other
 1059 casualty will be borne by the party entitled to the growing crops as provided in § 2.8 and such party is entitled
 1060 to such insurance proceeds or benefits for the growing crops.

1061 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller
 1062 acknowledge that the respective broker has advised that this Contract has important legal consequences and
 1063 has recommended the examination of title and consultation with legal and tax or other counsel before signing
 1064 this Contract.

1065 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines
 1066 in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including
 1067 Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as
 1068 provided in this Contract or waived, the non-defaulting party has the following remedies:

1069 **21.1. If Buyer is in Default:**

1070 **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest
 1071 Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest
 1072 Money is not a penalty, and the Parties agree the amount is fair and reasonable. Seller may recover such
 1073 additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force
 1074 and effect and Seller has the right to specific performance or damages, or both.

1075 **21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1.**
 1076 is checked. Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to
 1077 Seller, and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED
 1078 DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and (except as provided
 1079 in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to
 1080 perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and
 1081 additional damages.

1082 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all
 1083 Earnest Money received hereunder will be returned and Buyer may recover such damages as may be proper.
 1084 Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to
 1085 specific performance or damages, or both.

1086 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event
 1087 of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must
 1088 award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and
 1089 expenses.

1090 **23. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not
 1091 resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties
 1092 meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot
 1093 impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to
 1094 the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the
 1095 cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute
 1096 is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the
 1097 other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section
 1098 prohibits either party from filing a lawsuit and recording a *laches* defense affecting the Property, before or after the
 1099 date of written notice requesting mediation. This section will not alter any date in this Contract, unless
 1100

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1121 ~~otherwise agreed.~~

1122
 1123
 1124 **24. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must
 1125 release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In
 1126 the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the
 1127 Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any
 1128 proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of
 1129 competent jurisdiction, (Earnest Money Holder is entitled to recover court costs and reasonable attorney and
 1130 legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money
 1131 Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the
 1132 case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the
 1133 parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money
 1134 Holder does receive a copy of the Lawsuit, and has not interpled the monies at the time of any Order, Earnest
 1135 Money Holder must disburse the Earnest Money pursuant to the Order of the Court. ~~The parties reaffirm the~~
 1136 ~~obligation of Mediation.~~ This Section will survive cancellation or termination of this Contract.

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 1141 **25. TERMINATION.**

1142 **25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to
 1143 Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to
 1144 Terminate), provided such written notice was received on or before the applicable deadline specified in this
 1145 Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right
 1146 to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to
 1147 Terminate under such provision.

1148 **25.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received
 1149 hereunder will be returned and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23
 1150 and 24.

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 1156 **26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and
 1157 specified addenda, constitute the entire agreement between the parties relating to the subject hereof, and any
 1158 prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this
 1159 Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or
 1160 enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its
 1161 terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a
 1162 Party receives the predecessor's benefits and obligations of this Contract.

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 1167 **27. NOTICE, DELIVERY, AND CHOICE OF LAW.**

1168 **27.1. Physical Delivery and Notice.** Any document, or notice to Buyer or Seller must be in writing,
 1169 except as provided in § 27.2, and is effective when physically received by such party, any individual named in
 1170 this Contract to receive documents or notices for such party, the Broker, or Brokerage Firm of Broker working
 1171 with such party (except any notice or delivery after Closing must be received by the party, not Broker or
 1172 Brokerage Firm).

1173 **27.2. Electronic Notice.** As an alternative to physical delivery, any notice, may be delivered in
 1174 electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for
 1175 such party, the Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after
 1176 Closing must be received by the party; not Broker or Brokerage Firm) at the electronic address of the recipient
 1177 by facsimile, email or *n/a*.

1178 **27.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email
 1179 at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives
 1180 the information necessary to access the documents, or (3) facsimile at the Fax No. of the recipient.

1181 **27.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed
 1182 in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a
 1183 contract in Colorado for real property located in Colorado.

Initials SCA

28. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

29. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations, Title Insurance, Record Title and Off-Record Title, New ILC, New Survey and Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence, Buyer Disclosure and Source of Water.**

ADDITIONAL PROVISIONS AND ATTACHMENTS

30. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

30.1 Open Lands Advisory Commission and City Council Approval and Appropriation. This Contract is expressly contingent upon the Open Lands Advisory Commission recommending approval of and Loveland City Council adopting an ordinance appropriating the money to purchase the Property and the ordinance becoming law as provided in the City Charter prior to Closing. In the event the City Council does not adopt that ordinance or the ordinance does not become law within ninety (90) days following MEC, this Contract shall automatically terminate and the Earnest Money shall be returned to Buyer, and neither party shall have any further obligations to one another thereafter under this Contract except as expressly provided herein.

30.2 Seller acknowledges that the Buyer's fund availability as described in Section 4.4.2 is subject to City Council appropriation as described above.

30.3 Seller shall have the option of structuring the Closing of this transaction as a 1031 tax deferred exchange. If Seller elects a 1031 exchange, Buyer agrees to cooperate with the Seller and to execute such documents at the Closing as may be reasonably necessary to complete said exchange, so long as the 1031 exchange will not delay the Closing or cause the Buyer to incur any additional liability or expense.

30.4 Seller leaseback. At Closing, Buyer and Seller shall execute a lease for Seller to remain in the residence located at 731 Namaqua Road on the Property. The lease shall be a 2 year lease and then renewable annually by mutual agreement and shall provide that Seller shall be allowed to live in the residence rent free in exchange for Seller remaining the primary caretaker of the entire Property including maintenance of the land, weed mowing, tenant and tenant/farmer coordination, property security, etc. Seller shall remain responsible for the cost of the separately metered utilities associated with the residence. Buyer shall deliver a draft lease to Seller within sixty (60) days of MEC, and Buyer and Seller shall use commercially reasonable efforts to agree to the terms of the lease to be executed at Closing prior to the Inspection Objection Deadline.

31. ATTACHMENTS.

31.1. The following attachments are a part of this Contract:

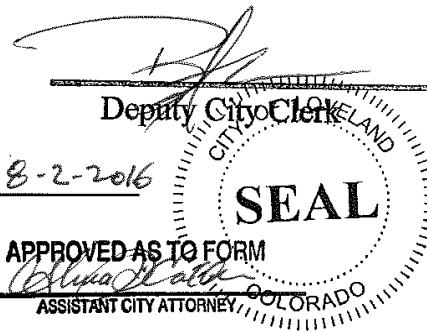
n/a

31.2. The following disclosure forms are attached but are not a part of this Contract:

n/a

Initials SCA/JZ

ATTEST:



SIGNATURES

Buyer: City of Loveland, a Municipal Corporation
By: Stephen C. Adams, City Manager

Date: 8-2-2016

SEAL

APPROVED AS TO FORM
BY:
ASSISTANT CITY ATTORNEY

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Date: Aug. 3 2016

Seller: Paul Ehrlich Revocable Trust

By: Paul Ehrlich, Trustee

Address: 731 N County Road 19E Loveland CO 80538

Phone: 970-663-2577 Fax:

Email Address: ehrlichpl@aol.com

32. COUNTER; REJECTION. This offer is Countered Rejected.

Initials only of party (Buyer or Seller) who countered or rejected offer

Paul Ehrlich Revocable Trust

By: Paul Ehrlich, Trustee

END OF CONTRACT TO BUY AND SELL REAL ESTATE

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker Does Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Buyer as a Buyer's Agent Seller's Agent Transaction-Broker in this transaction. This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by Listing Brokerage Firm
 Buyer Other n/a.

Brokerage Firm's Name: LC Real Estate Group, LLC

Date: 8/3/16

Broker's Name: Nathan Klein

Address: 1712 Topaz Drive Loveland, CO 80537

Ph: 970-667-7000 Fax: 970-635-2514 Email: nathan@lcrealestategroup.com

Initials SCA/J.E.

34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.
 (To be completed by Broker working with Seller)

Broker **Does** **Does Not** acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Seller as a **Seller's Agent** **Buyer's Agent** **Transaction-Broker** in this transaction. This is a **Change of Status**.

Brokerage Firm's compensation or commission is to be paid by **Seller** **Buyer** **Other n/a**.

Brokerage Firm's Name: *LC Real Estate Group, LLC*

Nathan Klein Date: 8/3/16

Broker's Name: *Nathan Klein*

Address: *1712 Topaz Drive Loveland, CO 80537*

Ph: 970-667-7000 Fax: 970-635-2514 Email: nathan@lcrealestategroup.com

CBS4-6-15. CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

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Initials *SCK*



LC Real Estate Group, LLC
 1712 Topaz Drive Loveland, CO 80537
 Nathan Klein Partner / Commercial Brokerage Manager
 Ph: 970-667-7000 Fax: 970-635-2514

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (RA33-10-12) (Mandatory 1-13)

**THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT
 LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.**

**RESIDENTIAL ADDENDUM
 TO CONTRACT TO BUY AND SELL REAL ESTATE**

Date: 8/2/2016

1. ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE. This Residential Addendum (Addendum) is made a part of the following contract that is checked:

Contract to Buy and Sell Real Estate (Land) between Seller and Buyer (Contract) dated 8/2/2016 relating to the sale of the Property, or;

Contract to Buy and Sell Real Estate (Commercial) between Seller and Buyer (Contract) dated relating to the sale of the Property

known as 729, 731, 755, N Namaqua Avenue, Loveland, CO 80537 (Property).

This Addendum shall control in the event of any conflict with the Contract. Except as modified, all other terms and provisions of the Contract shall remain the same. Terms used herein shall have the same meaning as in the Contract.

2. PURPOSE AND RESIDENTIAL PROVISIONS.

2.1. Purpose of Addendum. The Property contains, in part, one or more residences but the Contract does not contain required provisions that are set forth in this Addendum.

2.2. Residential Provisions. The Contract shall be amended by the addition of the check-marked provisions in this Addendum.

2.3. New Loan.

2.3.1. Buyer to Pay Loan Costs. Buyer, except as provided in § 4.4 of the Contract, if applicable, shall timely pay Buyer's loan costs, loan discount points, prepaid items and loan origination fees, as required by lender.

2.3.2. Buyer May Select Financing. Buyer may pay in cash or select financing appropriate and acceptable to Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 or § 30 (Additional Provisions) of the Contract.

2.3.3. Loan Limitations. Buyer may purchase the Property using any of the following types of loan: **Conventional** **FHA** **VA** **Bond** **Other**.

2.3.4. Good Faith Estimate – Monthly Payment and Loan Costs. Buyer is advised to review the terms, conditions and costs of Buyer's New Loan carefully. If Buyer is applying for a residential loan, the lender generally must provide Buyer with a good faith estimate of Buyer's closing costs within three days after Buyer completes a loan application. Buyer should also obtain an estimate of the amount of Buyer's monthly mortgage payment. If the New Loan is unsatisfactory to Buyer, Buyer has the Right to Terminate under § 25.1, on or before **Loan Objection Deadline** (§ 3) of the Contract.

2.4. Appraisal Condition.

2.4.1. Lender Property Requirements. If the lender imposes any requirements or repairs (Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract. Seller has the Right to Terminate under § 25.1, (notwithstanding § 10 of the Contract), on or before three days following Seller's receipt of the Requirements, based on any

Initials

64 unsatisfactory Requirements, in Seller's sole subjective discretion. Seller's Right to Terminate in this §
 65 2.4.1 shall not apply if, on or before any termination by Seller pursuant to this § 2.4.1: (1) the parties enter
 66 into a written agreement regarding the Requirements; or (2) the Requirements have been completed; or
 67 (3) the satisfaction of the Requirements is waived in writing by Buyer.

68 **2.4.2. Appraisal Condition.** The applicable Appraisal provision set forth below shall apply to
 69 the respective loan type set forth in § 4.5.3 of the Contract, or if a cash transaction, i.e. no financing, §
 70 2.4.3 shall apply.

71 **2.4.3. Conventional/Other.** Buyer has the sole option and election to terminate this Contract
 72 if the Property's valuation is less than the Purchase Price determined by an appraiser engaged by Buyer.
 73 The appraisal shall be received by Buyer or Buyer's lender on or before **Appraisal Deadline (§ 3)**, if the
 74 Property's valuation is less than the Purchase Price and Seller's receipt of either a copy of such appraisal
 75 or written notice from lender that confirms the Property's valuation is less than the Purchase Price. This §
 76 2.4.3 is for the sole benefit of Buyer.

77 **2.4.4. FHA.** It is expressly agreed that, notwithstanding any other provisions of this Contract,
 78 the Purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or
 79 to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the Purchaser (Buyer) has
 80 been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal
 81 Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender, setting forth the
 82 appraised value of the Property of not less than \$. The Purchaser (Buyer) shall have the privilege and
 83 option of proceeding with the consummation of the Contract without regard to the amount of the appraised
 84 valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of
 85 Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the
 86 Property. The Purchaser (Buyer) should satisfy himself/herself that the price and condition of the Property
 87 are acceptable.

88 **2.4.5. VA.** It is expressly agreed that, notwithstanding any other provisions of this Contract,
 89 the purchaser (Buyer) shall not incur any penalty by forfeiture of Earnest Money or otherwise or be
 90 obligated to complete the purchase of the Property described herein, if the Contract Purchase Price or cost
 91 exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The
 92 purchaser (Buyer) shall, however, have the privilege and option of proceeding with the consummation of
 93 this Contract without regard to the amount of the reasonable value established by the Department of
 94 Veterans Affairs.

95 **Note: If FHA or VA Appraisal is checked, the Appraisal Deadline (§ 3) does not apply to FHA or VA
 96 guaranteed loans.**

97 **2.5. Source of Potable Water (Residential Land and Residential Improvements Only).**
 98 Buyer **Does** **Does Not** acknowledge receipt of a copy of Seller's Property Disclosure or Source of
 99 Water Addendum disclosing the source of potable water for the Property. Buyer **Does** **Does Not**
 100 acknowledge receipt of a copy of the current well permit. There is No Well. *B.L.*
 101 **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE
 102 GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE
 103 DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S
 104 WATER SUPPLIES.**

105 **2.6. Carbon Monoxide Alarms.** **Note:** If the improvements on the Property have a fuel-fired
 106 heater or appliance, a fireplace, or an attached garage and include one or more rooms lawfully used for
 107 sleeping purposes (Bedroom), the parties acknowledge that Colorado law requires that Seller assure the
 108 Property has an operational carbon monoxide alarm installed within fifteen feet of the entrance to each
 109 Bedroom or in a location as required by the applicable building code.

110 **2.7. Lead-Based Paint.** Unless exempt, if the improvements on the Property include one or more
 111 residential dwellings for which a building permit was issued prior to January 1, 1978, this Contract shall be
 112 void unless (1) a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller, the required
 113 real estate licensees and Buyer, and (2) Seller receives the completed and fully executed form prior to the
 114 time when the Contract is signed by all parties. Buyer acknowledges timely receipt of a completed
 115 Lead-Based Paint Disclosure (Sales) form signed by Seller and the real estate licensees.

2.8. Methamphetamine Disclosure. If Seller knows that methamphetamine was ever manufactured, processed, cooked, disposed of, used or stored at the Property, Seller is required to disclose such fact. No disclosure is required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used as a methamphetamine laboratory. Buyer has the Right to Terminate under § 25.1, upon Seller's receipt of Buyer's written notice to terminate, notwithstanding any other provision of the Contract, based on Buyer's test results that indicate the Property has been contaminated with methamphetamine, but has not been remediated to meet the standards established by rules of the State Board of Health promulgated pursuant to § 25-18.5-102, C.R.S., Buyer shall promptly give written notice to Seller of the results of the test.

2.9. COLORADO FORECLOSURE PROTECTION ACT. The Colorado Foreclosure Protection Act (Act) generally applies if: (1) the Property is residential, (2) Seller resides in the Property as Seller's principal residence, (3) Buyer's purpose in purchase of the Property is not to use the Property as Buyer's personal residence, (4) the Property is in foreclosure or Buyer has notice that any loan secured by the Property is at least thirty days delinquent or in default. If the transaction is a Short Sale transaction and a Short Sale Addendum is part of this Contract, the Act does not apply. Each party is further advised to consult an attorney.

2.10. Home Warranty. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such inclusions.

Stephen C. Adams
 Buyer: *City of Loveland, a Municipal Corporation*
 By: *Stephen C. Adams, City Manager*

APPROVED AS TO FORM
 BY *Shane L. Adams*
 ASSISTANT CITY ATTORNEY

APPROVED AS TO FORM
 Seller: *Paul Ehrlich*
 By: *Paul Ehrlich, Trustee*

Date: *Aug. 3, 2016*

ATTEST: *Deputy City Clerk*

COLOMBO

SEAL

CITY OF LOVELAND

RA33-10-12. RESIDENTIAL ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE
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LC Real Estate Group, LLC
1712 Topaz Drive Loveland, CO 80537
Nathan Klein Partner / Commercial Brokerage Manager
Ph: 970-667-7000 Fax: 970-635-2514

2 The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission (CL8-9-12) (Mandatory 1-13)

4 THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT
5 LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CLOSING INSTRUCTIONS

Date: 8/2/2016

10 **1. PARTIES, PROPERTY.** Paul Ehrlich Revocable Trust, Seller, and City of Loveland, a Municipal
11 Corporation, Buyer, engage Land Title Guarantee Company, Closing Company, who agrees to
provide closing and settlement services in connection with the Closing of the transaction for the sale and
purchase of the Property
12 known as No. 729, 731, 755, N Namaqua Avenue, Loveland, CO 80537,
13 and more fully described in the Contract to Buy and Sell Real Estate, dated 8/2/2016, including
14 any counterproposals and amendments (Contract). All terms of the Contract are incorporated herein
15 by reference. In the event of any conflict between this Agreement and the Contract, this Agreement
16 shall control, subject to subsequent amendments to the Contract or this Agreement.

17 **2. TITLE COMMITMENT, EXCEPTIONS AND POLICY.** Closing Company **Agrees** **Does Not agree**
18 that: upon completion of a satisfactory title search and examination, it will furnish a Title
19 Insurance Commitment; and it will issue a Title Insurance Policy provided that all requirements have
20 been fulfilled. Closing Company **Agrees** **Does Not agree** to furnish copies of Exceptions.

3. INFORMATION, PREPARATION, CLOSING, RECORDING. Closing Company is authorized to obtain any information necessary for the Closing. Closing Company agrees to prepare (excluding legal documents), deliver and record all documents required or customarily recorded, and disburse all funds pursuant to the Contract that are necessary to carry out the terms and conditions of the Contract.

4. CLOSING FEE. Closing Company will receive a fee of \$ 350.00 for providing closing and settlement services (Closing Fee).

5. RELEASE, DISBURSEMENT. Closing Company is not authorized to release any signed documents or things of value prior to receipt and disbursement of Good Funds, except as provided in §§ 9, 10 and 11.

32
33 **6. DISBURSER.** Closing Company shall disburse all funds, including real estate commissions,
34 except those funds as may be separately disclosed in writing to Buyer and Seller by Closing
35 Company or Buyer's lender on or before Closing. All parties agree that no one other than the
36 disburser can assure that payoff of loans and other disbursements will actually be made.

37
38 **7. SELLER'S NET PROCEEDS.** Seller will receive the net proceeds of Closing as indicated:
39 **Cashier's Check**, at Seller's expense **Funds Electronically Transferred** (wire transfer)
40 to an account specified by Seller, at Seller's expense **Closing Company's trust account check**.

8. CLOSING STATEMENT. Closing Company will prepare and deliver an accurate, complete and detailed closing statement to Buyer and Seller at time of Closing.

9. FAILURE OF CLOSING. If Closing or disbursement does not occur on or before Closing Date,

CL 8.9.12 CLOSING INSTRUCTIONS Page 1 of 4

gement does not occur on or before 31

Buyer(s) Initials: SCA

Seller(s) Initials

46 set forth in the Contract, Closing Company, except as provided herein, is authorized and agrees to
 47 return all documents, monies, and things of value to the depositing party, upon which Closing
 48 Company will be relieved from any further duty, responsibility or liability in connection with these
 49 Closing Instructions. In addition, any promissory note, deed of trust or other evidence of indebtedness
 50 signed by Buyer will be voided by Closing Company, with the originals returned to Buyer and a copy
 51 to Buyer's lender.

52
 53 **10. RETURN OF EARNEST MONEY.** Except as otherwise provided in § 11, Earnest Money Dispute, if
 54 the Earnest Money has not already been returned following receipt of a Notice to Terminate or other
 55 written notice of termination, Earnest Money Holder shall release the Earnest Money as directed by
 56 the written mutual instructions. Such release of Earnest Money shall be made within five days of
 57 Earnest Money Holder's receipt of the written mutual instructions signed by both Buyer and Seller,
 58 provided the Earnest Money check has cleared.

59
 60 **11. EARNEST MONEY DISPUTE.** In the event of any controversy regarding the Earnest Money
 61 (notwithstanding any termination of the Contract), Earnest Money Holder shall not be required to take
 62 any action. Earnest Money Holder, at its option and sole subjective discretion, has several options (1)
 63 await any proceeding, (2) interplead all parties and deposit Earnest Money into a court of competent
 64 jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide
 65 notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and
 66 Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit)
 67 within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money
 68 Holder shall be authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder
 69 does receive a copy of the Lawsuit, and has not interpled the monies at the time of any Order, Earnest
 70 Money Holder shall disburse the Earnest Money pursuant to the Order of the Court.

71 **12. SUBSEQUENT AMENDMENTS.** Any amendments to, or termination of, these Closing Instructions
 72 must be in writing and signed by Buyer, Seller and Closing Company.

73
 74 **13. CHANGE IN OWNERSHIP OF WATER WELL.** Within sixty days after Closing, Closing Company
 75 shall submit any required Change in Ownership form or registration of existing well form to the Division
 76 of Water Resources in the Department of Natural Resources (Division), with as much information as is
 77 available, and the Division shall be responsible for obtaining the necessary well registration information
 78 directly from Buyer. Closing Company shall not be liable for delaying Closing to ensure Buyer
 79 completes any required form.

80
 81 **14. WITHHOLDING.** The Internal Revenue Service and the Colorado Department of Revenue
 82 may require Closing Company to withhold a substantial portion of the proceeds of this sale when
 83 Seller is either of the following (a) is a foreign person or (b) will not be a Colorado resident after Closing.
 84 Seller should inquire of Seller's tax advisor to determine if withholding applies or if an exemption exists.

85 **15. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the
 86 Colorado Real Estate Commission.)

87 n/a

88
 89 **16. COUNTERPARTS.** This document may be executed by each party, separately, and when
 90 each party has executed a copy, such copies taken together shall be deemed to be a full and
 91 complete contract between the parties.

92
 93 **17. BROKER'S COPIES.** Closing Company shall provide, to each broker in this transaction, copies
 94 of all signed documents that such brokers are required to maintain pursuant to the rules of the
 95 Colorado Real Estate Commission.

18 . NOTICE, DELIVERY, CHOICE OF LAW.

18.1 **Physical Delivery.** Except as provided in § 18.2, all notices must be in writing. 97
 98 Any notice or document to Buyer is effective when physically received by Buyer, any individual
 99 buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer. Any notice or
 100 document to Seller shall be effective when physically received by Seller, any individual seller, any
 101 representative of Seller, or Brokerage Firm of Broker working with Seller. Any notice or document to
 102 Closing Company shall be effective when physically received by Closing Company, any individual of
 103 Closing Company, or any representative of Closing Company.

18.2 **Electronic Delivery.** As an alternative to physical delivery, any signed document and
 104 written notice may be delivered in electronic form by the following indicated methods only:
 105 **Facsimile** **E-mail** **Internet** **No Electronic Delivery.** Documents with original
 106 original signatures shall be provided upon request of any party.

18.3. **Choice of Law.** This contract and all disputes arising hereunder shall be governed
 108 by and construed in accordance with the laws of the State of Colorado that would be applicable to
 109 Colorado residents who sign a contract in this state for property located in Colorado.
 110

111

112

113 Buyer: *Stephen C. Adams* **City of Loveland, a Municipal Corporation**
 By: *Stephen C. Adams*, City Manager

Date: *8-2-2011* ATTEST:

114 Address: 410 E 5th Street

115 Address: Loveland CO 80537

116 Phone No.:

117 Fax No.:

118 Electronic Address:

119

120 Buyer: _____

121

122 Address:

123 Address:

124 Phone No.:

125 Fax No.:

126 Electronic Address:

127

128 Seller: *Paul Ehrlich* **Paul Ehrlich Revocable Trust**
 By: *Paul Ehrlich*, Trustee

APPROVED AS TO FORM Deputy City Clerk

BY: *Alma P.* ASSISTANT CITY ATTORNEYDate: *Aug. 3 2011*

139 Phone No.:
 140 Fax No.:
 141 Electronic Address:
 142
 143
 144 **Closing Company:** Land Title Guarantee Company
 145

146 _____ Date: _____
 By: **Shawn Grimes**

147 Authorized Signature Title:
 148 Address: 1613 Pelican Lakes Point #200
 149 City: Windsor, CO 80550
 150 Phone No.: 970-674-0425
 151 Fax No.: 800-318-7821
 152 Electronic Address: sgrimes@ltgc.com
 153

154 **(TO BE COMPLETED ONLY BY BROKER AND CLOSING COMPANY)**

155
 156 **Nathan Klein (Broker)** **Working with Seller** **Working with Buyer**
 157 engages Closing Company as Broker's scrivener to complete, for a fee not to exceed \$ **10.00**
 158 at the sole expense of Broker, the following legal documents:

159
 160 **Deed** **Bill of Sale** **Colorado Real Estate Commission approved Promissory Note** **Colorado Real Estate Commission approved Deed of Trust**. Closing Company agrees
 161 to prepare, on behalf of Broker, the indicated legal documents pursuant to the terms and conditions
 162 of the Contract.

163
 164 The documents stated above shall be subject to Broker's review and approval and Broker
 165 acknowledges that Broker is responsible for the accuracy of the above documents.

166
 167 Brokerage Broker Firm's Name: **LC Real Estate Group, LLC**
 168

169 
 170 _____

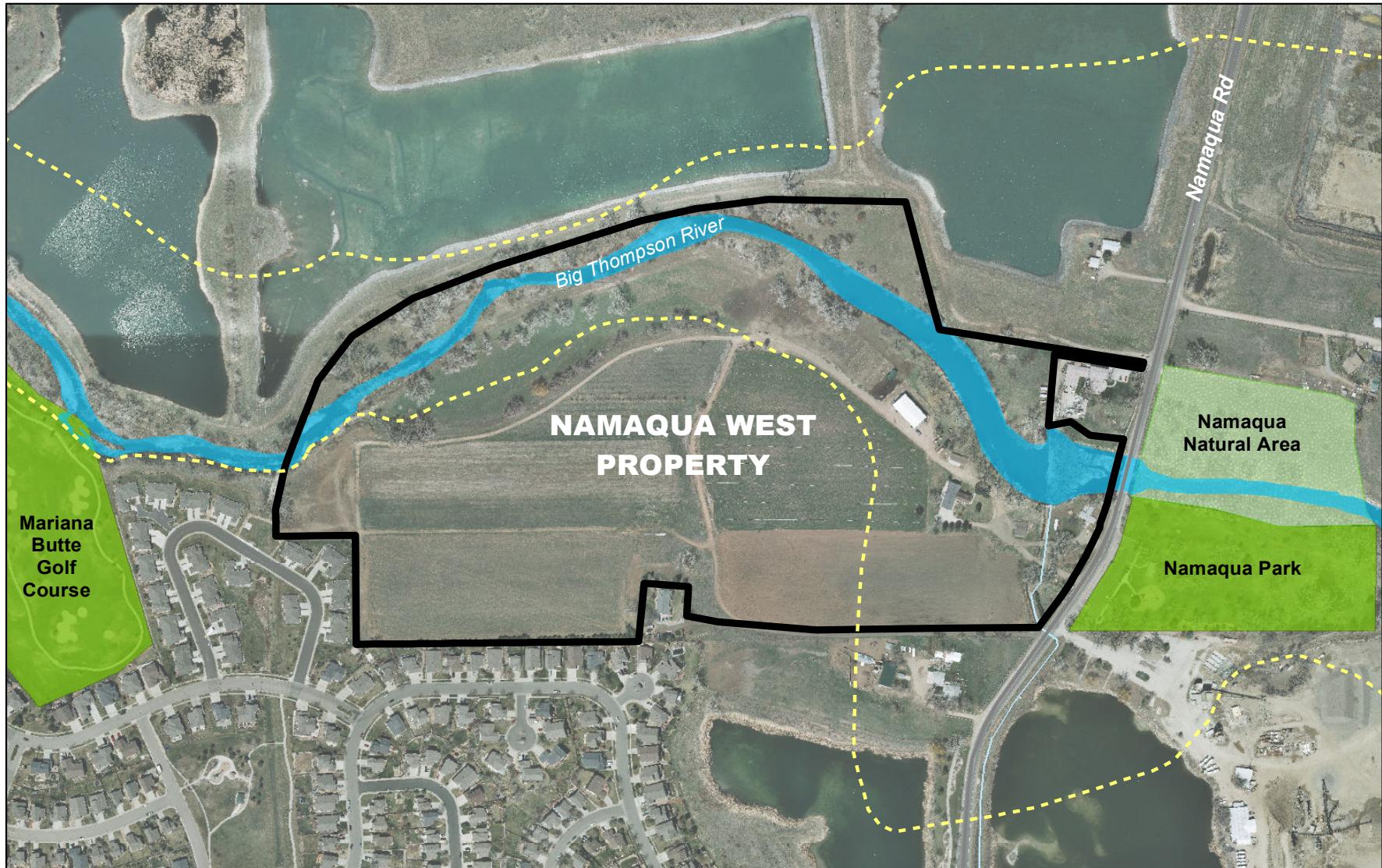
171 Broker: **Nathan Klein**

172
 173 **Closing Company: Land Title Guarantee Company**
 174

175 _____ Date: _____
 By: **Shawn Grimes**

176 Authorized Signature Title:
 177 _____

178 **CL8-9-12. CLOSING INSTRUCTIONS**
 CTM eContracts - ©2014 CTM Software Corp.



NAMAQUA WEST PROPERTY

 Namaqua West Property
 Open Lands/Natural Areas
 Parks & Golf Courses

 Big Thompson River
 Ditches/Canals
 Floodway

N
300 150 0 300 Feet

AGENDA ITEM: 2.8
MEETING DATE: 10/4/2016
TO: City Council
FROM: Economic Development
PRESENTER: Cindy Mackin, Visitor Services Coordinator

**TITLE:**

An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For Phase II Of The Wayfinding Program.

RECOMMENDED CITY COUNCIL ACTION:

Approve on first reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. Public Works would not be able to complete Phase II of the wayfinding sign program in 2016.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration. Delays in receiving this funding will push back the completion of the wayfinding sign program.

SUMMARY:

The ordinance requests \$55,000 from the lodging tax fund to support completion of Phase II of the wayfinding program.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The funding is from reserves in the lodging tax fund and reduces the flexibility for funding other future events or programs. If the request is approved the remaining 2016 unassigned fund balance in the lodging tax fund will be \$553,324.

BACKGROUND:

The Vision of the Community Marketing Commission (CMC) is to establish and promote Loveland as a world class destination for art, leisure and business visitors. Their mission is to promote visitation to increase visitor spending in the Loveland economy. The lodging tax can only be used for two purposes: marketing the city and supporting community and destination events.

In the Visit Loveland strategic marketing plan that the council adopted in 2011, goal #4 states that the CMC will develop a wayfinding signage program. Wayfinding provides directional signage to assist visitors coming to Loveland in navigating the city (golf courses, historic downtown, shopping districts, events arena, etc.).

Phase I of Loveland's wayfinding sign program was completed in November of 2014. Phase I consisted of 17 large multi-destination signs located along the higher speed/traffic areas of highways US 34 & US 287. The original budget for this phase was \$186,000, and actual costs were \$106,671.73.

Phase II wayfinding signs are single destination signs to direct users to the final terminus and close the wayfinding loop. In locations where the signs will be outside of the clear-zone and there is adequate space, decorative bases will be installed. Three of these locations will include a street light. Phase II consists of 13 signs (see attached map for locations).

Staff has been working to coordinate these signs over the last couple of years. Due to CDOT delays, the funds were not spent in 2014 or 2015 and \$100,000 was rolled over for the 2016 budget.

The construction went to bid in 2016. Due to increased labor and materials costs, the updated cost for wayfinding phase II came in at \$145,693. Total budget allocated in the 2016 budget for wayfinding is \$112,000 of which \$14,037 has been spent for design work and soil testing, leaving \$97,963 available. An additional \$47,730 is required to complete phase II of the wayfinding sign program.

Staff took a supplemental appropriation budget request for \$55,000 (providing a small buffer of funds) to the Community Marketing Commission (CMC) on September 21, 2016 to complete the funding for phase II of the wayfinding program.

At this meeting, the CMC made a motion to support the supplemental appropriation to move \$55,000 from lodging tax reserves to the 2016 budget to fully fund the \$145,693 bid for the wayfinding phase II project.

REVIEWED BY CITY MANAGER:
SCA

LIST OF ATTACHMENTS:

1. Ordinance
2. Map of Phase II

FIRST READING

October 4, 2016

SECOND READING

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR PHASE II OF THE WAYFINDING PROGRAM

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the 2016 City budget for Phase II of the Wayfinding Program; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2016 City budget for Phase II of the Wayfinding Program, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That reserves in the amount of \$55,000 from fund balance in the Lodging Tax Fund are available for appropriation. Such revenues in the total amount of \$55,000 are hereby appropriated to the 2016 City budget for Phase II of the Wayfinding Program. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Lodging Tax Fund 206**

Revenues

Fund Balance		55,000
Total Revenue		55,000

Appropriations

206-18-182-1508-42033	Non-Capital Tools & Equipment	55,000
Total Appropriations		55,000

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

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

ADOPTED this 18th day of October, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


City Attorney

CITY OF LOVELAND

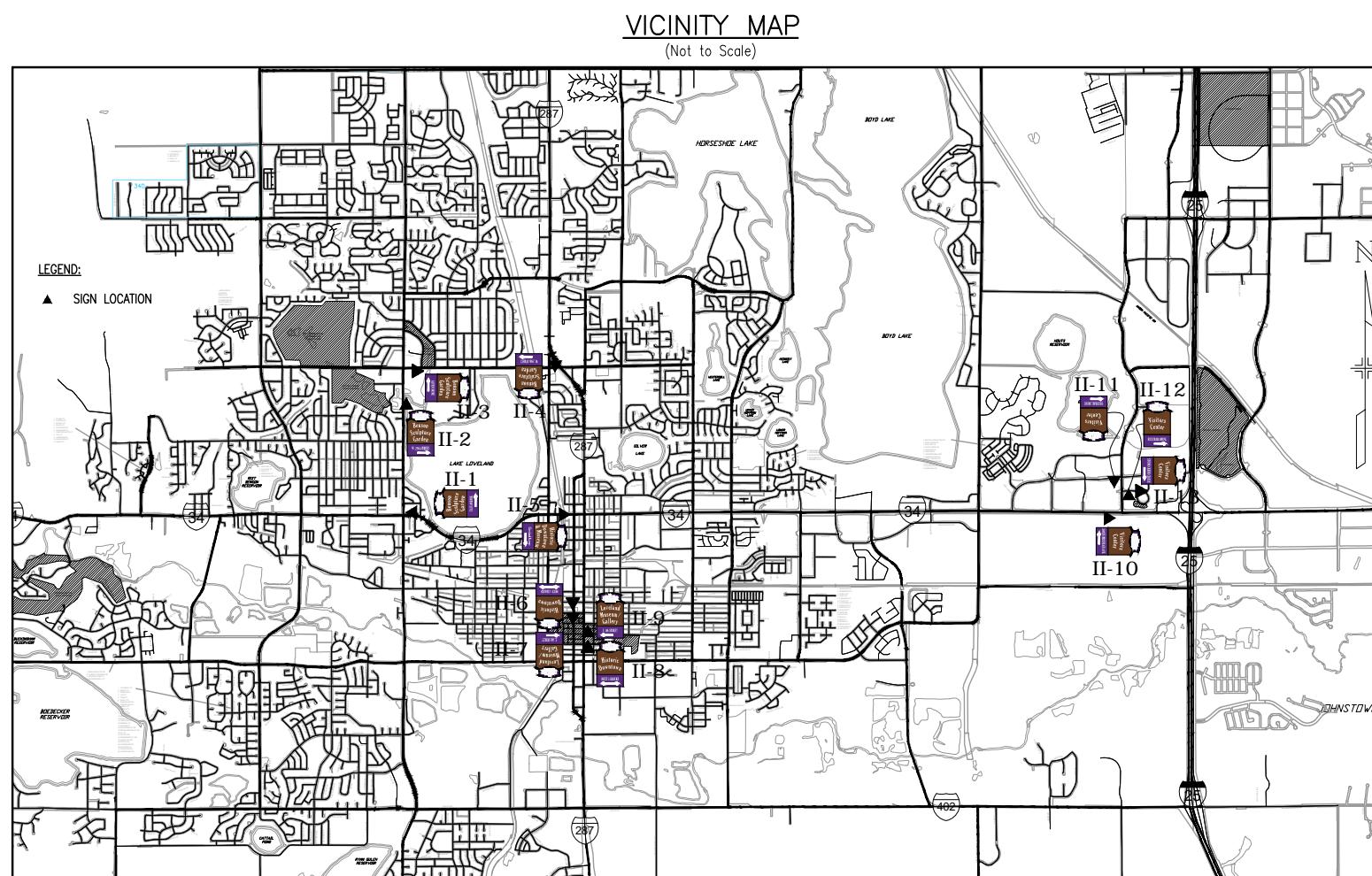
HIGHWAY CONSTRUCTION BID PLANS OF PROPOSED
PROJECT NO. EN1303-PHASE II

PHASE II WAYFINDING SIGNS

LARIMER COUNTY, COLORADO



Know what's below.
Call before you dig.



WATER AND SANITARY SEWER:
CITY OF LOVELAND
MS. MELISSA MORIN, PE
200 N. WILSON AVENUE
LOVELAND, CO 80537
(970) 962-3709

ELECTRIC:
CITY OF LOVELAND
MR. KENT ASPINALL
200 N. WILSON AVENUE
LOVELAND, CO 80537
(970) 962-3598

NATURAL GAS:
XCEL ENERGY
MR. ROCKY CAVANO
1901 E. HORSETOOTH ROAD
FORT COLLINS, CO 80525
(970) 227-1402

TELEPHONE:
CENTURY LINK COMMUNICATIONS
MR. JASON GARCIA
12680 COUNTY ROAD 58
GREELEY, CO 80634
(970) 392-4838

STORMWATER/EROSION CONTROL:
CITY OF LOVELAND
MR. KEVIN GINGER
410 E. 5TH STREET
LOVELAND, CO 80537
(970) 962-2711

CABLE TV:
COMCAST
MR. BILL BLAIR
1582 W. 1ST STREET
LOVELAND, CO 80537
(720) 790-3891

TRAFFIC SIGNAL:
CITY OF LOVELAND
MR. PAUL POLSTON
105 WEST 5TH ST.
LOVELAND, CO 80537
(970) 567-3443

TRAFFIC-CONTROL PLANS:
CITY OF LOVELAND
MR. PHIL LINDGREN
105 WEST 5TH ST.
LOVELAND, CO 80537
(970) 962-2516

PROJECT MANAGEMENT:
CITY OF LOVELAND
PUBLIC WORKS DEPT
MS. SHELLEY ASCHENBRENNER
410 E FIFTH ST.
LOVELAND, CO 80537
(970) 962-2558

SHEET NO. INDEX OF SHEETS

1	TITLE SHEET
2	STANDARD PLANS LIST
3	GENERAL NOTES
4	SUMMARY OF APPROXIMATE QUANTITIES
5-11	US HIGHWAY 34 SIGNS
12-16	US HIGHWAY 287 SIGNS
17-18	SIGN FACE PANEL DETAILS
19-30	M&S STANDARD DETAILS

CITY OF LOVELAND SIGNATURE BLOCK

CITY OF LOVELAND - TRANSPORTATION ENGINEERING DIVISION	BY: _____ DATE: _____
CITY OF LOVELAND - WATER/WASTEWATER ENGINEERING DIVISION	BY: _____ DATE: _____
CITY OF LOVELAND - FIRE DEPARTMENT	BY: _____ DATE: _____
CITY OF LOVELAND - ELECTRICAL ENGINEERING DIVISION	BY: _____ DATE: _____
CITY OF LOVELAND - CURRENT PLANNING DIVISION	BY: _____ DATE: _____
CITY OF LOVELAND - STORM DRAINAGE ENGINEERING DIVISION	BY: _____ DATE: _____

Computer File Information	Sheet Revisions	PUBLIC WORKS ENGINEERING 410 East Fifth Street Loveland, Colorado 80537 Phone: (970) 962-2627 FAX: (970) 962-2908 www.cityofloveland.org/publicworks	As Constructed	Contract Information	Project No./Code
Creation Date: 12/28/15 Initials: SRA	0000		No Revisions:	Contractor:	EN1303
Last Modification Date: Initials:			Revised:	Resident Engineer:	
Full Path: V:\(OPS\EN1303 CMC Wayfinding\City ACAD Drawings\EN1303 Production Drawings			Void:	Project Engineer:	
Drawing File Name: VicinityMapOverview-FinalPhaseII.dwg				PROJECT STARTED: ACCEPTED:	
Acad Ver. Civil3D2013 Scale: As Shown Units: English				Comments:	Sheet Number 1

GENERAL NOTES:

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE QUALITY CONTROL OF ALL LETTERING. ALL LETTERFORMS SHALL BE CRISP, SHARP, AND FREE OF NICKS, RAGGED EDGES AND DISCONTINUOUS CURVES.
2. ALL LETTERING SHALL CONFORM TO APPROVED TYPEFACE, WEIGHT AND LETTER SPACING. NO SUBSTITUTIONS OF TYPEFACE FOUNDRY, BRAND OR VERSION OR IMPLEMENTATION TECHNIQUE WILL BE ACCEPTED WITHOUT PRIOR APPROVAL.
3. LETTERFORMS WITH ROUNDED POSITIVE OR NEGATIVE CORNERS, NICKED, CUT, OR RAGGED EDGES, ETC., WILL NOT BE ACCEPTED. MARGINS AND SPACING BETWEEN LETTERS AND ARROWS MUST BE MAINTAINED AS SPECIFIED IN CONSTRUCTION PLAN DRAWINGS PER THE APPROVED ARTWORK.
4. ARTWORK AND GRAPHICS FOR THE BRAND PANEL WILL BE PROVIDED BY THE CITY OF LOVELAND. CALL OR EMAIL SHELLEY ASCHENBRENNER AT 970-962-2558, MICHELLE.ASCHENBRENNER@CITYOFLOVELAND.ORG TO COORDINATE.

DIGITAL PRINTING NOTES:

DIGITALLY PRINTED SIGNS SHALL MEET THE FOLLOWING REQUIREMENT FOR LEGENDS, BORDERS, BACKGROUND AND ACCESSORIES:

1) DIGITALLY PRINTED SIGNING MATERIALS

- a) REFLECTIVE SHEETING - SHEETING TYPE MUST BE 3M™ DIAMOND GRADE™ DG3 OR EQUIVALENT
- b) TRANSPARENT OVERLAMINATE - THE DIGITAL PRINT SHALL BE PROTECTED BY 3M™ ELECTROCUT™ FILM SERIES 1170 CLEAR OR EQUIVALENT UV PROTECTION FILM WITH A PMMA TOP FILM.

2) DIGITAL IMAGE

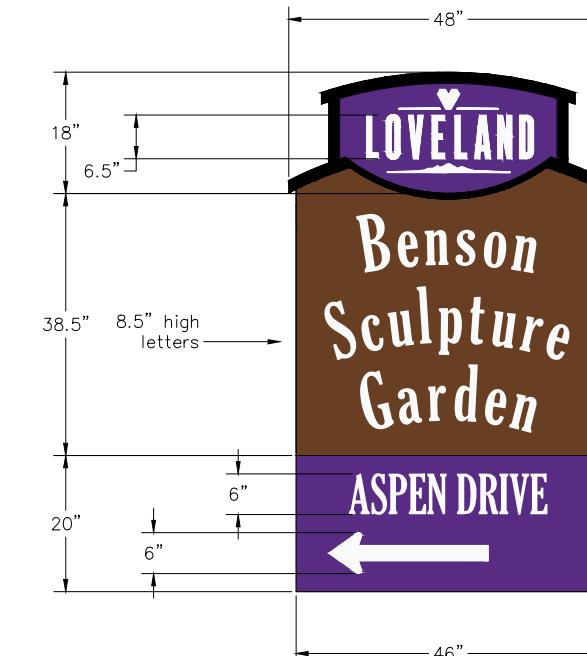
- a) PRINT RESOLUTION - THE PRINTING RESOLUTION SHALL BE A MINIMUM OF 540 DOTS PER INCH (DPI)
- b) IMAGE - ALL NUMBERS, LETTERS AND BORDERS OR BACKGROUND ON SIGNS SHALL BE DIGITALLY PRINTED (DIRECTLY OR THROUGH REVERSE IMAGE) BEFORE THE SHEETING IS ADHERED TO THE PANELS, UNLESS OTHERWISE APPROVED BY THE ENGINEER.
- c) FINAL SIGNS TO BE PRINTED WITH CUSTOM COLOR AS APPROVED BY CUSTOMER

3) DIGITAL PRINTING PROCESS

- a) THE INKJET PRINTER MUST BE CAPABLE OF PRINTING WITH A RESOLUTION OF 540 DOTS PER INCH ON A MEDIA OF 48 INCHES WIDE, AT A MINIMUM.
- b) DIGITAL PRINTING MUST BE PERFORMED USING AN ENVIRONMENTALLY FRIENDLY, FLEXIBLE, UV CURABLE INK
- c) THE OVERLAMINATE MUST BE APPLIED WITH THE USE OF A LAMINATOR CAPABLE OF HEATING TO 170 DEGREES FAHRENHEIT WITH A NIP PRESSURE OF 90 POUNDS PER SQUARE INCH.
- d) ALL DIGITALLY PRINTING SHALL BE DONE IN A WORKMANLIKE MANNER AND AS RECOMMENDED BY THE MANUFACTURER OF THE REFLECTIVE SHEETING.

4) WARRANTY

- a) IMAGE DURABILITY - SPECIAL OR CUSTOM COLORS THAT ARE USED IN THE MANUFACTURING OF DIGITALLY PRINTED GRAPHICS, WHICH ARE NOT DEFINED BY ASTM D4965, MUST BE WARRANTED FOR A PERIOD OF EIGHT YEARS AND SHALL NOT EXCESSIVELY FADE, DISCOLOR, CRACK, CRAZE, PEEL, BLISTER OR LOSE REFLECTIVITY SUCH THAT THE SIGNS BECOME VISUALLY UNSUITABLE FOR THEIR INTENDED PURPOSE.
- b) STANDARD TRAFFIC COLORS (GREEN, RED, BLUE, BROWN, PURPLE) PRODUCED BY THE DIGITAL PRINTING PROCESS SHALL BE WARRANTED FOR TWELVE YEARS, SUCH THAT, FOR CORRESPONDING COLOR, THEY COMPLY WITH MUTCD CHROMATICITY LIMITS, AND FOR COEFFICIENT OF RETROREFLECTION, THEY RETAIN 56% FOR YEARS 1-7, AND 49% FOR YEARS 8-12 AFTER MANUFACTURING, OF THE INITIAL REQUIREMENT GIVEN IN TABLE 10 IN ASTM D4956-11A, TYPE XI STANDARD SPECIFICATION.



BRAND PANEL ASSEMBLY-SIGN DETAIL
(ARTWORK TO BE PROVIDED BY
THE CITY OF LOVELAND.
SEE NOTE 4 BELOW.)



Standard 3M #1178C Black (or approved equal)
3M #4090 Diamond Grade White (or approved equal)
Pantone Purple 268 (or approved equal)
Pantone Brown 469 (or approved equal)

SIGN COLOR STANDARDS

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Creation Date:	12/29/15	Initials:	SRA	Rev. Nos.	Date	Description	Initials	No Revision:	Revised:	Designer: SRA	Structure Numbers	
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Acad Ver. Civil3D2013	Scale: As Shown	Units: English		(R-)								



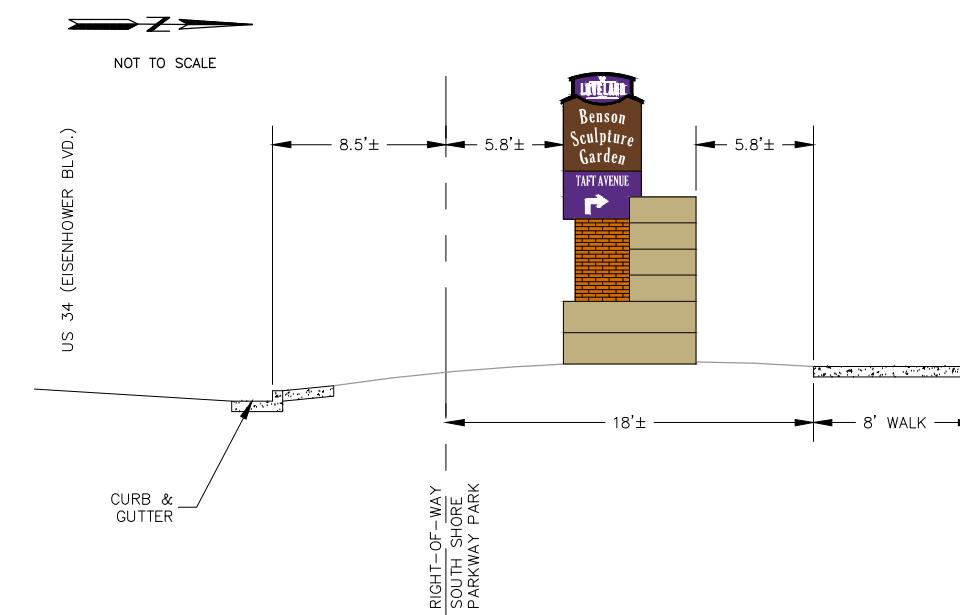
LOCATION PHOTO

LOCATION ID	II-1
ROADWAY	US 34 (Eisenhower Blvd.)
SIDE OF ROAD	North
SIGN FACES	East
NEAREST INTERSECTION	Taft Avenue
CDOT MILE MARKER POST	865' West of MP 91 (US 34)
DESTINATION NO.	4 (Benson Sculpture Garden)
ARROW DIRECTION/ROADWAY	Right Hook/Taft Avenue
BASE TYPE	Decorative, no light
EXISTING SIGN	No
FOOTING TYPE	

SIGN INFORMATION

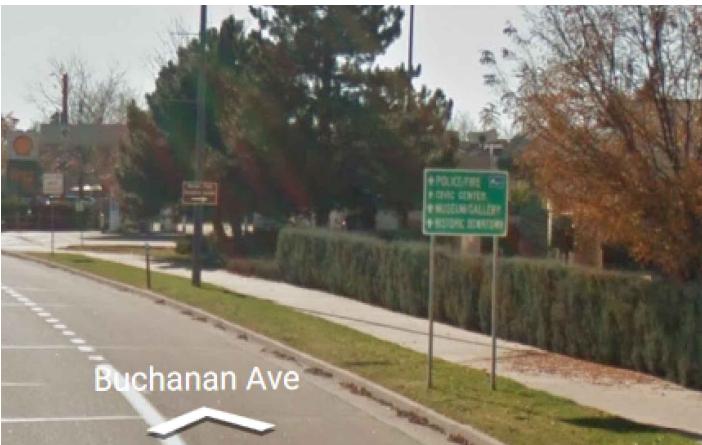


VICINITY MAP

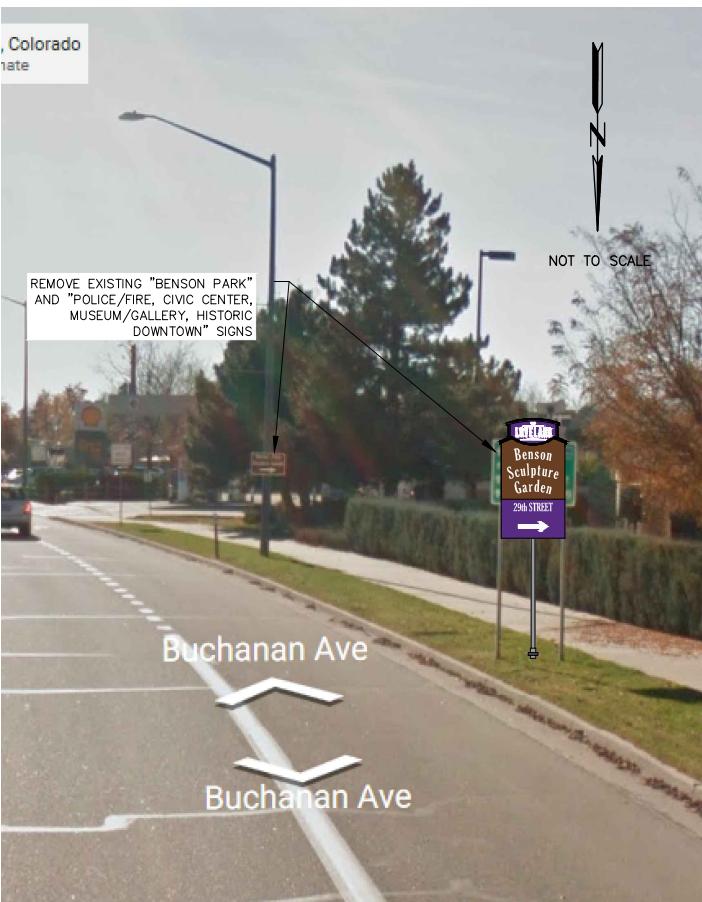


LOCATION CROSS SECTION

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Drawing File Name:	PhaseII-Location-Details.dwg	Initials:	(R-)					Void:				
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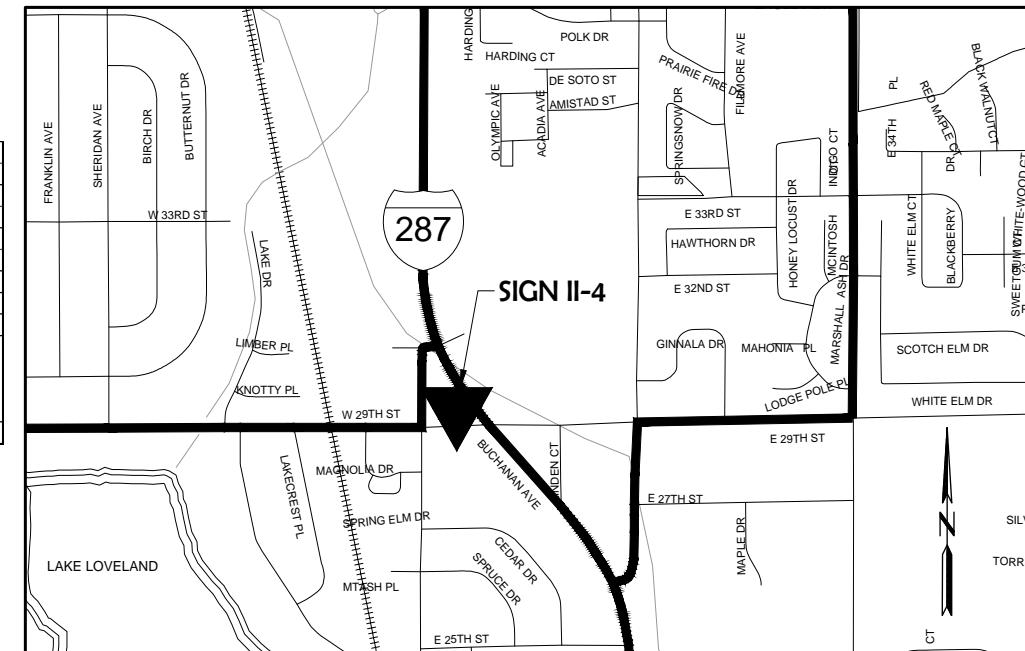
EXISTING SIGNS (TO BE REMOVED)



LOCATION PHOTO

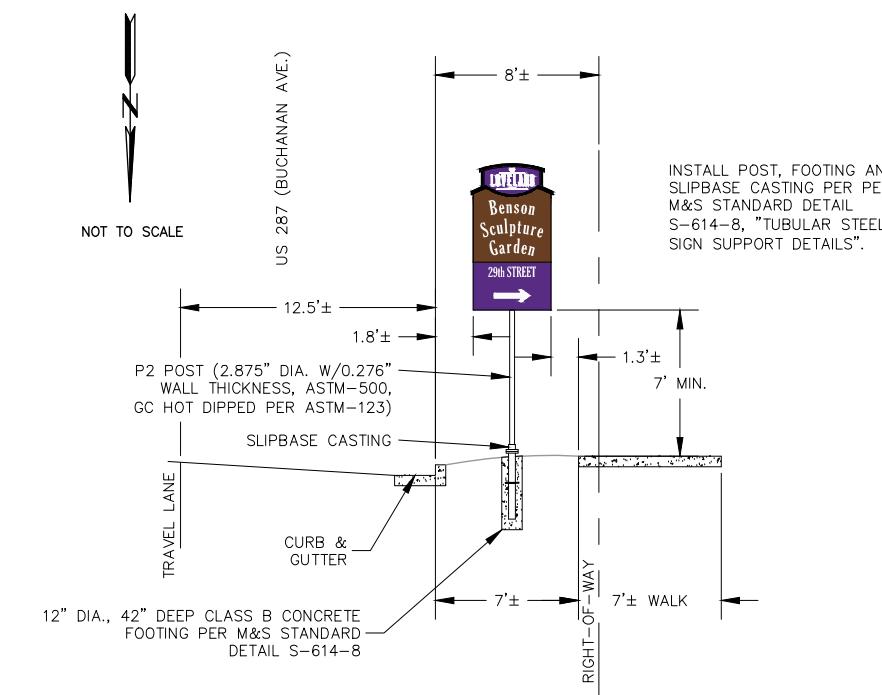
LOCATION ID	II-4
ROADWAY	US 287 (Buchanan Ave.)
SIDE OF ROAD	West
SIGN FACES	North
NEAREST INTERSECTION	West 29th Street
CDOT MILE MARKER POST	900' North of MP 335
DESTINATION NO.	4 (Benson Sculpture Garden)
ARROW DIRECTION/ROADWAY	Right/W. 29th Street
BASE TYPE	P2 Post (Single)
EXISTING SIGN	Yes. Remove existing "Benson Park" and "Police/Fire, Civic Center, Museum/Gallery, Historic Downtown" Signs
FOOTING TYPE	12" dia., 42" deep, Class B Concrete

SIGN INFORMATION

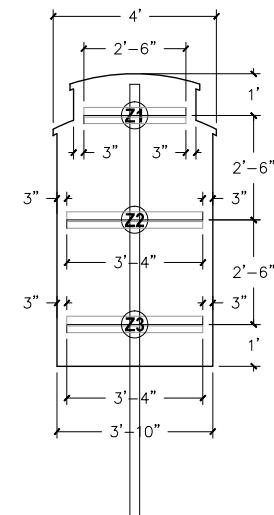


VICINITY MAP

SUPPORT TABLE		
SUPPORT	DESCRIPTION	SIZE
Z1	NEW	3"X2-11/16"X2.33" ALUMINUM BACKING ZEE, 2'-6" LONG
Z2-Z3	NEW	3"X2-11/16"X2.33" ALUMINUM BACKING ZEE, 3'-4" LONG

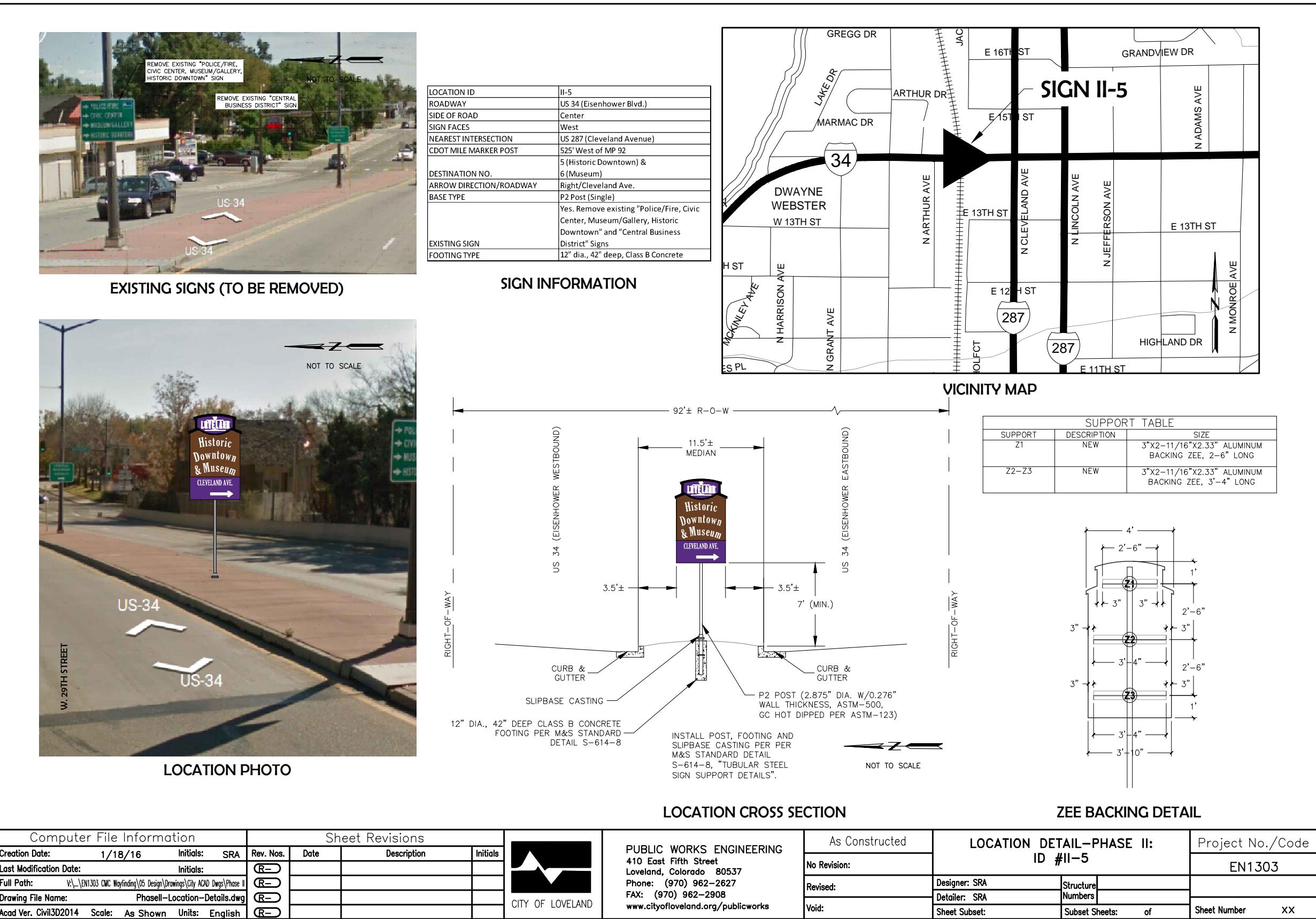


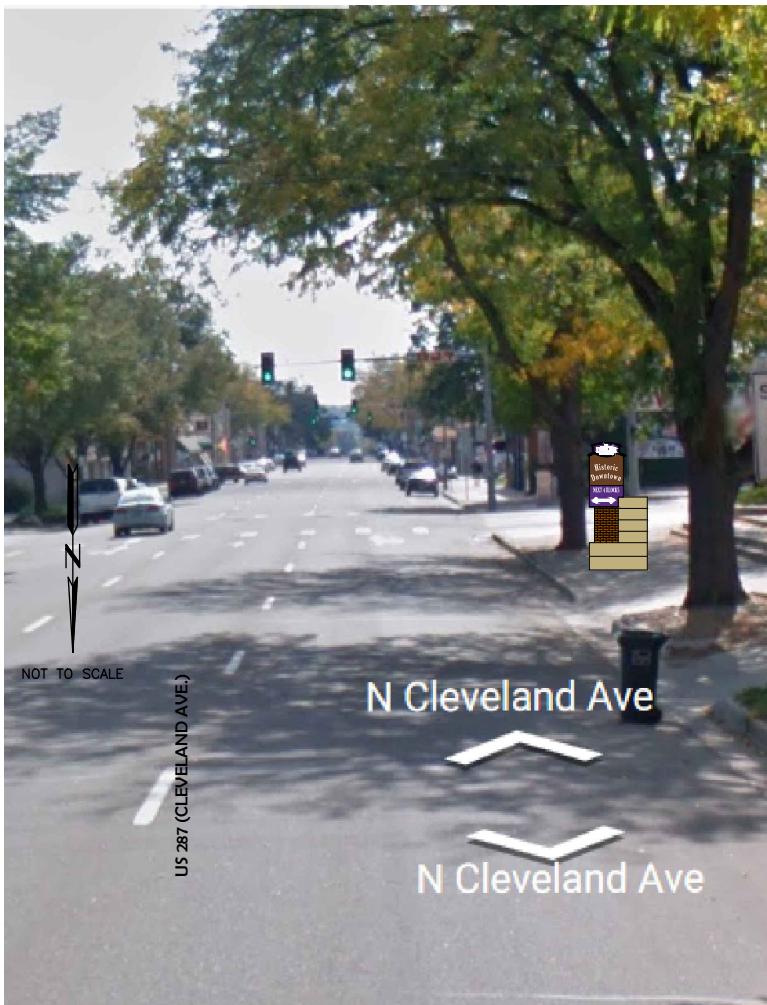
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ZEE BACKING DETAIL

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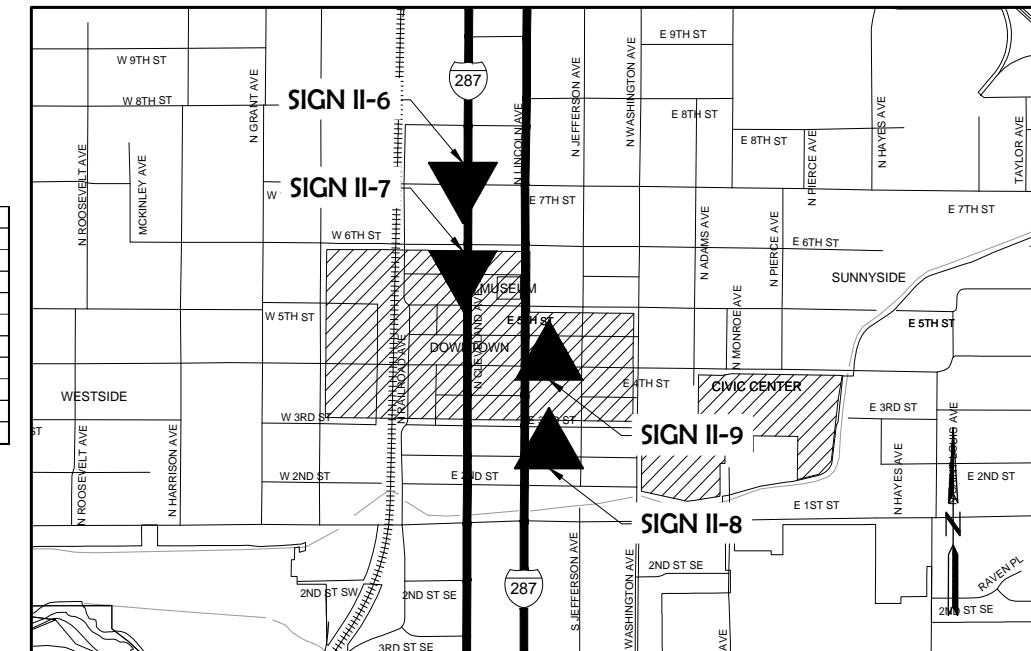




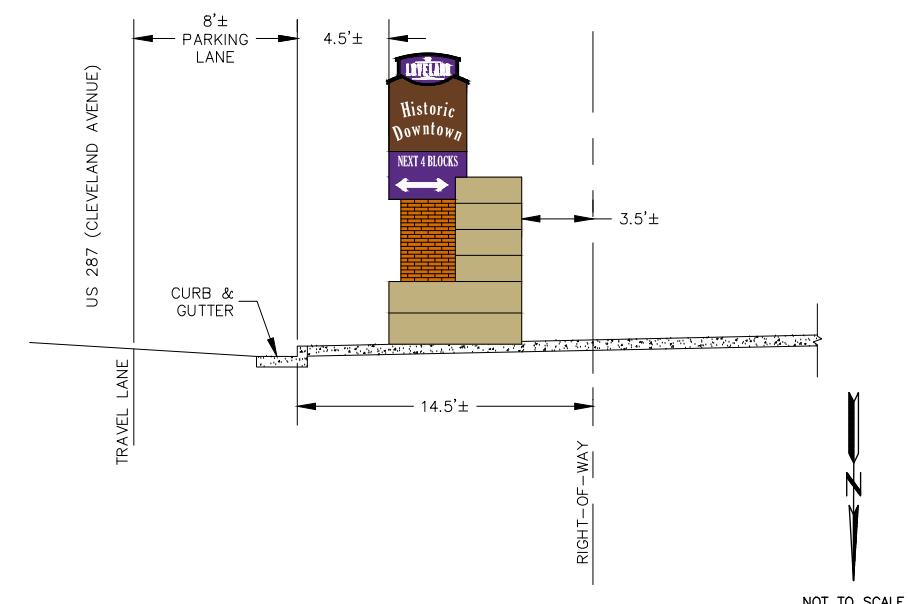
LOCATION PHOTO

LOCATION ID	II-6
ROADWAY	US 287 (Cleveland Avenue)
SIDE OF ROAD	West
SIGN FACES	North
NEAREST INTERSECTION	W. 7th Street
CDOT MILE MARKER POST	580' North of MP 1
DESTINATION NO.	5 (Historic Downtown)
ARROW DIRECTION/ROADWAY	Left & Right/Next 4 Blocks
BASE TYPE	Decorative, no light
EXISTING SIGN	No.
FOOTING TYPE	

SIGN INFORMATION



VICINITY MAP



LOCATION CROSS SECTION

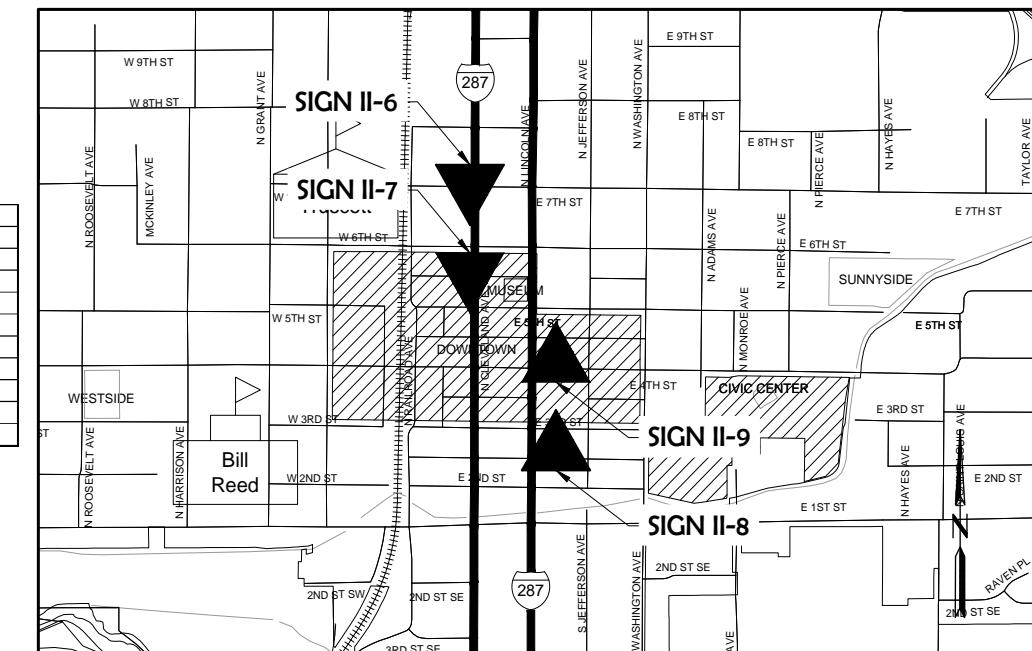
Computer File Information		Sheet Revisions				 CITY OF LOVELAND	PUBLIC WORKS ENGINEERING 410 East Fifth Street Loveland, Colorado 80537 Phone: (970) 962-2627 FAX: (970) 962-2908 www.cityofloveland.org/publicworks	As Constructed	LOCATION DETAIL-PHASE II:		Project No./Code	
Creation Date:	1/18/16 <th>Initials:</th> <td>SRA</td> <th>Rev. Nos.</th> <th>Date</th> <th>Description</th> <th>Initials</th> <th data-kind="ghost"></th> <th>ID #II-6</th> <th data-kind="ghost"></th> <th data-kind="ghost"></th>	Initials:	SRA	Rev. Nos.	Date	Description	Initials		ID #II-6			
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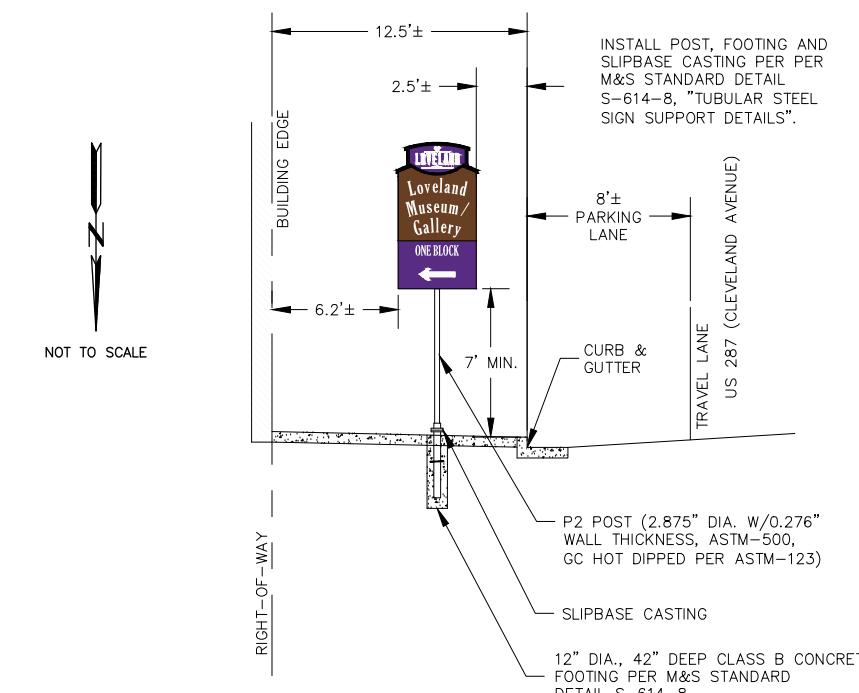
LOCATION PHOTO

LOCATION ID	II-7
ROADWAY	US 287 (Cleveland Avenue)
SIDE OF ROAD	East
SIGN FACES	North
NEAREST INTERSECTION	E. 5th Street
CDOT MILE MARKER POST	230' South of MP 1
DESTINATION NO.	6 (Loveland Museum/Gallery)
ARROW DIRECTION/ROADWAY	Left/One Block
BASE TYPE	P2 Post (Single)
EXISTING SIGN	No.
FOOTING TYPE	12" dia., 42" deep, Class B Concrete

SIGN INFORMATION

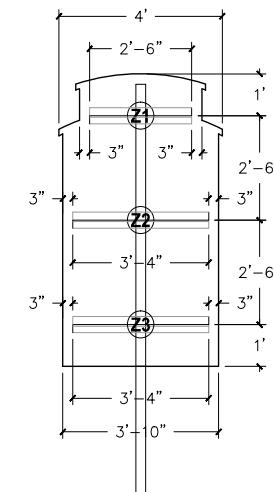


VICINITY MAP



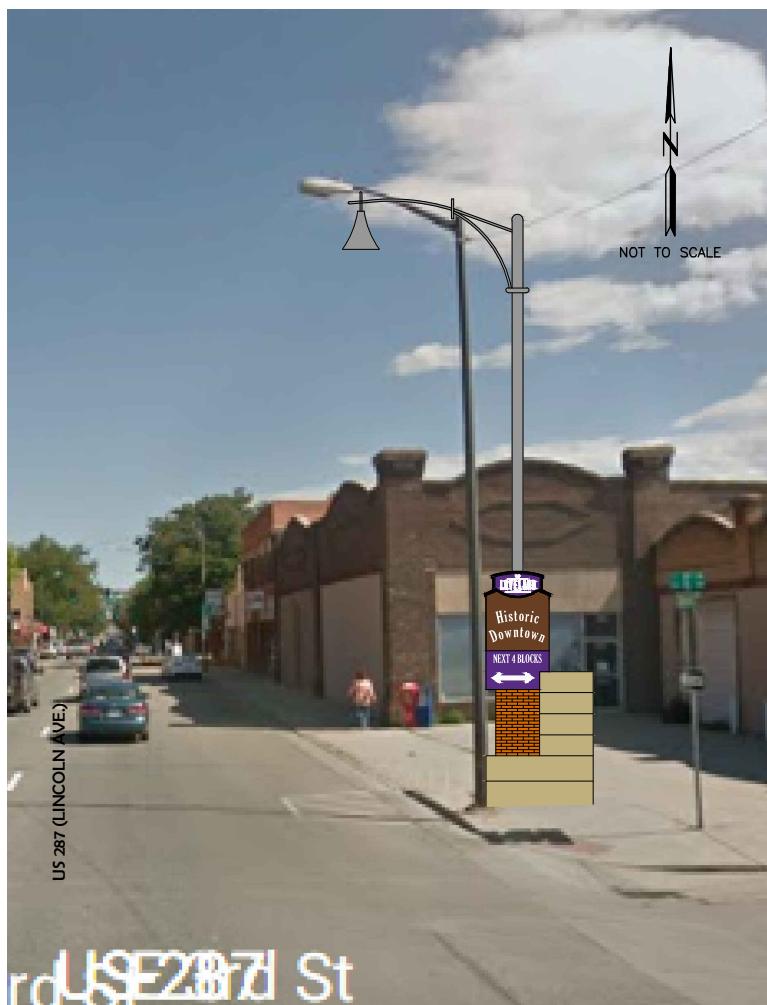
LOCATION CROSS SECTION

SUPPORT TABLE		
SUPPORT	DESCRIPTION	SIZE
Z1	NEW	3"X2-11/16"X2.33" ALUMINUM BACKING ZEE, 2'-6" LONG
Z2-Z3	NEW	3"X2-11/16"X2.33" ALUMINUM BACKING ZEE, 3'-4" LONG



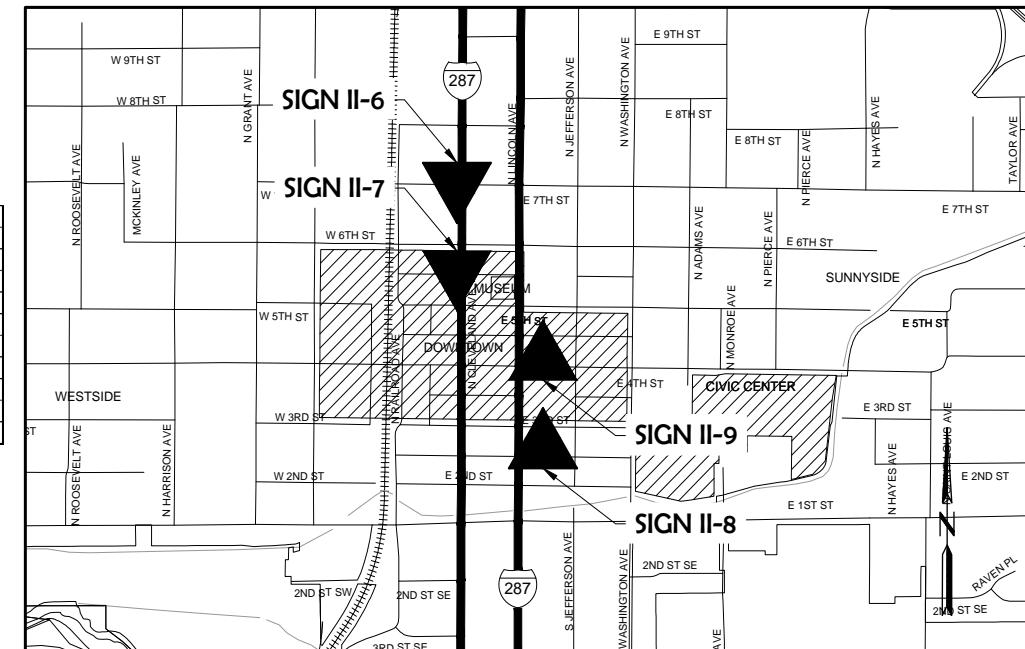
ZEE BACKING DETAIL

Computer File Information		Sheet Revisions				 CITY OF LOVELAND	PUBLIC WORKS ENGINEERING 410 East Fifth Street Loveland, Colorado 80537 Phone: (970) 962-2627 FAX: (970) 962-2908 www.cityofloveland.org/publicworks	As Constructed		LOCATION DETAIL-PHASE II: ID #II-7		Project No./Code		
Creation Date:	1/18/16	Initials:	SRA	Rev. Nos.	Date			Description	Initials			No Revision:		
Last Modification Date:	Initials:		(R-)							Revised:	Designer: SRA	Structure		
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Drawing File Name:	PhaseII-Location-Details.dwg		(R-)							Void:	Sheet Subset:	Subset Sheets:	of	Sheet Number
Acad Ver. Civil3D2014	Scale:	As Shown	Units:	English	(R-)									XX

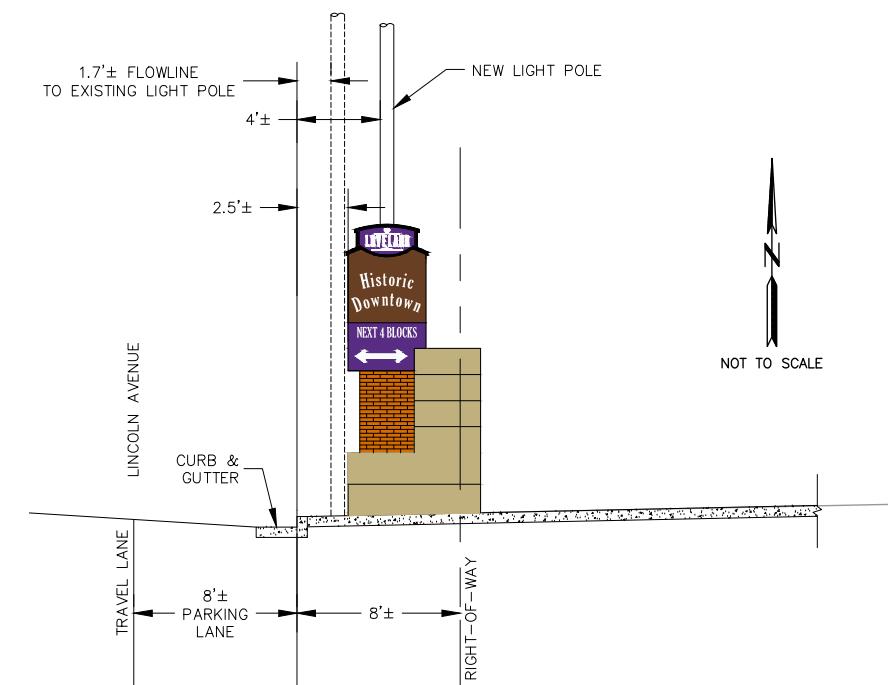


LOCATION ID	II-8
ROADWAY	US 287 (Lincoln Avenue)
SIDE OF ROAD	East
SIGN FACES	South
NEAREST INTERSECTION	E. 3rd Street
CDOT MILE MARKER POST	700' North of MP 333
DESTINATION NO.	5 (Historic Downtown)
ARROW DIRECTION/ROADWAY	Left & Right/Next 4 Blocks
BASE TYPE	Decorative, Light Pole
EXISTING SIGN	No.
FOOTING TYPE	

SIGN INFORMATION

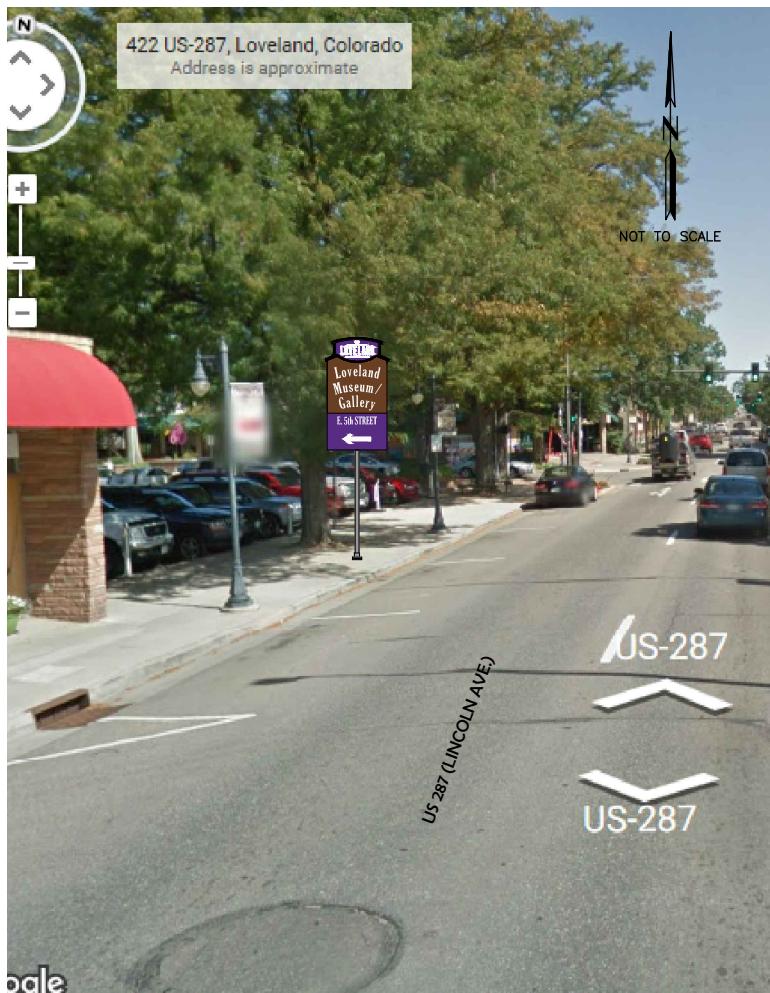


VICINITY MAP



LOCATION CROSS SECTION

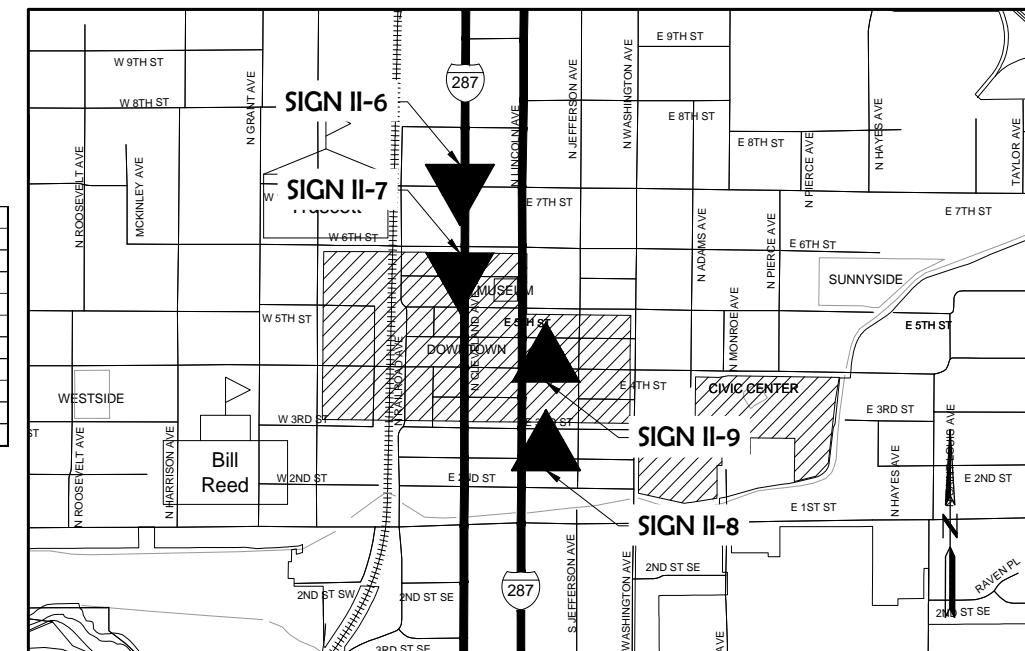
Computer File Information		Sheet Revisions				 CITY OF LOVELAND	PUBLIC WORKS ENGINEERING 410 East Fifth Street Loveland, Colorado 80537 Phone: (970) 962-2627 FAX: (970) 962-2908 www.cityofloveland.org/publicworks	As Constructed	LOCATION DETAIL-PHASE II:		Project No./Code
Creation Date:	1/18/16 <th>Initials:</th> <td>SRA</td> <th>Rev. Nos.</th> <th>Date</th> <th>Description</th> <th>Initials</th> <th data-kind="ghost"></th> <th>ID #II-8</th> <th data-kind="ghost"></th> <th data-kind="ghost"></th>	Initials:	SRA	Rev. Nos.	Date	Description	Initials		ID #II-8		
Last Modification Date:		Initials:	(R-)							EN1303	
Full Path:	V:_\EN1303 CMC Wayfinding\05 Design\Drawings\City ACAD Drawings\Phase II	Initials:	(R-)								
Drawing File Name:	Phasell-Location-Details.dwg	Initials:	(R-)								
Acad Ver. Civil3D2014	Scale: As Shown	Units:	English	(R-)							



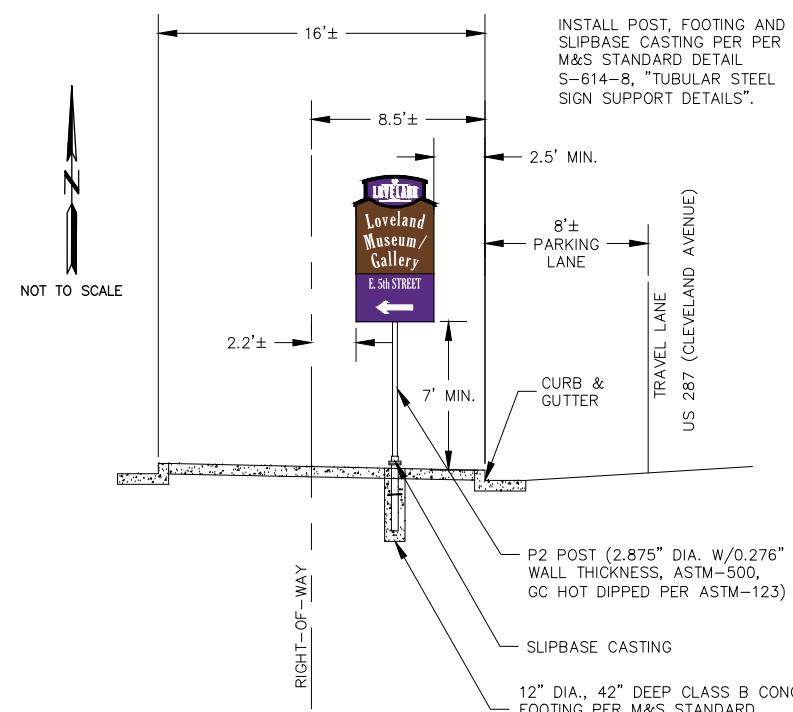
LOCATION PHOTO

LOCATION ID	II-9
ROADWAY	US 287 (Lincoln Avenue)
SIDE OF ROAD	West
SIGN FACES	South
NEAREST INTERSECTION	E. 5th Street
CDOT MILE MARKER POST	435' South of MP 1
DESTINATION NO.	6 (Loveland Museum/Gallery)
ARROW DIRECTION/ROADWAY	Left/E. 5th Street
BASE TYPE	P2 Post (Single)
EXISTING SIGN	Yes, remove existing light pole.
FOOTING TYPE	12" dia., 42" deep, Class B Concrete

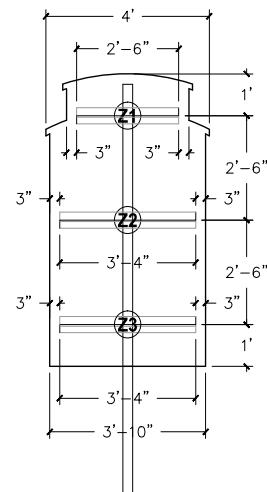
SIGN INFORMATION



VICINITY MAP

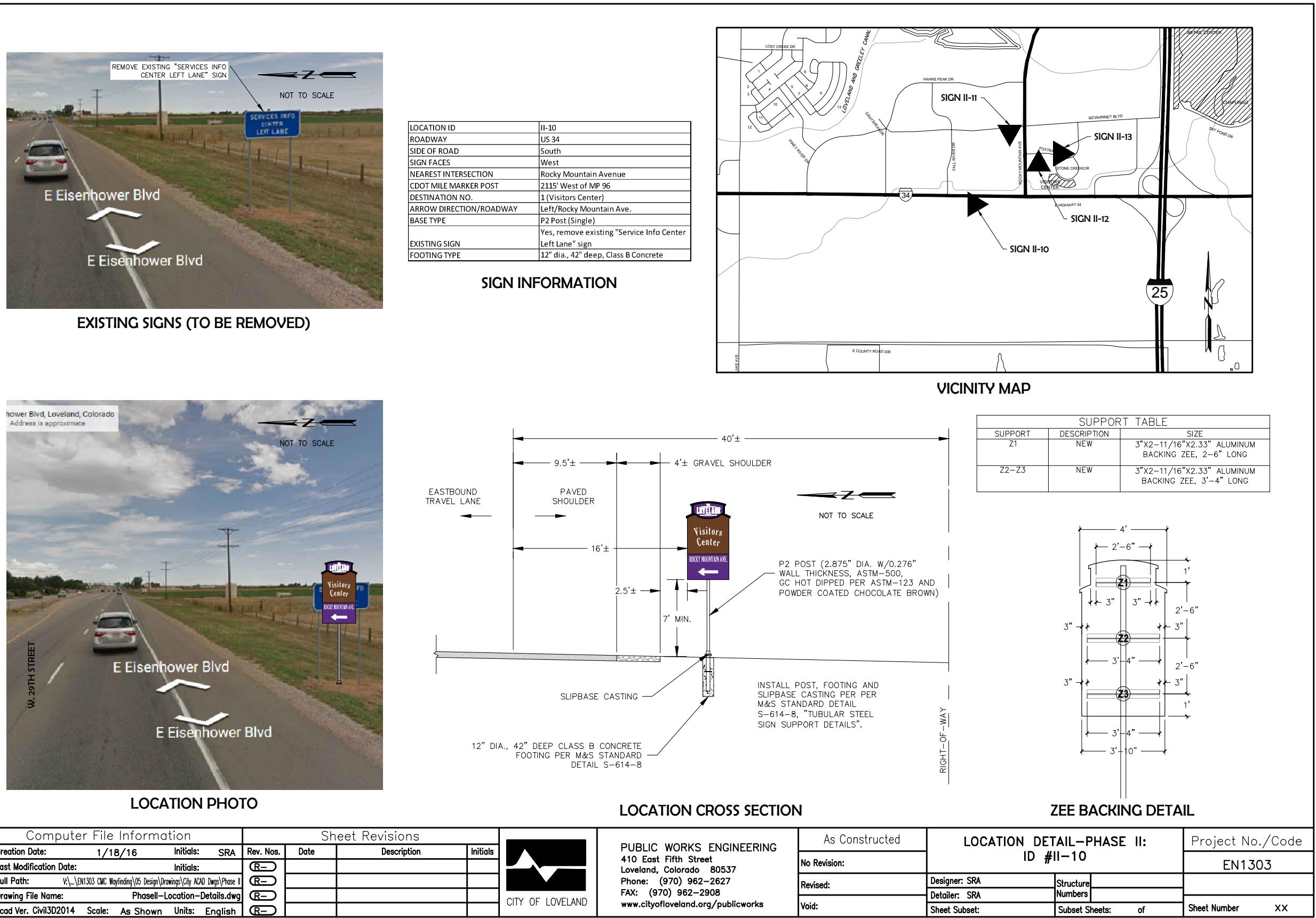


LOCATION CROSS SECTION



7FF BACKING DETAIL

SUPPORT TABLE		
SUPPORT	DESCRIPTION	SIZE
Z1	NEW	3"X2-11/16"X2.33" ALUMINUM BACKING ZEE, 2-6" LONG
Z2-Z3	NEW	3"X2-11/16"X2.33" ALUMINUM BACKING ZEE, 3"-4" LONG



AGENDA ITEM: 2.9
MEETING DATE: 10/4/2016
TO: City Council
FROM: Leah Browder, Public Works Department
PRESENTER: Chris Carlson, Civil Engineer II



TITLE:

- 1. A Resolution Authorizing the City Manager to Execute the Community Development Block Grant – Disaster Recovery (CDBG-DR) Planning Grant Agreement (Project No. CDBG-DR P16-025) Between the City of Loveland And The State of Colorado Department of Local Affairs.**
- 2. An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2016 City of Loveland Budget for the Big Thompson River Corridor Master Plan.**

RECOMMENDED CITY COUNCIL ACTION:

Adopt the resolution and approve the ordinance on first reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. (The CDBG-DR grant awarded to the City will be forfeited)
3. Adopt a modified action.
4. Refer back to staff for further development and consideration.

SUMMARY:

City Council approval is necessary to accept a Community Development Block Grant – Disaster Recovery (CDBG-DR) planning grant awarded by the State of Colorado to the City of Loveland. The grant is intended to reimburse the City of Loveland for the cost of preparing a detailed, multi-objective Big Thompson River Corridor Master Plan.

The ordinance on first reading appropriates funding for the engineering and planning costs to develop the Big Thompson River Corridor Master Plan. The project is anticipated to cost up to \$275,000, of which \$249,700 will be reimbursed by the CDBG-DR planning grant. The City's cost share is \$25,300 maximum. The City will contract with a consulting firm to develop the master plan, which is expected to be completed in approximately 12 months.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The Stormwater Utility Capital Fund will be used as the primary funding source for the \$275,000 cost, but the fund balance will increase as the CDBG-DR grant reimbursements are received. A maximum amount of \$25,300 will be spent above the CDBG-DR grant amount of \$249,700. The existing working cash balance of the Stormwater Utility Capital fund is \$7,170,622. It will be reduced to a minimum of balance of \$6,895,622 before reimbursement from the grant and to a minimum balance of \$7,145,322 after reimbursement is received.

BACKGROUND:

After the flood of September 2013, the State of Colorado received disaster recovery funds from the Federal Government through the U.S. Department of Housing and Urban Development (HUD). The State of Colorado Department of Local Affairs (DOLA) administers these funds through its Community Development Block Grant – Disaster Recovery (CDBG-DR) program. The available funding was divided into both planning and implementation or infrastructure project categories. In November 2015 the City submitted a grant application to develop a detailed multi-objective master plan for the Big Thompson River corridor through Loveland. In July 2016 the City was awarded the full \$249,700 requested through a very competitive selection process.

Consequently, the City has now received a CDBG-DR Resiliency Planning Grant Agreement from DOLA that requires the City Manager's signature in order to execute the agreement. Adoption of this proposed resolution will allow the City Manager to sign the agreement and for City staff to proceed with the project.

The Big Thompson Watershed Coalition (BTWC) prepared a river restoration master plan after the 2013 Flood for the Big Thompson River from Lake Estes downstream to the river's confluence with the South Platte River. The City of Loveland contributed to this effort. With over 65 miles of river corridor in greatly varying geographical regions (mountains, plains, and urban areas), the River Restoration Master Plan was a successful big picture/high level planning effort for a very large watershed. Through an approximately 9-mile reach crossing Loveland, the River Restoration Master Plan has helped guide many important emergency and permanent infrastructure repair decisions. It is viewed as a successful and useful product for its intended flood recovery purpose.

However, the Coalition's river restoration master planning effort was not tasked to address a number of other important objectives through Loveland. These objectives include:

- Capture a long term vision for the river corridor and recommend a process for how the City should see that vision brought to fruition. Incorporate within that vision considerations for infrastructure protection, resiliency against future floods, flood hazard reduction and mitigation, improved recreation opportunities, ecological and natural areas restoration, and land use planning in accordance with other City planning efforts.
- Include detailed analysis of potential projects to determine which projects, particularly from a flood mitigation and ecological restoration perspective, provide cost effective benefits.
- Include analysis of resiliency metrics and benefits for proposed projects related to existing infrastructure, public and private properties, and local businesses.
- Determine which projects would actually be feasible, assuming available funding, given a myriad of sometimes competing interests, objectives, and constraints.
- Recommend on a per reach basis how the City can best restore the river corridor to a more naturally functioning, healthy river system that is a better public amenity and more resilient to future floods.
- Recommend projects that improve water quality, particularly from existing storm sewer outfalls.
- Include a conceptual construction cost estimate for each recommended project.

- Include an implementation plan that recommends prioritization of the various projects.
- Connect to and fit within the City's existing planning efforts such as the Highway 287 Corridor Plan, the Comprehensive Plan Update, the Stormwater Master Plan, the 2035 Transportation Master Plan, etc.
- Recommend how the City could better capitalize on the fact that a beautiful river corridor runs through it. Evaluate what restoration efforts, property acquisitions, open space connections, recreational opportunities, public access, strategic alliances, changes to river management and land use regulations, etc. should be pursued. Recommend how the City should best manage the river corridor.
- And finally, recommend funding mechanisms that would best allow the City to implement the proposed plan and potential improvements within the corridor.

In summary, the City needs a detailed multi-objective river corridor plan that uses the recent River Restoration Master Plan and other general planning efforts as its starting point, but taking it to a more detailed and implementable level. The Loveland reach of interest generally runs from the Morey Wildlife Reserve on the west downstream to approximately Larimer County Road 9E (CR-9E). This proposed project will not re-evaluate restoration efforts already planned by the BTWC, but would incorporate those efforts into the overall River Corridor Master Plan.

Approval of the resolution to accept the grant award and approval of the ordinance to appropriate those funds will allow City staff to proceed with the project.

The funding source for this project and supplemental appropriation into the 2016 budget will be from the Stormwater Utility Capital Fund, account number 345-23-283-0000-43450, project amount of \$275,000.

REVIEWED BY CITY MANAGER:**SCA**

LIST OF ATTACHMENTS:

1. Resolution
2. Ordinance
3. Map

RESOLUTION # R-91-2016

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY RESILIENCY PLANNING GRANT AGREEMENT (PROJECT NO. CDBG-DR P16-025) BETWEEN THE CITY OF LOVELAND AND THE COLORADO DEPARTMENT OF LOCAL AFFAIRS

WHEREAS, the City of Loveland suffered damage to infrastructure in the flooding that occurred September 9 through September 15, 2013; and

WHEREAS, President Obama signed FEMA-DR-4145-CO, which after amendments, designates eighteen counties as a Presidential disaster area. Further, the U.S. Department of Housing and Urban Development (“HUD”) has designated Larimer County as one of three “most impacted and distressed” counties in Colorado; and

WHEREAS, the Colorado Department of Local Affairs (“DOLA”) is leading Colorado’s housing and economic recovery effort. DOLA has received federal Community Development Block Grant – Disaster Recovery funds (“CDBG-DR”) and has published an action plan identifying short and long-term housing, infrastructure, and economic needs as a result of the severe flooding; and

WHEREAS, the City of Loveland has applied for funding to develop a detailed multi-objective river corridor plan using the recent Big Thompson Restoration Master Plan (“Project”);

WHEREAS, DOLA has approved the City of Loveland’s application and has offered a grant award of \$249,700.00 in CDBG-DR grant funds for the Project; and

WHEREAS, a separate request for a supplemental appropriation is being presented to City Council for approval to utilize the grant funds in accordance with the CDBG-DR Resiliency Planning Grant Agreement (“CDBG-DR Grant Agreement”), attached hereto as “Exhibit A;”

WHEREAS, governmental entities 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; and

WHEREAS, the Loveland City Council desires to approve the CDBG-DR Grant Agreement on behalf of the City.

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

Section 1. That the CDBG-DR Resiliency Planning Grant Agreement for project CDBG-DR P16-025 (“CDBG-DR Grant Agreement”) between the Colorado Department of Local Affairs and the City of Loveland is hereby approved.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to modify the CDBG-DR Grant 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 is authorized and directed to execute the CDBG-DR Grant Agreement on behalf of the City of Loveland.

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

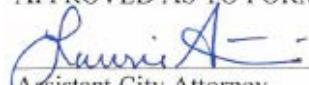
ADOPTED this 4th day of October, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Lauri A.
Assistant City Attorney

CDBG DR P16-025 – Loveland Big Thompson Corridor Master Plan

CMS #92596

**COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER
RECOVERY (CDBG-DR)
RESILIENCY PLANNING GRANT AGREEMENT**

Between

**STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS**

And

CITY OF LOVELAND

Summary	
Award Amount: <u>\$249,700.00</u>	
<u>Agreement Identification:</u>	
Contract Encumbrance #:	<u>F7DR2P16025</u> (<i>DOLA's primary contract identification #</i>)
Contract Management System #:	<u>92596</u> (<i>State of Colorado's contract tracking #</i>)
<u>Project Information:</u>	
Project/Award Number:	<u>CDBG-DR P16-025</u>
Project Name:	<u>Loveland Big Thompson Corridor Master Plan</u>
Performance Period:	Start Date: End Date: <u>January 31, 2018</u>
Brief Description of Project / Assistance:	<u>The City of Loveland will develop a detailed multi-objective river corridor plan.</u>
<u>Program & Funding Information:</u>	
Program Name	<u>Community Development Block Grant Disaster Recovery (CDBG-DR)</u>
Funding source:	<u>Federal Funds</u>
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds):	<u>14.269</u>

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EXHIBIT G – PROJECT PERFORMANCE PLAN	

1. PARTIES

This Agreement (hereinafter called “**Grant**”) is entered into by and between the **City of Loveland** (hereinafter called “**Grantee**”), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Local Government (hereinafter called the “**State**” or “**DOLA**”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “**Effective Date**”). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to (*see checked option(s) below*):

- A. The Effective Date.
- B. The Effective Date; provided, however, that all Project costs, if specifically authorized by the federal funding authority, incurred on or after March 1, 20XX, may be submitted for reimbursement as if incurred after the Effective Date.
- C. insert date for authorized Pre-agreement Costs (as such term is defined in §4), if specifically authorized by the funding authority. Such costs may be submitted for reimbursement as if incurred after the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in CRS §24-32-106 and funds have been budgeted, appropriated and otherwise made available pursuant to the Disaster Relief Appropriations Act of 2013 (Pub. L. 113-2) and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

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 Grant.

C. Purpose

The purpose of this Grant is described in **Exhibit B**.

D. References

All references in this Grant 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. Beneficiary

“Beneficiary” shall have the meaning given in **Exhibit B**.

B. Budget

“Budget” means the budget for the Project and/or Work described in **Exhibit B**.

C. Closeout Certification

“Closeout Certification” means the Grantee’s certification of completion of Work submitted on a form provided by the State.

D. Evaluation

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in **§6, Exhibit B** and Project Performance Plan.

E. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

- i. Exhibit A (Applicable Laws)
- ii. Exhibit B (Statement of Project/Budget)
- iii. Exhibit C (Option Letter)
- iv. Exhibit D (Supplemental Provisions for Federal Funding Accountability and Transparency Act of 2006 (FFATA))
- v. Exhibit E (FFATA Data Report Form)
- vi. Exhibit F (Procedure to Prevent Duplication of Benefits)
- vii. Exhibit G (Project Performance Plan)

F. Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

G. Grant

“Grant” means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

H. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

I. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

J. Pay Request(s)

“Pay Request(s)” means the Grantee’s payment request(s) for Work submitted on form(s) provided by the State and including all supporting documentation (including invoices) and as specified in **Exhibit B**.

K. Pre-agreement costs

“Pre-agreement costs,” when applicable, means the costs incurred on or after the date as specified in §2 above, and prior to the Effective Date of this Grant. Such costs shall have been detailed in Grantee’s grant application and specifically authorized by the State and incorporated herein pursuant to **Exhibit B**.

L. Project

“Project” means the project described in **Exhibit B**, which includes the Work.

M. Project Closeout

“Project Closeout” means the submission by the Grantee to the State of an actual final Pay Request, a final Status Report and a Closeout Certification.

N. Project Performance Plan

“Project Performance Plan” means the milestones, performance goals and timelines for the Project identified in the project performance plan which is attached to this Grant.

O. Program

“Program” means the grant program specified on the first page of this Grant that provides the funding for this Grant.

P. Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6, Exhibit B** and Project Performance Plan.

Q. Services

“Services” means the required services to be performed by Grantee pursuant to this Grant.

R. Status Report(s)

“Status Report(s)” means the Grantee’s status report(s) on the Work submitted on form(s) provided by the State.

S. Subcontractor

“Subcontractor” means third-parties, if any, engaged by Grantee to carry out specific vendor related Services and Goods.

T. Subgrantee

“Subgrantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations. Subgrantee is bound by the same overall programmatic and grant requirements as Grantee.

U. Subject Property

“Subject Property” means the real property, if any, for which Grant Funds are used to construct, or rehabilitate.

V. Work

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit B**, including the performance of the Services and delivery of the Goods.

W. Work Product

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

5. TERM**A. Initial Term-Work Commencement**

The Parties’ respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on **January 31, 2018** unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Grantee as provided in **§16**, may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement

Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF PROJECT

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit B**. Except as specified in §2 above, the State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

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

C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee's or Subgrantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is **\$249,700.00 (TWO HUNDRED FORTY-NINE THOUSAND SEVEN HUNDRED AND XX/100 DOLLARS)**, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in Statement of Project/Budget.

B. Payment

i. Payments

Any payment allowed under this Grant shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall not pay interest on Grantee invoices. The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant 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 fully appropriated, or otherwise become unavailable for this Grant, the State may immediately terminate this Grant in whole or in part to the extent of funding reduction without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee,

may be recovered from Grantee by deduction from subsequent payments under this Grant or other grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

v. Retroactive Payments

If specified in **§2**, the State shall pay Grantee for costs or expenses incurred or performance by the Grantee prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules and regulations applicable to the Work provide for such retroactive payments to the Grantee. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit B**. Modifications to uses of such Grant Funds shall be made in accordance with **Exhibit B**. If an option letter is required for a Project Budget Line Item adjustment, Minor Budget Adjustment or True-Up Budget Proposal (as such terms are defined in **Exhibit B**), the State shall provide written notice to Grantee in a form substantially equivalent to **Exhibit C** (each an “**Option Letter**”). If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

D. Other Funds

Grantee shall provide other funds in accordance with **Exhibit B**.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this **§8** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§19**, if applicable.

A. Performance, Progress, Personnel, and Funds

State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee’s performance and the final status of Grantee’s obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit B** and the Project Performance Plan.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee’s ability to perform its obligations hereunder, Grantee 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’s principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of DOLA.

C. Noncompliance

Grantee’s failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of funds and/or termination as provided under this Grant.

D. Subgrants/Subcontracts

Copies of any and all subgrants and subcontracts entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative. Any and all subgrants and subcontracts entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants and subcontracts be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee 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. Grantee shall maintain such records (the “**Record Retention Period**”) until the last to occur of the following:

- (i) a period of five years after the State's CDBG –DR grant is completed or terminated and closed out with HUD,
- (ii) for such further period as may be necessary to resolve any pending matters, or
- (iii) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved.

B. Inspection

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

C. Monitoring

- i. Grantee.** Grantee shall permit the State, the federal government (if Grant Funds include federal funds), and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant 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 monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.
- ii. Subgrantee/Subcontractor.** Grantee shall monitor its Subgrantees and/or Subcontractors, if any, during the term of this Grant. Results of such monitoring shall be documented by Grantee and maintained on file.

D. Final Audit Report

Grantee shall provide a copy of its audit report(s) to DOLA as specified in **Exhibit B**.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this **§10** 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.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and 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 Grantee shall be immediately forwarded to the State's principal representative. Except as otherwise provided in this Grant, Grantee shall keep all tenant, patient and offender information confidential.

B. Notification

Grantee shall notify its agent, employees, Subgrantees, 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 Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee 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 Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall, to the extent permitted by law, 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 Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this **§10**.

E. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

DOLA is not a covered entity under HIPAA for purposes of this Grant. If the Grantee is a covered entity under HIPAA, it shall comply with the requirements of HIPAA, and in all instances shall comply with all other federal and state laws protecting the confidentiality of patient information.

11. CONFLICTS OF INTEREST

Grantee 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 Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee 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 Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee's Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant 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 Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, etc.

Grantee 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. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, 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 Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

D. Exclusion, Debarment and/or Suspension

Grantee represents and warrants that Grantee, or its employees, Subgrantees or authorized Subcontractors, are not presently excluded from participation, debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise ineligible to participate in a federal payment program by any federal or State of Colorado department or agency. If Grantee, Subgrantee, or any of their respective subcontractors, employees or authorized agents, is excluded from participation, or becomes otherwise ineligible to participate in any such program during the term of this Grant, Grantee will notify the State in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to Grantee, the State, in its sole discretion, reserves the right to immediately cease contracting with Grantee and terminate this Grant without penalty.

13. INSURANCE

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

A. Grantee

i. Public Entities

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

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in **§13(B)** with respect to Subgrantees that are not "public entities".

B. Grantees, Subgrantees and Subcontractors

Grantee shall require each subgrant with a Subgrantee and each contract with a Subcontractor, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Workers' Compensation

Workers' Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee, Subgrantee and Subcontractor 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 contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire.

iii. Automobile Liability

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

iv. Malpractice/Professional Liability Insurance

This section shall | shall not apply to this Grant.

Grantee, Subgrantees and Subcontractors shall maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, written on an occurrence form that provides coverage for its work undertaken pursuant to this Grant. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Grant and for at least two years beyond the completion and acceptance of the work under this Grant, or, alternatively, a two year extended

reporting period must be purchased. The Grantee, Subgrantee or Subcontractor shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from such party's performance of professional services under this Grant, a subcontract or subgrant.

v. Umbrella Liability Insurance

For construction projects exceeding \$10,000,000, Grantee, Subgrantees and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in §13(B)(i)-(iv) above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in subsections above may be satisfied by the Grantee, Subgrantee and Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned. The insurance shall have a minimum amount of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

vi. Property Insurance

This subsection shall apply if Grant Funds are provided for the acquisition, construction, or rehabilitation of real property.

Insurance on the buildings and other improvements now existing or hereafter erected on the premises and on the fixtures and personal property included in the Subject Property against loss by fire, other hazards covered by the so called "all risk" form of policy and such other perils as State shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Properties, and to be in an amount at least equal to the replacement cost value of the Subject Property. Grantor will at its sole cost and expense, from time to time and at any time, at the request of State provide State with evidence satisfactory to State of the replacement cost of the Subject Property.

vii. Flood Insurance

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance identified in §vi above or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

viii. Builder's Risk Insurance

This subsection shall apply if Grant Funds are provided for construction or rehabilitation of real property.

Grantee, Subgrantee and/or Subcontractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial construction/rehabilitation costs, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the property owner has an insurable interest in the property.

- a) The insurance shall include interests of the property owner, Grantee, Subgrantee, Subcontractors in the Project as named insureds.
- b) All associated deductibles shall be the responsibility of the Grantee, Subcontractor and Subgrantee. Such policy may have a deductible clause but not to exceed \$10,000.
- c) Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Grantee's, Subgrantee's and Subcontractor's services and expenses required as a result of such insured loss.

- d) Builders Risk coverage shall include partial use by Grantee and/or property owner.
- e) The amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, Subgrantee and Subcontractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

ix. Pollution Liability Insurance

If Grantee and/or its Subgrantee or Subcontractor is providing directly or indirectly work with pollution/environmental hazards, they must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Grantee's Subcontractor and/or Subgrantee.

C. Miscellaneous Insurance Provisions

Certificates of Insurance and/or insurance policies required under this Grant shall be subject to the following stipulations and additional requirements:

- i. **Deductible.** Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Grantee, its Subgrantees or Subcontractors,
- ii. **In Force.** If any of the said policies shall fail at any time to meet the requirements of the Grant as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Grant, the Grantee, its Subgrantee and its Subcontractor shall promptly obtain a new policy.
- iii. **Insurer.** All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to Grantee,

iv. Additional Insured

Grantee and the State shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of Grantee, Subgrantees and Subcontractors shall be primary over any insurance or self-insurance program carried by Grantee 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 Grantee and Grantee shall forward such notice to the State in accordance with **§16** (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. Subrogation Waiver

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

D. Certificates

Grantee, Subgrantee and Subcontractor shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant or of their respective subcontract or subgrant. No later than 15 days prior to the expiration date of any such coverage, Grantee, Subgrantee and Subcontractor shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, subgrant or subcontract, Grantee, Subgrantee and Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, 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. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute 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 §16. 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 §15. 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 Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

Except for the remedies listed in §15(C) which do not require a notice and cure period for Grantee's breach and may be immediately exercised by the State, if Grantee is in breach under any provision of this Grant or if the State terminates this Grant pursuant to §15(B), the State shall have the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B), if applicable. 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 Grantee 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 Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant 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. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee 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 Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee'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 Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the

State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee 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. Grantee 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 Grant 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 Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant 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 Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made.

Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Untimely Expenditure of Funds

The CDBG-DR appropriation (the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2)) requires that all funds must be fully expended within 24 months of the date HUD (as defined in Exhibit B) obligates the State's allocation. HUD requires that the State implement procedures to determine timely expenditures of Grantees. To fulfill this requirement, the State will track performance measures and expenditures as described in the Statement of Project/Budget, **Exhibit B**, and in the Project Performance Plan (collectively, the "Milestones"). If, at any time during the term of this Grant, State determines the Project is not proceeding timely in accordance with its Milestones, State may elect to take one or more of the following actions, which shall not be deemed a breach of its obligations hereunder:

i. Technical Assistance. State may elect to conduct on-site monitoring and work closely with Grantee to until the Project is back on schedule. State shall provide prior written notice to Grantee if its elects to conduct on-site monitoring, which shall be conducted during normal business hours and shall not unduly disrupt Grantee's business operations.

ii. Terminate Grant. The State, at its option, may terminate this entire Grant if Grantee has failed to properly meet the Project's Milestones. Grantee shall continue performance of this Grant to the extent not terminated, if any.

a) Method and Content.

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

b) Obligations and Rights.

Upon receipt of a termination notice and to the extent specified in such termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

c) Deobligation of Grant Funds; Repayment by Grantee of Received Funds.

If this Grant is terminated by the State pursuant to this §15(C)(ii), State shall de-obligate any remaining unexpended Grant Funds for the Project, and shall provide notice to Grantee that such Project has failed to meet its Milestones and the corresponding HUD timeliness requirements and that as a result, Grantee is required to immediately return to the State any previously received Grant Funds for the Project.

D. Remedies Not Involving Termination

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

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee 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 Grantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee'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 Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee 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.

16. NOTICES and REPRESENTATIVES

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

A. State:

Chantal Unfug, Division Director Division of Local Government Colorado Department of Local Affairs 1313 Sherman Street, Room 521 Denver, Colorado 80203 Email: chantal.unfug@state.co.us
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B. Grantee:

Stephen C. Adams, City Manager
 City of Loveland
 500 E. 3rd Street
 Loveland, CO 80537
 Email: steve.adams@cityofloveland.org

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

This section shall | shall not apply to this Grant.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the non-exclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's non-exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works.

18. 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 GIA. 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 is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is greater than \$100,000 either on the Effective Date or at anytime thereafter, this **§19** applies.

Grantee 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 Grants and inclusion of Grant performance information in a statewide Contract Management System.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract 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 Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee'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 Grant term. Grantee 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 Grantee 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 the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from receiving future grants and bidding on future contracts. Grantee 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 Grantee, by the Executive Director, upon a showing of good cause.

20. RESTRICTION ON PUBLIC BENEFITS

This section shall | shall not apply to this Grant.

Grantee must confirm that any individual natural person is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the applicant to:

- A. Produce an identification document in accordance with §2.1.1 through §2.1.3 of Colorado Department of Revenue's Rule #1 CCR 201-17, Rule for Evidence of Lawful Presence, as amended.
- B. Execute an affidavit, Residency Declaration, stating
 - i. That he or she is a United States citizen or legal permanent resident; or
 - ii. That he or she is otherwise lawfully present in the United States pursuant to federal law.

Notwithstanding the foregoing, to the extent that there is any conflict with the provisions above or those set forth in the Residency Declaration and any provision of federal law, the provisions of federal law shall prevail.

21. GENERAL PROVISIONS

A. Assignment and Subgrants

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

B. Binding Effect

Except as otherwise provided in **§21(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 Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

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

E. Entire Understanding

This Grant 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 additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall, to the extent permitted by law, 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 Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

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

H. List of Selected Applicable Laws

At all times during the performance of this Grant, Grantee shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended, including without limitation those set forth on **Exhibit A**, Applicable Laws. Grantee also shall require compliance with such laws and regulations by subgrantees under subgrants permitted by this Grant.

I. Use Covenants, Deed Restrictions and Conservation Easements

This section shall | shall not apply to this Grant.

For Subject Property that is owned by Grantee upon execution of this Grant, Grantee shall record a Use Covenant, in the form provided by the State, with the county in which the property resides as soon as reasonably practicable after execution of this Grant. For Subject Property acquired by Grantee using Grant Funds, Grantee shall record a Use Covenant, in the form provided by the State, with the county in which the property resides as soon as reasonably practicable after acquisition of such property. For Subject Property acquired by Grantee using Grant Funds for flood mitigation, Grantee shall record a Deed Restriction and/or Conservation Easement, in the forms provided by the State, with the county in which the property resides as soon as reasonably practicable after acquisition of such property.

J. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment hereto, 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 MODIFICATION OF CONTRACTS - TOOLS AND FORMS. Changes to the Grant shall be authorized to be approved by the following State or DOLA parties:

- a) Approval by Division Director
The Division Director of DOLA or his delegate shall have authority to approve changes to the Responsible Administrator and Key Personnel specified in **§6.1 of Exhibit B** and the Principal Representative in **§16**.
- b) Approval by DOLA Controller
The DOLA Controller shall have authority to approve all changes to the Grant which are not reserved to the Division Director above.

ii. By Operation of Law

This Grant 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 Grant on the effective date of such change, as if fully set forth herein.

K. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Exhibit D (Supplemental Provisions for Federal Funding Accountability and Transparency Act of 2006)
- ii. Colorado Special Provisions (§22 of the main body of this Grant)
- iii. Exhibit B (Statement of Project/Budget)
- iv. The provisions of the main body of this Grant (excluding §22, Colorado Special Provisions and the cover page of this Grant)
- v. Exhibit F (Procedure to Prevent Duplication of Benefits)
- vi. Exhibit G (Project Performance Plan)
- vii. Exhibit A (Applicable Laws)
- viii. Any executed Option Letter
- ix. The cover page of this Grant
- x. Any document incorporated by reference which is not included in any item listed in (i) through (ix) above

L. Severability

Provided this Grant 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.

M. Survival of Certain Grant Terms

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

N. 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. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

O. Third Party Beneficiaries

Enforcement of this Grant 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 Grant are incidental to the Grant, and do not create any rights for such third parties.

P. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, 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.

Q. CORA Disclosure

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

22. COLORADO SPECIAL PROVISIONS

A. The Special Provisions apply to all Grants except where noted in *italics*.

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

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

ii. 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.

iii. GOVERNMENTAL IMMUNITY.

No term or condition of this Grant 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.

iv. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee 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 Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee 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.

v. COMPLIANCE WITH LAW.

Grantee 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.

vi. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. 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 Grant, to the extent capable of execution.

vii. 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 Grant or incorporated herein by reference shall be null and void.

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

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

ix. 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 Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

x. 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.

xi. PUBLIC GRANTS 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] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the Subgrant if a Subgrantee 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 Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

xii. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.

Grantee, 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 Grant.

(Colorado Special Provisions - effective 1/1/09)

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SIGNATURE PAGE**THE PARTIES HERETO HAVE EXECUTED THIS GRANT**

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

GRANTEE
City of Loveland

By: Stephen C. Adams

Title: City Manager

*Signature

Date: _____

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
DEPARTMENT OF LOCAL AFFAIRS

By: _____
Irv Halter, Executive Director

Date: _____

PRE-APPROVED FORM CONTRACT REVIEWER

By: _____
Andy Hill, Community Development Office Program Manager

Date: _____

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Janet Miks, CPA, Controller Delegate

Date: _____

EXHIBIT A – APPLICABLE LAWS

Laws, regulations, and authoritative guidance incorporated into this Grant include, without limitation:

1. Housing and Community Development Act of 1974, Pub L, No. 93-383, as amended.
2. 24 CFR Part 570, Community Development Block Grants.
3. State of Colorado Community Development Block Grant (CDBG) Guidebook, available on DOLA's website.
4. Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub L, No 93-288, as amended.
5. 24 CFR Parts 0-91 Housing and Urban Development.
6. 24 CFR Subtitle B, Chapter I – XXV, HUD.
7. 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.
8. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
9. CRS §29-1-601 et seq., Local Government Audit Law.
10. CRS §24-32-106 – Powers of the director provision.
11. CRS §24-32-705(1)(i) – DOH ability to accept and receive grants
12. 16 USC §469 et seq., Historic Preservation
13. 2 USC Chapter 26, Disclosure of Lobbying Activities.
14. 5 USC §552a, Public Information; agency rules, opinions, order, records and proceedings (Privacy Act 1974).
15. 8 USC §1101-1646, Immigration and Nationality.
16. 12 USC §§1701- 1701z-15, National Housing Act.
17. 15 USC Chapter 49, Fire Prevention and Control.
18. 16 USC Chapters 1-92, Conservation.
19. 16 USC §469 et seq., Historic Preservation
20. 16 USC §1531 et seq., Endangered Species
21. 16 USC §1271 et seq., Wild and Scenic Rivers
22. 20 USC Chapter 38, Discrimination Based on Sex or Blindness (Title IX, as amended, Education Amendment of 1972).
23. 29 USC Chapter 8, §§201, 206, et seq., as amended, Labor.
24. 29 USC Chapter 14 Age Discrimination in Employment.
25. 29 USC Chapter 16, §§793-794, et seq., as amended, Vocational Rehabilitation and Other Rehabilitation Services.
26. 31 USC Subtitles I – VI, Money and Finance.
27. 40 USC Subtitle I, Federal Property and Administrative Services.
28. 40 USC Subtitle II, Public Buildings and Works.
29. 40 USC §§ 3141 – 3148, Wage Rate Requirements (Davis Bacon).
30. 40 USC §§ 3701 – 3708, Contract Work Hours and Safety Standards Act.
31. 40 CFR Parts 1500-1508, Council on Environmental Quality (Regulations Implementing NEPA).
32. 41 CFR Chapter 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
33. 41 USC § 6502, et seq., Walsh-Healey Public Contracts Act.
34. 41 USC Chapter 81, Drug Free Workplace.
35. 42 USC Chapter 6A, Public Health Service.
36. 42 USC Chapter 21, Civil Rights.
37. 42 USC Chapter 45 Fair Housing.
38. 42 USC Chapter 50, National Flood Insurance.
39. 42 USC Chapter 55, National Environmental Policy.
40. 42 USC Chapter 63, Lead-Based Paint Poisoning Prevention.

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41. 42 USC Chapter 69, Community Development.
42. 42 USC Chapter 76, Age Discrimination in Federally Assisted Programs.
43. 42 USC Chapter 85, Air Pollution Prevention and Control.
44. 42 USC Chapter 89, Congregate Housing Services.
45. 42 USC Chapter 126, Equal Opportunity for Individuals with Disabilities.
46. 42 USC Chapter 130, National Affordable Housing.
47. 42 USC §§300f – 300j-26, Safe Drinking Water
48. 49 CFR Part 24, as amended, Uniform Relocation Assistance and Real Property for Federal and Federally Assisted Programs.
49. CRS §24-34-301, et seq., Colorado Civil Rights Division.
50. CRS §24-34-501, et seq. Housing Practices.
51. CRS §24-75-601 et seq., Legal Investment of Public Funds.
52. Executive Order 11063, HUD Equal Opportunity in Housing, as amended by Executive Order 12259, Leadership and Coordination of Fair Housing in Federal Programs.
53. Executive Order 11593, Protection and Enhancement of the Cultural Environment.
54. Executive Order 11988, Floodplain Management.
55. Executive Order 11990, Protection of Wetlands
56. Public Law 110-289, Housing and Economic Recovery Act of 2008.
57. Public Law 111-203, Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.
58. Compliance with all applicable standards, orders, or requirements issued pursuant to section 508 of the Clean Water Act (33 USC §1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Applicable to contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
59. 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, 89 Stat. 871). [53 FR 8068, March 11, 1988, as amended at 60 FR 19639, Apr. 19, 1995].

EXHIBIT B – STATEMENT OF PROJECT/BUDGET (SOP)

1. GENERAL DESCRIPTION OF THE PROJECT.

1.1 Purpose. The Colorado Department of Local Affairs (“**DOLA**”) is leading Colorado’s housing and economic recovery effort in response to severe flooding that occurred September 9 through September 15, 2013. On September 14, 2013, President Barack Obama signed FEMA-DR-4145-CO; subsequent amendments to date have declared 18 counties as a Presidential Disaster Area: Adams, Arapahoe, Boulder, Clear Creek, Crowley, Denver, El Paso, Fremont, Gilpin, Jefferson, Lake, Larimer, Lincoln, Logan, Morgan, Sedgwick, Washington, and Weld. On December 16, 2013, the U.S. Department of Housing and Urban Development (“**HUD**”) published a notice in the Federal Register at Fed. Reg. 76,154 – 76,160 (December 16, 2013), which allocates Community Development Block Grant-Disaster Recovery (“**CDBG-DR**”) funds to the State of Colorado (the “**Colorado Notice**”). Boulder, Larimer, and Weld counties have been designated as the “most impacted and distressed” counties in the Colorado Notice, and 80% of the CDBG-DR allocation provided under the Colorado Notice must address unmet needs within these three counties. As a requirement of funding, in cooperation with impacted communities, DOLA developed and HUD approved an action plan (the “**Initial Action Plan**”), which assessed the short term and long term housing, infrastructure, and economic needs in the flood-impacted areas, and developed a strategy for addressing the needs. The Initial Action Plan shall be amended as necessary and available on DOLA’s website (collectively, the “**Action Plan**”). This Project implements an element of the resiliency planning component of the Action Plan for authorized disaster recovery activities (collectively, “**Authorized Activities**”). Additional requirements for Authorized Activities are published in notices in the Federal Register at Fed. Reg. 14,329-14,349 (March 5, 2013) (the “**March Notice**”) and Fed. Reg. 23,578-23,581 (April 19, 2013) (the “**April Notice**”). The Colorado Notice, March Notice and April Notice are collectively, the “**Notices**”.

1.2 Action Plan Amendment #1 Substantial Amendment for the Second Allocation. For performance of projects funded by federal funds committed as a result of the Action Plan Amendment #1 Substantial Amendment for the Second Allocation of CDBG-Disaster Recovery, approved November 10, 2014, this provision also applies in addition to the above: a notice in the Federal Register at Fed. Reg. 31,964 – 31,973 (June 3, 2014). Action Plan Amendment #1 added Teller County to the list of declared counties and Federally declared wildland fire events to eligible events.

1.3 Project Description. The City of Loveland will develop a detailed multi-objective river corridor plan using the recent Big Thompson River Restoration Master Plan and other general planning efforts as its starting point, then taking the Plan to a more detailed and implementable level. The Loveland reaches on the Big Thompson River generally run from the Morey Wildlife Reserve (Reach 29) on the west, downstream to the Kaufman property at CR-9E (Reach 38). These reaches consist of approximately 9 miles of the Big Thompson River.

1.3.1 The Big Thompson Corridor Master Plan will:

- a)** Provide a long term vision for the river corridor and recommend a process for how the City should see that vision through to fruition.
- b)** Develop a detailed analysis of proposed projects to determine which projects, particularly from a flood mitigation and ecological restoration perspective, provide cost effective benefits.

- c) Analyze resiliency metrics and benefits for proposed projects related to existing infrastructure, public and private properties, and local businesses.
- d) Determine which projects would be feasible, assuming available funding, competing interests, objectives, and constraints.
- e) Provide & Prioritize recommendations on a per reach basis for how the City can best restore the river corridor to a more naturally functioning, healthy river system that is a better public amenity and more resilient to future floods.
- f) Develop project recommendations towards improved water quality particularly from existing storm sewer outfalls.
- g) Provide a conceptual design and construction cost estimate for each recommended project.
- h) Complete an implementation plan recommending prioritization of the various projects.
- i) Connect to, and fit within, the City's existing planning efforts such as the Highway 287 Corridor Plan, the Comprehensive Plan Update, the Stormwater Master Plan, the 2035 Transportation Master Plan, and other adopted planning documents.
- j) Recommend how the City of Loveland fund mechanisms would best allow the City to implement the proposed plan.
- k) Recommend how the City of Loveland:
 - 1. Could better capitalize on the fact that a river corridor runs through it.
 - 2. Suggest what restoration efforts, property acquisitions, open space connections, recreational opportunities, strategic alliances, changes to river management and land use regulations, etc. should be pursued.
 - 3. Should best manage the river corridor.

1.3.2 The City of Loveland and selected Consultant will work closely with, and incorporate comments from, the DOLA/CWCB Technical Assistance team and CWCB staff during the development of the Master Plan. The primary deliverable will be a River Master Plan document consisting of a report, drawings, recommendations, costs, and an implementation plan which will be provided electronically to the State.

- 1.4 Responsibilities.** Grantee shall be responsible for the completion of the Project, administration of this Grant, and to provide required documentation to the State as specified herein.
- 1.5 Service Area.** The performance of the Services for this Grant shall be located in approximately 9 miles of the Big Thompson River corridor within the city limits and growth management area of the City of Loveland. (“Service Area”).

2. DEFINITIONS

- 2.1 Advance Payment.** “Advance Payment” means the use of Grant Funds to pay for Work that has been completed and invoiced to DOLA, but for which the Grantee has not paid such consultant invoices.
- 2.2 Beneficiary.** "Beneficiary" for this Project is (check one):

the persons and/or households who are the end users that benefit from this Project which is funded with Grant Funds.

the area that benefits from this Project which is funded with Grant Funds.

2.3 Business Day. “Business Day” means a day during which the State is open for business, excluding weekends and legal public holidays.

2.4 CDBG Guidebook. “CDBG Guidebook” means the DOLA CDBG Guidebook. It is updated periodically and available on DOLA’s website.

2.5 Conservation Easement. “Conservation Easement” means the conservation easement that limits uses of, and lists requirements for, the real property which is part of the Project and which may be attached. Conservation Easements only apply if they are attached to this Grant.

2.6 Cost Savings. “Cost Savings” means the Project budget amount less the amount expended to complete the Project Work. Cost Savings are determined at the time the Project Work is completed and the final payment request is submitted by the Grantee to the State. Cost Savings do not result in payment by the State to Grantee above actual expenditures beyond the required ratio, but de-obligates unexpended Grant Funds. The State shall provide written notice to Grantee verifying any Cost Savings.

2.7 Cumulative Basis. “Cumulative Basis” means a cumulative or increasing accumulation of additional expenses within a specific Project Budget Line Item starting with the initial amount approved in §4.2, Project Budget as of the Effective Date. Such starting point will reset with an amendment to this Grant approved by the DOLA Controller changing the Project Budget Line Item amount or the Project Budget Line Item has been amended through an approved True-up Budget Proposal.

2.8 Deed Restriction. “Deed Restriction” means the deed restriction that may be attached and which limits uses of Subproject real property. Deed Restrictions only apply if they are attached to this Grant.

2.9 Eligible Expenses. “Eligible Expenses” are the costs of performing approved and eligible Subproject activities pursuant to this Exhibit. Such Eligible Expenses are specified in the Action Plan and must comply with all CDBG-DR requirements, State Fiscal Rules, this Exhibit and the Grant Agreement.

2.10 HUD. “HUD” is the Department of Housing and Urban Development.

2.11 Low- and Moderate-Income Persons. This subsection is, or is not applicable.

“Low- and Moderate-Income Persons” for this Project are (check one):

Those persons who are members of families whose incomes are at or below 80% of area median income, determined by HUD and which shall be posted by HUD on its website, or

Those persons who reside in areas that have been determined by HUD, based upon the 2000 Census data, to be at or below 80% of area median income areas, as further specified in the National Objective in §3.2 below, or

Those persons belonging to clientele groups (as such term is defined by HUD) who are presumed by HUD to be at or below 80% of area median income, as further specified in the National Objective in §3.2 below, or

Those persons who are members of families whose incomes are at or below 80% of area median income as determined by utilizing an income survey methodology approved by HUD.

2.12 Lump Sum Budgeting. "Lump Sum Budgeting" means a very general, non specific budget for a multi-component project that leaves all discretion with the recipient of the grant for use of grant funds. For purposes of this definition, "component" means a distinct period or stage in a sequence of events to complete a project. For example, a multi-component construction project not using Lump Sum Budgeting may include separate line items for Real Property Acquisition, Design, Utilities, and Construction. A multi-component construction project using Lump Sum Budgeting may only include a line item for Construction. Lump Sum Budgeting is not permitted under this Grant.

2.13 National Objective. "National Objective" means those objectives approved by HUD and listed in §3.2 of this **Exhibit B**.

2.14 Other Funds. "Other Funds" means funding provided by other federal, state, local or private sources for the Project. Other Funds are good faith estimates and do not include Grant Funds.

2.15 Pre-agreement Costs. "Pre-agreement Costs" are those costs specifically authorized as pre-agreement costs by DOLA and which are specifically authorized by the federal funding source.

2.16 Project Budget Line Item. "Project Budget Line Item" means each line for Project activities specified and approved in the Project Budget in **§4.2**.

2.17 Project Performance Plan. "Project Performance Plan" means the milestones, performance goals and timelines for the Project identified in **Exhibit G**.

2.18 Program Income. "Program Income" shall have the meaning given at §VI.17.a. of the "March Notice" and 24 CFR §570.500(a).

2.19 Substantial Completion. "Substantial Completion" for the Project shall have the meaning given in **§5.7** of this Exhibit and the Project Performance Plan.

2.20 Use Covenant. "Use Covenant" means the use covenant that limits uses of Project real property, and which may be attached. Use Covenants only apply if they are attached to this Grant.

3. DELIVERABLES

3.1 Outcome. The final outcome of this Project is to develop a Plan integrating disaster recovery principles into the Loveland Big Thompson Corridor Master Plan in accordance with this Grant and Grantee's CDBG-DR grant application.

3.2 National Objective. Pursuant to 24 CFR §570.208 (Criteria for national objectives), CDBG funds expended for planning and administrative costs under 24 CFR §570.205 and §570.206 are considered to address the national objectives. This Project is considered to address national objectives because all Grant Funds are expended for planning and/or capacity building costs under 24 CFR §570.205.

3.3 Project Performance Plan. The Parties shall comply with the milestones, performance goals and timelines in the Project Performance Plan ("Exhibit G").

4. FUNDING

The State provided funds shall be limited to the amount specified under the "Grant Funds" column of **§4.2**, Project Budget, below.

4.1 Other Funds. Grantee shall provide the required Other Funds as listed in the "Other Funds" column of **§4.2** below during the term of this Project.

4.2 Project Budget.

Budget Line	Total Cost	Grant Funds	Other Funds	Other Fund Source
Consultant Services and Project Delivery Expenses	\$249,700.00	\$249,700.00	\$0	None
Total	\$249,700.00	\$249,700.00	\$0	None

If administrative expenses are included as Eligible Expenses, there must be a separate Project Budget Line Item for such expenses. Project Delivery Expenses must comply with Cost Principles 2 CFR 200.

4.3 Project Budget Line Item Adjustments. Project Budget Line Item adjustments pursuant to this Section shall not change the total awarded or contracted amount of the Grant Funds for the Project. Increases to Grant Funds for a Project require an amendment. Calculations in §§4.3.1 and 4.3.2 must be made on a Cumulative Basis.

4.3.1 Grantee shall have authority to adjust individual Project Budget Line Items without approval of the State up to an aggregate of 10% of such Project Budget Line Item from which the funds are moved. Such authority shall not allow Grantee to transfer to or between administration budget lines (E.g. development fees, overhead and project delivery). Grantee shall send written notification of allowed adjustments to the State within 30 days of such adjustment.

4.3.2 All changes to individual Project Budget Line Items which are in excess of 10% but less than 24.99% of such Project Budget Line Item from which the funds are moved shall require prior written approval of the DOLA Controller. Grantee shall submit a written request for changes pursuant to this Section to DOLA. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If DOLA approves such request, DOLA shall unilaterally execute an Option Letter accepting such request pursuant to §7(C) of the Grant Agreement. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change.

4.3.3 All changes to individual Project Budget Line Items which are in excess of 24.99% of such Project Budget Line Item from which the funds are moved shall require a prior written amendment executed by the Grantee and DOLA pursuant to §21(J) of the Grant Agreement. Grantee shall submit a written request for changes pursuant to this Section to DOLA. Such request shall include the amount of such request, the reason for the request and any necessary documentation. Grantee is not authorized to perform until a bi-lateral amendment is fully executed by the DOLA Controller accepting such change.

4.3.4 Signature Authority. All Grantee notices and requests submitted to DOLA pursuant to this §4.3 (each a “**Line Item Proposal**”), must be signed and dated by a person authorized to bind the Grantee to such Line Item Proposal.

4.4 Overall Budget Adjustments.

4.4.1 All changes to the overall Project Budget which are less than 24.99% (each a “**Minor Budget Adjustment**”) shall require prior written approval of the DOLA Controller. Grantee’s Responsible Administrator shall submit a written request for changes pursuant to this Section to DOLA. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If DOLA approves such request, DOLA shall unilaterally execute an Option Letter accepting such request pursuant to §7(C) of the Grant Agreement. Grantee is not authorized to

perform until Grantee receives an executed Option Letter accepting such change. Minor Budget Adjustments shall not increase the Grant Funds.

4.4.2 Exception for Setting Final Initial Budget. Within 30 days of bid opening for its selection of its prime Subcontractor, Grantee shall submit a written request for changes to the overall Project Budget to revise the initial overall Budget estimate to align it with current market conditions (a “**True-up Budget Proposal**”). Grantee’s Responsible Administrator shall submit a written request for changes pursuant to this Section to DOLA. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If DOLA approves such request, DOLA shall unilaterally execute an Option Letter accepting such request pursuant to **§7(C)** of the Grant Agreement. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change. True-up Budget Proposals shall not increase the Grant Funds. The overall Budget adjustment permitted by this **§4.4.2** is only permitted once under this Grant.

4.4.3 Other Budget Changes. All changes to the overall Project Budget which are in excess of 24.99% shall require a prior written amendment executed by the Grantee and DOLA pursuant to **§21(J)** of the Grant Agreement. Grantee shall submit a written request for changes pursuant to this Section to DOLA. Such request shall include the amount of such request, the reason for the request and any necessary documentation. Grantee is not authorized to perform until a bi-lateral amendment is fully executed by the DOLA Controller accepting such change.

4.4.4 Signature Authority. All Grantee notices and requests submitted to DOLA pursuant to this **§4.4** (each a “**Budget Proposal**”), must be signed and dated by a person authorized to bind the Grantee to such Budget Proposal.

5. PAYMENT

Payments shall be made in accordance with this section and the provisions set forth in **§7** of the Grant Agreement. Grantee’s requests for funds from this Grant shall be for the reimbursement of actual Eligible Expenses.

5.1 Payment Schedule. The State shall make payment to Grantee pursuant to accepted Pay Requests until 95% of Grant Funds have been disbursed: the final 5% shall be disbursed in accordance with **§5.5**.

5.2 Advance Payments. This subsection is, or is not applicable.

DOLA Controller has previously approved in writing Advance Payments for this Project. If Work is subcontracted or subgranted, such Subcontractors and/or Subgrantees are not previously paid, Grantee shall disburse Grant Funds received from the State to such Subcontractor or Subgrantee within three Business Days of receipt. Grantee shall provide DOLA with proof of payment within three Business Days of such payment. Excess funds shall be returned to DOLA.

To maximize the use of Grant Funds, the State shall evaluate Grantee’s expenditure of the Grant Funds for timeliness and compliance with the terms of this Grant and Exhibit. DOLA reserves the right to recapture advanced Grant Funds when Grantee has not or is not complying with the terms of this Grant and/or Exhibit.

5.3 Remittance Address. If mailed, payments shall be remitted to the following address unless changed in accordance with **§16** of the Grant Agreement:

City of Loveland

500 E. Third Street
Loveland, CO 80537

5.4 Interest. If Advance Payments are authorized, Grantee or Subgrantee may keep interest earned from all federal funds received by Grantee or Subgrantee up to \$100 per year (calculated on Grantee's fiscal year) for administrative expenses. All interest earned in excess of \$100 shall be remitted to DOLA.

5.5 Milestones.

Project Activity	Milestone	Target Date*
Request for Proposals	Issue Request for Proposals.	By: 60 days after executed Grant Agreement.
Consultant Selection	Consultant selection.	By: October 15, 2016.
Consultant Services and Project Delivery Expenses	Consultant effort begins.	By: November 1, 2016.
Consultant Services and Project Delivery Expenses	Document analysis, public outreach, preliminary recommendations.	By: May 31, 2017.
Consultant Services and Project Delivery Expenses	Conceptual designs and cost estimates.	By: August 31, 2017.
Consultant Services and Project Delivery Expenses	Draft Big Thompson River Restoration Master Plan.	October 1, 2017.
Consultant Services and Project Delivery Expenses	Final Big Thompson River Restoration Master Plan.	By: December 31, 2017.

*If Target Date for such Milestone(s) is/are not met, the State has the authority to use any remedies stated in the Grant, including, but not limited to, those specified in §15(C) of the Grant Agreement which allow the State, at its sole discretion, to provide technical assistance and/or termination of the Project..

5.6 Quarterly Pay Requests. Beginning the earlier to occur of January 10th, April 10th, July 10th, or October 10th after commencement of Work under this Project and for each quarter thereafter until termination of this Project, Grantee shall submit Pay Requests using a form provided by the State. The State shall pay the Grantee for actual expenditures made in the performance of this Project based on the submission of Pay Requests. The Grantee shall submit Pay Requests setting forth a detailed description and provide documentation (including invoices) of the amounts and types of reimbursable expenses. For months in which there are no expenditures to reimburse, Grantee shall indicate zero (0) in the request. The Pay Request shall contain actual expenditures of Grant Funds incurred in the period by Project Budget Line Item pursuant to §4.2 of this Statement of Project/Budget as well as a projection of all Project Work expected to be accomplished in the following month, including an estimate of Grant Funds to be expended. This report is due within 10 days of the end of the reporting quarter or more frequently at the discretion of the Grantee. See Project Performance Plan for specific submittal dates.

5.7 Final Payment/Substantial Completion. Final payment for this Project shall not be released by DOLA until Grantee has submitted a final Pay Request and achieved substantial completion, which includes completion of the Project Work; completion, submission, and DOLA's acceptance of all interim reports; completion of on-site Project monitoring by DOLA, including approval of all corrective action taken on any identified findings or concerns; and submission by Grantee and acceptance by DOLA of the Project Completion

Report (collectively, “**Substantial Completion**”). For the purposes of this Grant, “completion of the Project Work” means the following :

For planning programs: Completion and submission of the planning document and receipt of final invoicing for such Work completed and as defined in 24 CFR § 570.205.

5.8 Eligible Expenses. Pay Requests shall include only Eligible Expenses in accordance with §4.2. Eligible Expenses do not include administrative expenses.

5.9 Cost Savings. Cost Savings derived while completing the Project shall be (choose one):

split on a pro-rata basis between the State and Grantee

returned to the State

6. ADMINISTRATIVE REQUIREMENTS

These funds will be administered by Grantee, in accordance with the requirements of this Grant, the Action Plan, **Exhibit B** and Project Performance Plan. Grantee shall comply with the administration requirements set forth in the most recent State Community Development Block Grant Guidebook, or such requirements as may be subsequently amended by the State, which shall be available on DOLA’s website.

6.1 Personnel.

6.1.1 Responsible Administrator. Grantee's performance hereunder shall be under the direct supervision of Mr. Chris Carlson, Stormwater/Capital Improvement Manager (chris.carlson@cityofloveland.org), an employee or agent of Grantee, who is hereby designated as the Responsible Administrator of this Subproject.

6.1.2 Other Key Personnel: Brent Worthington, Finance Director (brent.worthington@cityofloveland.org). Such key personnel shall be updated through the approval process in **§6.1.3**.

6.1.3 Replacement. Grantee shall immediately notify DOLA if any Key Personnel cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its Key Personnel, it shall notify DOLA and seek its approval, which shall be at DOLA's sole discretion, as DOLA issued this Grant in part in reliance on Grantee's representations regarding Key Personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what his/her qualifications are, and when the change will take effect. Anytime Key Personnel cease to serve, DOLA, in its sole discretion, may direct Grantee to suspend work on the Subproject until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with **§16** of the Grant Agreement.

6.2 Accounting. Grantee shall maintain properly segregated accounts of Grant Funds, and Other Funds associated with the Project and make those records available to the State upon request. All receipts and expenditures associated with the Project shall be documented in a detailed and specific manner, in accordance with this Exhibit.

6.3 Audit Report. If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant or any other grants/contracts with DOLA, Grantee shall promptly submit the final audit report, including a report in accordance with the Single Audit Act, to:

Department of Local Affairs
 Accounting & Financial Services
 1313 Sherman Street, Room 323
 Denver, CO 80203

Or Email to: dola.audit@state.co.us

6.4 Prevention and Detection of Waste, Fraud, and Abuse. Grantee shall certify that all reported information submitted to State is complete and accurate. Grantee shall work with State staff to review project budgets, financial projections and other supporting documents to ensure that Grant Funds are responsibly expended and are used on projects that are necessary and feasible. Grantee shall allow State, or State's authorized agent, full on-site monitoring including site visits and inspections (if applicable), file review and administrative review to ensure compliance with requirements, no duplication of benefits occurred, that any long-term affordability requirements are met and all payments disbursed are eligible and reasonable. Grantee warrants that it has adequate procedures to detect fraud, waste and/ or abuse in its programs and/or expenditures. If Grantee suspects or has knowledge of any waste, fraud and/or abuse of Grant Funds, Grantee shall immediately provide written notice to State of such waste, fraud and/or abuse and Grantee shall be liable to the State to repay/reimburse State for any waste, fraud and/or abuse of Grant Funds.

6.5 Prevention of Duplication of Benefits. The CDBG-DR appropriation (Pub. L. 113-2), and the Stafford Act, direct that Beneficiaries of federal disaster assistance not receive duplication of benefits from any resources available to them between federal, state, local, and certain private sources.

6.5.1 Determine Maximum Eligible Benefit. Prior to awarding Grant Funds to Grantee, DOLA reviewed information submitted by the Grantee, pursuant to DOLA's Procedure to Prevent Duplication of Benefits (attached as **Exhibit F**). The Grant Funds awarded pursuant to this Grant do not exceed DOLA's determination of Grantee's unmet need for each Subproject.

6.5.2 Recapture and Reimbursement of Duplicative Benefits. Grantee acknowledges that the source and amount of any and all additional funds received for costs associated with the disaster will be reported to DOLA within 15 calendar days of receipt. If DOLA determines the additional funds to be duplicative, the Grant Funds will be reduced by and/or the Grantee will be required to repay any disbursed duplicative amount.

6.5.3 Subrogation. Grantee hereby assigns to the State all of Grantee's future rights to reimbursement and all payments received that are determined in the sole discretion of the State to be a duplication of benefits.

6.5.4 Completion Monitoring. Upon Substantial Completion of the Project, Grantee will report and certify to DOLA whether additional funds were received for disaster related expenses, the source, the amount, and date of receipt. If additional funds were received and DOLA determines they are duplicative, the Grantee must repay the duplicative amount to DOLA.

6.5.5 On-going Monitoring. One year after Substantial Completion of the Project, Grantee will report and certify whether additional funds were received for disaster related expenses, the source, the amount, and date of receipt. If additional funds were received that are determined to be duplicative, the Grantee must repay the duplicative amount to DOLA.

Exhibit B – Page 9

6.6 Reporting. Grantee shall submit the following reports to DOLA using the state-provided forms. DOLA may withhold payment(s) or take additional action described in §15 of the Grant Agreement, if such reports are not submitted timely. When there is a conflict between the reporting requirement in this section and the CDBG Guidebook, the stricter requirement shall prevail.

6.6.1 Pay Requests. Pay Requests are due in accordance with **§5.6** of this **Exhibit B**.

6.6.2 Financial Status Report. This Report is due within 10 calendar days of the end of each quarter until the Project has been closed out with the State.

6.6.3 Performance Reports. The Project Performance Plan report for the Project shall be submitted within 10 calendar days of the end of each quarter until the Project has been closed out with the State.

6.6.4 Project Completion Report. Within 30 days of the earlier of termination or completion of the Project, the Grantee shall submit one copy of the Project Completion Report, and two copies of the final Financial Status Report.

6.7 Monitoring/Inspections. The State shall monitor this Grant in accordance with this Exhibit and **§9** of the Grant Agreement.

6.7.1 Grantee. Prior to submitting a request for payment, Grantee must inspect as described below in **§§6.7.1.1** through **6.7.1.2** and certify that it meets the requirements and standards of the Notices and the Action Plan. Grantee's payment request to DOLA must include documentation of inspection and approval.

6.7.1.1 For Planning: Grantee shall inspect planning documents for progress that is consistent with the Subcontractor invoice.

6.7.1.2 For hiring temporary Planning employees (supporting planning activities defined in 24 CFR §570.205): Grantee shall inspect a schedule of hourly rates, timesheets of the individuals signed by the employee and supervisor, and bank records demonstrating payroll payments have been disbursed for the period of the Pay Request.

6.7.2 DOLA.

6.7.2.1 At its sole discretion, DOLA, or its authorized agent, may perform an inspection of the Work and/or Subject Property, as applicable, prior to release of requested payment.

6.7.2.2 Prior to Substantial Completion of the Project, DOLA or its authorized agent shall perform an inspection of the Work and/or Subject Property, and shall have access to all Grantee financial, administrative, and Beneficiary records related to the Project. Release of final payment shall be subject to acceptable completion of this monitoring, per **§5.2**, above.

6.8 Procurement Standards. Selection of subcontractors and purchase of materials to accomplish a Project shall follow appropriate procurement standards as outlined in DOLA's CDBG Guidebook, *Financial Management Section*. If the standards in the CDBG Guidebook conflict with this Grant, the provisions of this Grant shall prevail. Procurement documentation shall be submitted to DOLA at the time of occurrence.

6.9 Environmental Requirements. Grantee shall comply with all HUD and other federal environmental requirements and shall not obligate Grant Funds prior to compliance with all

federal environmental requirements in 24 CFR Part 58 and receipt of the written release of funds from the State.

6.10 The Federal Funding Accountability and Transparency Act of 2006 as Amended 10/15/2010 (FFATA). The Grantee and Subgrantee (if any) shall comply with all the requirements of the Federal Funding Accountability and Transparency Act in accordance with the provisions set forth in **Exhibit D**.

6.11 Program Income. This Project shall or shall not generate Program Income.
 For the purpose of these Grant Funds, Program Income is defined at §VI.17.a. of the "March Notice" and 24 CFR §570.500(a). This Project is not anticipated to generate Program Income; however, if it does, Grantee shall return such Program Income to DOLA on a calendar quarterly basis within 20 days of the end of such quarter. Grantee shall track and account for all Program Income in accordance with the requirements in the CDBG-DR Program Income Guidelines (available on DOLA's website) and 24 CFR 570.504.

6.12 Davis-Bacon Act. This subsection is, or is not applicable.
 Grantee shall comply with all the requirements set forth in 24 CFR §570.603 (Davis-Bacon Act). If applicable, the responsible party for oversight of compliance shall be designated in the PPP.

6.13 Section 3 of the HUD Act of 1968 and 24 CFR Part 135. To the greatest extent feasible, the Grantee and Subgrantee (if applicable) will provide opportunities for training and employment that arise from this HUD-financed project, will give preference in hiring to persons whose income is equal to or less than 80% of Area Median Income (AMI), and will give preference in contracting to businesses owned in substantial part by persons, or that substantially employ persons, whose income is equal to or less than 80% of AMI in the Subproject area.
 In addition, Grantee shall, to the maximum extent feasible, provide for the hiring of employees who reside in the vicinity, as such term is defined below herein, or contract with small businesses that are owned and operated by persons residing in the vicinity of such projects. Note: This local hiring requirement does not replace the responsibilities of Grantee under Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135, except to the extent the obligations may be in direct conflict. For the purposes of this Grant, "vicinity" is defined as each neighborhood identified by the Grantee and approved by the State as being the areas of greatest need.
 "Small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act.

6.14 Minority and Women Business Enterprises (24 CFR 570.506(g)(6)). To the greatest extent feasible, the Grantee and Subgrantee (if applicable) will take affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for subcontracts to be paid with CDBG-DR funds.

6.15 Uniform Relocation Act (URA). Grantee and Subgrantee are required to follow a URA Residential Anti-displacement and Relocation Assistance Plan when designing their programs in that obligations related to voluntary and involuntary property acquisition activities for vacant and abandoned property apply. Grantee shall follow the alternative relocation requirements associated with these Grant Funds, which are specified in the March Notice.

6.16 System of Award Management (SAM) and Data Universal Numbering System (DUNS). In accordance with Section 3 of **Exhibit D (FFATA)** Grantee is required to register with the System of Award Management (SAM) and have an active registration in SAM in accordance

with 2 CFR Part 25. Grantee shall provide its DUNS number to the State and shall update Grantee's information at least annually after the registration and more frequently if required by changes in Grantee's information.

6.17 Termination for Convenience. In addition to the Remedies listed in §15 of the main Grant Agreement, this Grant may be terminated in whole or part as follows:

6.17.1 By the State with consent of the Grantee in which case the Grantee and State shall agree upon the termination conditions including the effective date and in the case of partial termination, the portion to be terminated.

6.17.2 By the Grantee upon written notification to the State, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the State determines that the remaining portion of the Grant will not accomplish the purposes for which the Grant was made, the State may terminate the Grant in its entirety.

6.18 Reversion of Assets

6.18.1 Upon expiration of this Grant, Grantee shall transfer to the State any CDBG Funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG Funds. Any real property under the Grantee's control that was acquired or improved in whole or in part with CDBG funds (including CDBG Funds provided to the Grantee in the form of a loan) in excess of \$25,000 is either:

- A.** Used to meet one of the national objectives in §570.208 (formerly §570.901) until five years after expiration of the Grant Agreement, or for such longer period of time as determined to be appropriate by the State; or
- B.** Not used in accordance with paragraph 6.18.1 (A) of this section, in which event the Grantee shall pay the State an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the State. (No payment is required after the period of time specified in paragraph 6.18.1 (A) of this section.) [53 FR 8058, Mar. 11, 1988, as amended at 53 FR 41331, Oct. 21, 1988; 57 FR 27120, June 17, 1992; 60 FR 56915, Nov. 9, 1995; 68 FR 56405, Sept. 30, 2003]

6.19 Recapture and Repayment

6.19.1 Recapture Upon completion of the Project for which Funds were awarded, Grantee shall report and certify whether additional funds were received for disaster-related expenses, the amount, and when funds were received. If additional funds were received that are determined to be duplicative, the State shall recapture the total amount of additional funds received.

6.19.2 Repayment One year after completion of Project, for which Grant Funds were awarded, the Grantee must report and certify whether additional funds were received for disaster-related expenses, the amount, and when funds were received. If additional funds were received that are determined to be duplicative, the Grantee must repay the State the total amount of additional funds received.

6.20 Uniform Administrative Requirements.

Grantee agrees to comply with all applicable uniform administrative requirements as described in 24 CFR §570.502.

6.21 Other Program Requirements.

Grantee agrees to carry out each activity of this Project in compliance with all Federal laws and regulations described in 24 CFR §570, Subpart K except that:

- A. Grantee does not assume the State's environmental responsibilities described at §570.604.
- B. Grantee does not assume the State's responsibility for initiating the review process under the provisions of 24 CFR part 52.

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Exhibit C -Form of Option Letter

Date:	Original Grant CMS #:	Option Letter #	CMS Routing #
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1) OPTIONS:

- a. Option to issue a new Project Budget (**§4.3 of the Project Scope of Work/Budget**) for a Project Budget Line Item adjustment of §4.2.
- b. Option to issue a new Project Budget (**§4.4.1 of the Project Scope of Work/Budget**) for a Minor Budget Adjustment of §4.2.
- c. Option to issue a new Project Budget (**§4.4.2 of the Project Scope of Work/Budget**) for a True-up Budget Proposal of §4.2.

2) REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

- a. **For use with Option 1(a):** In accordance with §7(C) of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs, and Contractor's Name ("Grantee") and §4.3 of the Project Scope of Work for [REDACTED] (the "Project SOW"), the State hereby approves the Line Item Proposal on the attached revised Project Budget for §4.2 of the Project SOW. Section 4.2 of the Project SOW of the Original Grant is hereby deleted and replaced with the attached §4.2. All references to §4.2 of the Project SOW in the Original Grant shall refer to the attached Exhibit. Project Budget Line Item adjustments shall not increase the Grant Funds for a Project. The total value of the Grant is unchanged.
- b. **For use with Option 1(b):** In accordance with §7(C) of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs, and Contractor's Name ("Grantee") and §4.4.1 of the Project Scope of Work for [REDACTED] (the "Project SOW"), the State hereby approves the Minor Budget Adjustment on the attached revised Project Budget for §4.2 of the Project SOW. Section 4.2 of the Project SOW of the Original Grant is hereby deleted and replaced with the attached §4.2. All references to §4.2 of the Project SOW in the Original Grant shall refer to the attached Exhibit. Minor Budget Adjustments shall not increase the Grant Funds for a Project. The total value of the Grant is unchanged.
- c. **For use with Option 1(c):** In accordance with §7(C) of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs, and Contractor's Name ("Grantee") and §4.4.2 of the Project Scope of Work for [REDACTED] (the "Project SOW"), the State hereby approves the True-up Budget Proposal on the attached revised Project Budget for §4.2 of the Project SOW. Section 4.2 of the Project SOW of the Original Grant is hereby deleted and replaced with the attached §4.2. All references to §4.2 of the Project SOW in the Original Grant shall refer to the attached Exhibit. True-up Budget Proposal adjustments shall not increase the Grant Funds for a Project. The total value of the Grant is unchanged.

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

STATE OF COLORADO
John W. Hickenlooper GOVERNOR
 Colorado Department of Local Affairs

By: Irv Halter, Executive Director

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
 Janet Miks, CPA, Controller Delegate

Date: _____

CDBG DR P16-025 – Loveland Big Thompson Corridor Master Plan

CMS #92596

SAMPLE - DO NOT SIGN

EXHIBIT D – Supplemental Provisions for FFATA

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.
 - 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 applies 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

CDBG DR P16-025 – Loveland Big Thompson Corridor Master Plan

CMS #92596

Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

7. Subrecipient Reporting Requirements. If Contractor is a Subrecipient, Contractor shall report as set forth below.

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

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CDBG DR P16-025 – Loveland Big Thompson Corridor Master Plan

CMS #92596

**Exhibit E - Federal Funding Accountability and Transparency Act (FFATA)
Data Report Form**

**Reporting is required for initial awards of \$25,000 or more
or award modifications that result in a total award of \$25,000 or more.**

Information Field Definitions can be found in Exhibit D	Response
1. Grantee's DUNS Number:	
2. Grantee's Legal Name:	
3. Grantee's Parent DUNS Number: (Report ONLY if different from Grantee DUNS number)	
4. Location of Grantee Receiving Award: (Full street address, including City, State and Zip+4)	
5. Primary Location of Performance of the Award: (City, State and Zip+4)	
Answer True or False	
6. In the preceding fiscal year, Grantee received:	
a. \$25,000,000 or more in annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or sub-awards subject to the Transparency Act.	
b. 80% or more of its annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or sub-awards subject to the Transparency Act.	
c. The public does not have access to information about the compensation of its five most highly compensated Executives through periodic reports filed through the Securities Exchange Act of 1934 or the IRS.	

An answer to question 7 is required ONLY when all answers to questions 6 are true.

7. Names and total compensation of the five (5) most highly compensated Executives for the preceding fiscal year:

Print Name

Compensation Amount

By signing below, I certify the information contained in this report is complete and accurate to the best of my knowledge.

Signature of Responsible Administrator

Date

EXHIBIT F
PROCEDURE TO PREVENT DUPLICATION OF BENEFITS

For activities carried out by subrecipients, the designated administrator of the activity will be contractually required to complete this procedure and submit documentation for review before the responsible State agency will release payment.

PROCEDURE

- a. Prior to assistance
 - i. Identify total need
 - 1. Determine the specific purpose for the CDBG-DR request
 - 2. Total need will be determined by project type (e.g. homeowner rehabilitation cost estimate, infrastructure reconstruction cost estimate). The total need must be documented.
 - 3. All costs included in total need must be reasonable and necessary.
 - ii. Identify all other potentially duplicative sources of funding received and reasonably anticipated
 - 1. For individuals as well as entities, the application for assistance will require documentation for all sources of funding received or reasonably anticipated, and certification that all assistance is reported.
 - 2. 3rd party verify when possible (FEMA, SBA)
 - iii. Determine which funding sources to include in and exclude from unmet need calculation (based upon guidance in Fed. Reg. 71,060 – 71,066 (November 16, 2011)) and deduct assistance determined to be duplicative
 - iv. Apply program cap, if applicable
 - v. Arrive at maximum award
 - vi. Execute grant/loan agreement with recipient, including provision that all additional funds received will be reported to the State or subrecipient program administrator within 15 calendar days. If the additional funds are determined to be duplicative, the award will be reduced and/or the recipient will be required to repay any disbursed duplicative benefit.
- b. Upon completion of activity for which funds were awarded
 - i. Require recipient to report and certify whether additional funds were received for disaster-related expenses, the amount, and when funds were received. If additional funds were received that are determined to be duplicative, require repayment.
- c. One year after completion of activity for which funds were awarded
 - i. Require recipient to report and certify whether additional funds were received for disaster-related expenses, the amount, and when funds were received. If additional funds were received that are determined to be duplicative, require repayment.

RESPONSIBLE PERSONNEL

- a. The Department of Local Affairs, Executive Director's Office
 - i. CDBG DR Program Manager – overall program management
 - ii. Accounting and Financial Services – fiscal control

Exhibit F Page 1 of 2

- iii. Communications
- b. Economic Development
 - i. Office of Economic Development and International Trade
 - 1. Economic development specialist – initial calculation and follow-up
 - ii. Colorado Department of Agriculture
 - 1. Program manager – initial calculation and follow-up

Exhibit F Page 2 of 2

EXHIBIT G – PROJECT PERFORMANCE PLAN

Funding: CDBG-DR	Name of Grantee	City of Loveland	
Project Number: P16-025	Name of Project	Loveland Big Thompson Corridor Master Plan	
DESCRIPTION OF PROJECT:	The City of Loveland will develop a detailed multi-objective river corridor plan.		
DOLA Staff: Tim Katers- CDBG-DR Resilience Planning Program Manager, (303) 864-7888, (tim.katers@state.co.us)			
MILESTONES – Grantee shall...	By:	STATE ROLE - DOLA shall...	
Release Request for Proposal (RFP)	Within 60 days of the Effective Date of this Grant Agreement.	Assist Grantee with RFP process as necessary. Provide feedback to Grantee identifying issues or concerns, if any.	ACHIEVED: <u>MM/DD/20YY</u>
Hire Consultant	October 15, 2016	Review selection and award documentation, and copy of subcontract(s) and/or sub-grant(s) for project file. Provide feedback to Grantee identifying issues or concerns, if any.	ACHIEVED: <u>MM/DD/20YY</u>
Consultant begins Work on Project.	November 1, 2016	Monitor progress reports from the Grantee. Help Grantee identify if/when a Grant Agreement amendment is needed. Provide feedback to Grantee identifying issues or concerns, if any.	ACHIEVED: <u>MM/DD/20YY</u>
Document analysis, public outreach, and preliminary recommendations.	May 31, 2017	Monitor progress reports from the Grantee. Help Grantee identify if/when a Grant Agreement amendment is needed. Provide feedback to Grantee identifying issues or concerns, if any.	ACHIEVED: <u>MM/DD/20YY</u>
Complete conceptual designs and cost estimates.	August 31, 2017	Monitor progress reports from the Grantee. Help Grantee identify if/when a Grant Agreement amendment is needed. Provide feedback to Grantee identifying issues or concerns, if any.	ACHIEVED: <u>MM/DD/20YY</u>
Complete draft of Big Thompson River Restoration Master Plan	October 1, 2017	Review draft Big Thompson River Restoration Master Plan. Provide feedback to Grantee identifying issues or concerns, if any.	ACHIEVED: <u>MM/DD/20YY</u>

Complete final Big Thompson River Restoration Master Plan.	December 31, 2017	Review final Big Thompson River Restoration Master Plan. Provide feedback to Grantee identifying issues or concerns, if any.	ACHIEVED: <u>MM/DD/20YY</u>
<p>Submit quarterly progress reports, which includes: Project Performance Plan accomplishments and a Financial Summary Report for:</p> <p>3rd Quarter 2016 4th Quarter 2016 1st Quarter 2017 2nd Quarter 2017 3rd Quarter 2017 4th Quarter 2017 1st Quarter 2018</p> <p>Progress shall be evaluated by the Grantee and documented and included at least upon submittal of Quarterly Progress Reports. Such evaluation shall consist of at least the following monitoring method:</p> <p>a) Question and answer sessions with the Consultant to confirm understanding by all parties as to the nature of the Work and how far along it should be dependent upon the Quarter under review. Specifically, such sessions will determine if:</p> <p>i) A percentage of the Big Thompson Corridor Master Plan has been developed as per agreed timeline as would be expected under this Grant and described in Exhibit B.</p>	<p>(10 calendar days after each quarter):</p> <p>October 10, 2016 January 17, 2016 April 10, 2017 July 10, 2017 October 10, 2017 January 10, 2018 April 10, 2018</p>	<p>Review documents and provide follow up technical assistance as necessary.</p> <p>If needed, respond to a request for training within 10 days.</p>	<p>ACHIEVED: <u>MM/DD/20YY</u></p> <p>ACHIEVED: <u>MM/DD/20YY</u></p> <p>ACHIEVED: <u>MM/DD/20YY</u></p> <p>ACHIEVED: <u>MM/DD/20YY</u></p>

Submit Pay Requests including supporting documentation of expenses. Pay requests are recommended to be submitted on a monthly basis. Pay requests must be submitted at a minimum quarterly basis. Supporting documentation must be included in all pay requests.	Recommended monthly. Required 10 calendar days after each quarter.	Review backup documentation and proof of payment prior to approving pay request. Reimbursement should not exceed pro rata share.	ACHIEVED: <u>MM/DD/20YY</u>
Submit the Project Final Report to DOLA within 30 days after Project Completion. Project Final Report must be completed prior to the expiration of this Grant Agreement.	January 30, 2018	Process the Final Report, final payment and de-obligate any remaining Grant Funds within 30 days of receiving a complete Project Final Report.	ACHIEVED: <u>MM/DD/20YY</u>

QUARTERLY QUESTIONS

List Reimbursement Requests for the three months being reported on:

Month January **Amount**

Month January **Amount**

Month January **Amount**

Were any months "zero payment" (no costs incurred) during this quarter? If so, please provide an explanation.

What are the forecasted costs for the next quarter?

Are the budget lines still adequate? Is a contract amendment needed at this time? Are there any anticipated concerns or issues?

Do you foresee any potential problems meeting the Grant Agreement completion deadline?

Were previously identified problems (if any) corrected? Was a budget adjustment needed/done to address the problem(s)?

FIRST READING

October 4, 2016

SECOND READING

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR THE BIG THOMPSON RIVER MASTER PLAN

WHEREAS, the City has received and reserved funds not anticipated or appropriated at the time of the adoption of the 2016 City budget for the Big Thompson River Master Plan; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2016 City budget for the Big Thompson River Master Plan, 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 \$249,700 from a federal grant in the Stormwater Utility Fund are available for appropriation. That reserves in the amount of \$25,300 from fund balance in the Stormwater Utility Fund are available for appropriation. Such revenues in the total amount of \$275,000 are hereby appropriated to the 2016 City budget for the Big Thompson River Master Plan. The spending agencies and funds that shall be spending the monies suplementally budgeted and appropriated are as follows:

Supplemental Budget
Stormwater Utility Fund 345

Revenues

Fund Balance	25,300
345-23-280-0000-32000 CDBG-DR R3SW Federal Grants	249,700
Total Revenue	275,000

Appropriations

345-23-280-0000-49355 CDBG-DR R3SW Design & Architecture	275,000
Total Appropriations	275,000

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

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

ADOPTED this 18th day of October, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

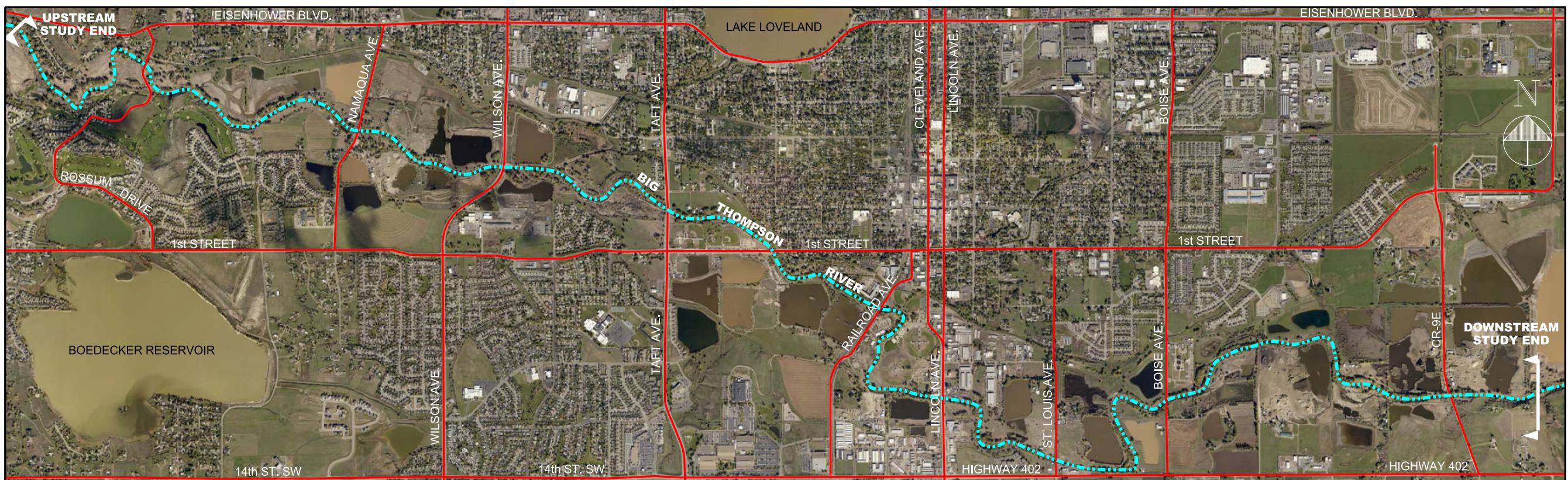
City Clerk

APPROVED AS TO FORM:



City Attorney

BIG THOMPSON RIVER CORRIDOR MASTER PLAN STUDY LIMITS MAP



The password to the public access wireless network (colquest...)

AGENDA ITEM: 2.10
MEETING DATE: 10/4/2016
TO: City Council
FROM: Leah Browder, Public Works Director
PRESENTER: Leah Browder, Public Works Director

**TITLE:**

A Resolution Approving An Intergovernmental Agreement (IGA) Between The Colorado Department Of Transportation (CDOT) And The City Of Loveland (City) For Roadway Maintenance Services

RECOMMENDED CITY COUNCIL ACTION:

Approve the Resolution approving the IGA between CDOT and the City so that the City may continue to deliver uninterrupted roadway maintenance services at updated rates and charges

OPTIONS:

1. Adopt the action as recommended, which will allow roadway maintenance services to continue uninterrupted at new rates and charges.
2. Deny the action, which would cause the City to cease providing roadway maintenance services potentially causing significant service interruptions to roadway users.
3. Adopt a modified action (specify in the motion).
4. Refer back to staff for further development and consideration causing at least a significant delay in roadway maintenance as snow season approaches.

SUMMARY:

City Council approval will allow City staff to proceed with renewing an IGA with CDOT so that the City can continue to provide maintenance services on certain CDOT roadways totaling just over 123 lane miles within or abutting city boundaries. The IGA would become effective in 2016 and would be renewable annually for a term of up to five years, assuming both parties are amenable and that State funds are appropriated accordingly. The annual contract payment from CDOT to the City would total \$110,916 and is subject to yearly increase should the City request and validate the need for an adjustment and CDOT accept the request.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

Due to an updating of rates and charges, the annual payment would increase to \$110,916 from \$41,750.50.

BACKGROUND:

The City of Loveland has traditionally provided roadway maintenance services upon certain CDOT roadways through an IGA. Through this contractual arrangement, CDOT roadways that are located within city boundaries or that abut city boundaries have been maintained by City forces. This approach has resulted in improved budget and operational efficiency and better project coordination, helping avoid the customer frustration that can arise when adjoining roadway projects undertaken by different agencies cause roadway conflicts or unnecessary extended timeframes.

The IGA includes seven general locations totaling an estimated 123.24 lane miles including frontage roads; US287; and US34 including the Park-n-Ride at I25. City forces will provide minor repairs such as pavement patching, crack sealing, and base stabilization; sign, delineator and guardrail repairs; and roadway snow removal at a rate of \$900 per lane mile for a total first year contract amount of \$110,916. When service requests exceed the capabilities of the City's internal work crews, the City and CDOT work together to determine the most efficient and cost effective way to undertake those more extensive projects.

To date, the City has appreciated a collaborative and constructive maintenance relationship with CDOT which has benefitted the service experienced by roadway users in Loveland. The renewal of this IGA will help to support the continuation of this positive situation.

REVIEWED BY CITY MANAGER:
SCA

LIST OF ATTACHMENTS:

1. Resolution
2. IGA

RESOLUTION #R-92-2016

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE COLORADO DEPARTMENT OF TRANSPORTATION REGARDING MAINTENANCE SERVICES FOR U.S. HIGHWAYS

WHEREAS, the State of Colorado Department of Transportation (“CDOT”) is responsible for the maintenance of various roadways with the boundaries of the City of Loveland; and

WHEREAS, the City has provided maintenance of portions of such roadways pursuant to an intergovernmental agreement with CDOT whereby CDOT has compensated the City for such maintenance; and

WHEREAS, the parties find it necessary and desirable to continue this arrangement, and wish to enter into a new intergovernmental agreement to address each party’s obligations with respect to the City’s maintenance of the roadways for the safety of the traveling public; and

WHEREAS, pursuant to the new intergovernmental agreement, the City will provide maintenance on portions of the I-25 Frontage Road, U.S. Highway 34, and U.S. Highway 287; 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; and

WHEREAS, the City Council desires to approve the Intergovernmental Agreement between the City and CDOT attached hereto as “Exhibit A” on behalf of the City.

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

Section 1. That the Intergovernmental Agreement is hereby approved.

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

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.

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

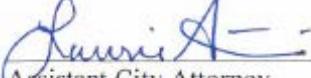
ADOPTED this 4th day of October, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Lauri A.
Assistant City Attorney

PO #: 471000985
 Routing #: 17 HA4 ZH 00055

(State SHWY Mtce)
 City of Loveland (wma)

Rev 10/03
 Region: 4

CONTRACT

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

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function: 2400, GL Account: 4541000020, and Order: 1000045279 . (Contract Encumbrance Amount: \$110,916.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Section 43-2-135(1)(i) C.R.S., as amended, requires the State to install, operate, maintain and control, at State expense, all traffic control devices on the state highway system within cities and incorporated towns.
4. The parties desire to enter this Contract for the Contractor to provide some or all of the certain Highway maintenance services on state highways that are the responsibility of the State under applicable law, and for the State to pay the Contractor a reasonable negotiated fixed rate for such services.
5. The parties also intend that the Contractor shall remain responsible to perform any services and duties on state highways that are the responsibility of the Contractor under applicable law, at its own cost.
6. The State and the Contractor have the authority, as provided in Sections 29-1-203, 43-1-106, 43-2-103, 43-2-104, and 43-2-144 C.R.S., as amended, and in applicable ordinance or resolution duly passed and adopted by the Contractor, to enter into contract with the Contractor for the purpose of maintenance of traffic control devices on the state highway system as hereinafter set forth.
7. The Contractor has adequate facilities to perform the desired maintenance services on State highways within its jurisdiction.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Local Agency shall perform all Maintenance Services for the specified locations located within the Local Agency's jurisdiction and described in Exhibit A. Such services and highways are further detailed in Section 5.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this Contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 22 of this Contract
2. This Contract
3. Exhibit A (Scope of Work)
4. Exhibit C (Option Letter)
5. Exhibit D (Encumbrance Letter).

Section 3. Term

This contract shall be effective upon the date signed/approved by the State Controller, or designee, or on July 1, 2016, whichever is later. The term of this contract shall be for a term of FIVE (5) years. Provided, however, that the State's financial obligation for each subsequent, consecutive fiscal year of that term after the first fiscal year shall be subject to and contingent upon funds for each subsequent year being appropriated, budgeted, and otherwise made available therefor.

Section 4. Project Funding and Payment Provisions

- A. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as Exhibit B.

PO #: 471000985
Routing #: 17 HA4 ZH 00055

- B. Subject to the terms of this Contract, for the satisfactory performance of the Maintenance Services on the Highways, as described in **Section 5** and **Exhibit A**, the State shall pay the Local Agency upon receipt of the Local Agency's invoices provided. Local Agency will invoice the state for the full amount at the beginning of the performance period, with the understanding that the payment is to go through the end of the fiscal year (7/1 to 6/30). The lump sum payment shall be based solely on the rate negotiated by the parties per lane miles of the highways. The total of such payments during the Fiscal year shall not exceed the particular maximum amount determined by the formula of "rate X lane miles".
- C. The Local Agency will provide Maintenance Services as described in **Exhibit A**, for a total maximum amount of \$110,916.00 per State fiscal year, and a maximum contract total shall not exceed the cumulative five-year total of \$554,580.00. The negotiated rate per mile shall remain fixed for the full five-year term of the contract, unless this rate is renegotiated in accord with the procedure set forth herein in **Section 17**. The total payments to the Local Agency during the term of this contract shall not exceed that maximum amount, unless this contract is amended. The Local Agency will bill the State monthly and the State will pay such bills within 45 days.
- D. The State shall pay the Local Agency for the satisfactory operation and maintenance of traffic control devices under this agreement at the rates described in **Exhibit A**.
- E. The statements submitted by the Local Agency for which payment is requested shall contain an adequate description of the type(s) and the quantity(ies) of the Maintenance Services performed, the date(s) of that performance, and on which specific sections of the Highways such services were performed, in accord with standard Local Agency billing standards.
- F. If the Local Agency fails to satisfactorily perform the Maintenance Services or if the statement submitted by the Local Agency does not adequately document the payment requested, after notice thereof from the State, the State may deduct and retain a proportionate amount from the monthly payment, based on the above rate, for that segment or portion.

Section 5. State & Local Agency Commitments:

- A. The Local Agency shall perform the Maintenance Services for the certain State Highway System locations described herein. Such services and locations are detailed in **Exhibit A**.
- B. The Local Agency shall operate and maintain the highway miles as listed on **Exhibit A**. As used herein the term "maintenance services" shall mean only those maintenance services normally performed by the State to comply with its responsibility under §§43-2-102 and 43-2-135, C.R.S., as described in the State's then current "Maintenance Management Information Manual", as amended, which is incorporated herein by this reference. The Local Agency shall obtain a copy of that Manual from the State before it performs any Maintenance Services under this contract. Maintenance Services do not include reconstruction of portions of the highways destroyed by major disasters, fires, floods, or Acts of God. Provided, however, that the Local Agency shall give the State immediate notice of the existence of any such conditions on the Highways.)
 - 1. Maintenance Services to be performed by the Local Agency, at State expense, for the Highways under this contract shall include (without limitation) the following services:
 - a. Removal of snow, sanding and salting.
 - b. Patching, making safe, repairing, spot reconditioning, spot stabilization and spot seal coating, including shoulders, and damage caused by ordinary washouts.
 - c. Painting of bridges, of other structures, and of highway appurtenances.
 - d. Warning the State's representative of any "dangerous condition" (as defined in §24-10-103(1) C.R.S., as amended), and/or repairing that condition.
 - e. Inspecting State Highway signing and regulatory devices on the Highways at least weekly and notifying the State's Regional Transportation Director as soon as the Local Agency has notice of any State Highway signing and regulatory devices in need of repair.
 - 2. Local Agency shall also continue to perform, at its own expense, all activities/duties on the Highways that Local Agency is required to perform by §43-2-135 (1) (a) and (e), C.R.S., as amended, including, but not limited to: cutting weeds and grasses within the State's right of way; fence maintenance; cleaning of roadways, including storm sewer inlets and catch basins; cleaning of ditches; and repairing of drainage structures, excluding storm sewers.
- C. The Local Agency shall perform all Maintenance Services on an annual basis. The Local Agency's performance of such services shall comply with the same standards that are currently used by the State for the State's performance of such services, for similar type highways with similar use, in that year, as determined by the State. The State's Regional Transportation Director, or their representative, shall determine the then current applicable maintenance standards for the Maintenance Services. Any standards/directions provided by the State's

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representative to the Local Agency concerning the Maintenance Services shall be in writing. The Local Agency shall contact the State Region office and obtain those standards before the Local Agency performs such services.

D. The Local Agency shall perform the Maintenance Services in a satisfactory manner and in accordance with the terms of this contract. The State reserves the right to determine the proper quantity and quality of the Maintenance Services performed by the Local Agency, as well as the adequacy of such services, under this contract. The State may withhold payment, if necessary, until Local Agency performs the Maintenance Services to the State's satisfaction. The State will notify the Local Agency in writing of any deficiency in the Maintenance Services. The Local Agency shall commence corrective action within 24 hours of receiving actual or constructive notice of such deficiency: a) from the State; b) from its own observation; or c) by any other means. In the event the Local Agency, for any reason, does not or cannot correct the deficiency within 24 hours, the State reserves the right to correct the deficiency and to deduct the actual cost of such work from the subsequent payments to the Local Agency, or to bill the Local Agency for such work.

Section 6. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State and FHWA to inspect the project and to inspect, review and audit the project records.

Section 7. Termination Provisions

This contract may be terminated as follows:

A. This Contract may be terminated by either party, but only at the end of the State fiscal year (June 30), and only upon written notice thereof sent by registered, prepaid mail and received by the non-terminating party, not later than 30 calendar days before the end of that fiscal year. In that event, the State shall be responsible to pay the Local Agency only for that portion of the highway Maintenance Services actually and satisfactorily performed up to the effective date of that termination, and the Local Agency shall be responsible to provide such services up to that date, and the parties shall have no other obligations or liabilities resulting from that termination. Notwithstanding subparagraph A above, this contract may also be terminated as follows:

B. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

C. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract. Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined. If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

D. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon

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availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 8. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 9. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 4. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 4 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State	If to the Local Agency
CDOT Region: 4	City of Loveland
Tim Miles	Mick Mercer
Project Manager	Public Works Manager
10601 West 10 th Street	2525 West First Street
Greeley, CO 80634	Loveland, CO 80537
970-350-2120	970-962-2530
tim.miles@state.co.us	mick.mercer@cityofloveland.org

Section 10. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 11. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 12. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 13. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 14. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

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Section 15. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 16. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 17. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

A. Amendment

Either party may suggest renegotiation of the terms of this contract, provided that the contract shall not be subject to renegotiation more often than annually, and that neither party shall be required to renegotiate. If the parties agree to change the provisions of this contract, the renegotiated terms shall not be effective until this Contract is amended/modified accordingly in writing. Provided, however, that the rates will be modified in accordance with applicable cost accounting principles and standards (including sections 24-107-101, et seq., C.R.S. and implementing regulations), and be based on an increase/decrease in the "allowable costs" of performing the Work. Any such proposed renegotiation shall not be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved by the State Controller or delegatee. Any such rate change will go into effect on the first day of the first month following the amendment execution date.

B. Option Letter

- a. The State may increase/decrease the quantity of goods/services described in **Exhibit A** at the same unit prices (rates) originally established in the contract. The State may exercise the option by written notice to the Local Agency in a form substantially equivalent to **Exhibit C**.
- b. As a result of increasing/decreasing the locations, the State may also unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices (rates) originally established in the contract and the schedule of services required, as set by the terms of this contract. The State may exercise the option by providing a fully executed option to the Local Agency, in a form substantially equivalent to **Exhibit C**, immediately upon signature of the State Controller or an authorized delegate. The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Any such rate change will go into effect on the first day of the first month following the option letter execution date.

C. State Encumbrance Letter

The State may encumber the funds up to the maximum amount allowed during a given fiscal year by unilateral execution of an encumbrance letter in a form substantially equivalent to **Exhibit D**. The State shall provide a fully executed encumbrance letter to the Local Agency after execution. Delivery/performance of the goods/services shall continue at the same rate and under the same terms as established in the contract.

Section 18. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract, which is not disposed of by agreement, will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with

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decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 19. Does not supersede other agreements

This contract is not intended to supersede or affect in any way any other agreement (if any) that is currently in effect between the State and the Local Agency for other "maintenance services" on State Highway rights-of-way within the jurisdiction of the Local Agency. Also, the Local Agency shall also continue to perform, at its own expense, all such activities/duties (if any) on such State Highway rights-of-ways that the Local Agency is required by applicable law to perform.

Section 20. Subcontractors

The Local Agency may subcontract for any part of the performance required under this contract, subject to the Local Agency first obtaining approval from the State for any particular subcontractor. The State understands that the Local Agency may intend to perform some or all of the services required under this contract through a subcontractor. The Local Agency agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under the contract] without the express, written consent of the State; which shall not be unreasonably withheld. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

Section 21. Statewide Contract Management System

If the maximum amount payable to Local Agency under this contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this **Statewide Contract Management System** applies.

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 Local Agency performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Local Agency's performance shall be part of the normal contract administration process and Local Agency's performance will be systematically recorded in the statewide contract 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 Local Agency's obligations under this contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of 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 contract term. 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 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 the Department of Transportation, and showing of good cause, may debar Local Agency and prohibit Local Agency from bidding on future contracts. 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 Local Agency, by the Executive Director, upon showing of good cause.

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Section 22. Special Provisions

These Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL.** CRS §24-30-202(1). This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY.** CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1336(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET.** CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support

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arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

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

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

Revised 1-1-09

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Section 23. SIGNATURE PAGE

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>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____ *Signature</p> <p>Date: _____</p> <p>2nd Local Agency Signature if needed</p> <p>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p>STATE OF COLORADO John W. Hickenlooper Department of Transportation</p> <p>By _____ Joshua Laippy, P.E., Chief Engineer (For) Shailen P. Bhatt, Executive Director</p> <p>Date: _____</p> <p>STATE OF COLORADO LEGAL REVIEW Cynthia H. Coffman, Attorney General</p> <p>By _____ Signature – Assistant Attorney General</p> <p>Date: _____</p>
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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 OF COLORADO STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Colorado Department of Transportation</p> <p>Date: _____</p>

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Exhibit A - Scope of work

**Colorado Department of Transportation Scope of work for Maintenance performed duties
by the city of Loveland.
(for fiscal year 2017, 7/1/16 to 6/30/17)**

The Local Agency shall perform all "maintenance services" for the State Highway and US Highway System segments described herein, I-25 Frontage Road-MP 257.300 to MP 257.400; I-25 Frontage Road- MP257.600 to MP 258.380; I-25 Frontage Road- MP 259.550 to MP 260.350; US 34A- MP 87.730 to MP 97.800; US287C- MP 330.100 to MP 339.128; US 287Z- MP 0.00 to MP 1.760; US 34A Park-and-Ride MP 96.100 for a total of 22.54 center line miles which is equivalent to 123.24 lane miles, as detailed in Exhibit A, attached hereto and incorporated herein by this reference. To include current and future park-and-ride locations within the local Agencies jurisdiction. All work will be performed in accordance to standards set by the state maintenance section.

Section 43-2-102 and 103, C.R.S require the state to maintain state highways (including where such highways extend through a city or an incorporated town), and 43-2-135 describes certain specific responsibilities of the State and affected local entities (respectively) with respect to state highways that are also part of a local street system.

The parties also intend that the Local Agency shall remain responsible to perform any services and duties on state highways that are the responsibility of the Local Agency under applicable law, at its own cost.

The Local Agency has adequate facilities to perform the desired maintenance services on State highways within its jurisdiction.

I-25 Frontage Road
MP 257.300 to MP 257.400 0.20 lane miles

I-25 Frontage Road MP 257.600 to MP 258.380 1.56 lane miles

I-25 Frontage Road
MP 259.550 to MP 260.350 1.60 lane miles

US 34A
MP 87.730 to MP 97.800 60.42 lane miles

US 287C MP 330.100 to MP 339.128 54.18 lane miles

US 287Z
MP 0.000 to MP 1.760 5.28 lane miles

US 34A Park-n-Ride
MM 86.100

123.24 lane miles
x \$900.00 per lane mile

\$110,916.00 per year payment to
The City of Loveland

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FLEXIBLE PAVEMENT PATCHING/ MINOR REPAIRS

Patching small areas of bituminous roadway curb and ditch to correct abrupt depressions, potholes, edge failure or surface cracking, buckling, or spalling. Includes work with the small patch machine, curb machine and planning done with motor grader. All hand patching and minor curb and gutter repair of bituminous material to be shown under this activity.

RIGID PAVEMENT PATCHING/ MINOR REPAIRS

Patching small areas of concrete roadway, curb and ditch to correct abrupt depressions, potholes, edge failure or surface cracking, buckling, or spalling. Includes patching of P.C.C. pavement with bituminous concrete. All hand patching and minor curb and gutter repair of concrete material to be shown under this activity.

CRACK SEALING FLEXIBLE PAVEMENT- HAND

Deterioration of bituminous pavement due to excessive cracking and spalling. Cleaning and filling cracks in roadway surface with crack filler material to prevent spalling and entry of water and debris.

CRACK & JOINT SEALING RIGID PAVEMENT-HAND

Deterioration of concrete pavement due to excessive cracking, spalling and joint failure. Cleaning and filling cracks and joints in roadway surface with crack and joint filler material to prevent spalling and entry of water and debris. Includes routing joints, and replacement of backer rods and joints.

BASE STABILIZATION AND REPAIR

Removal and replacement of base and surface material using premixed bituminous material and/or required base material to correct severe cracking, upheavals, and base failures. Includes raising and leveling concrete slabs by mud jacking.

FENCE, GATE, CATTLEGUARD CLEANING & MAINTENANCE

Repair, replace or install fence, cattle guards and gates located on or within the Right-of-Way limits. Clean dirt, vegetation or debris from fence line. Also includes any fence taken down and not replaced (with landowner consent, if applicable).

SINGLE POST SIGN – INSTALLATION, MAINTENANCE & REPLACEMENT

Install, replace or repair signs and signpost damaged by accident, vandalism or deterioration. Includes single-posted outdoor advertising sign, mailbox repair, and all breakaway features on signs. Report to this Activity when new signs are being installed where none previously existed or when removing single-posted outdoor advertising signs.

MULTI POST SIGN - INSTALLATION, MAINTENANCE & REPLACEMENT

Install, replace or repair signs and signpost damaged by accident, vandalism or deterioration. Includes two or more posted outdoor advertising sign, mailbox repair, and all breakaway features on signs. Report to this Activity when new signs are being installed where none previously existed or when removing multi-posted outdoor advertising signs.

DELINERATOR, REFERENCE POST INSTALLATION, MAINTENANCE & REPLACEMENT

Install, straighten, paint, clean or replace delineator posts, reflectors, or reference posts to maintain desired traffic control. Includes the posts for delineators and reference posts (mile marker posts) and guardrail and median barrier delineation.

METAL GUARD RAIL MAINTENANCE, INSTALLATION, STRAIGHTENING

New installation, repair, replace, clean or remove rail sections, SRT or Safety end treatments, post and hardware damaged by accident, vandalism or normal deterioration. Includes damaged metal guardrail with straightening machine.

PO #: 471000985
Routing #: 17 HA4 ZH 00055

CONCRETE GUARDRAIL MAINTENANCE & INSTALLATION

Repair, installation and maintenance of all concrete guardrail.

BRIDGE / STRUCTURE PAINTING

Painting of all structural members and railings to prevent deterioration. This will include the preparation for painting. Also includes painting done to cover graffiti.

SNOW REMOVAL & TRACTION APPLICATION (SANDING, DEICERS)

Removing snow, ice and slush from the roadway, shoulders and ramps; plowing or blading with trucks or graders to keep roads open and reduce weather related hazardous driving conditions, including the application of chemicals and abrasives to continuous sections or roadway or isolated spots

EXHIBIT C – OPTION LETTER**SAMPLE OPTION LETTER**

Date: _____ State Fiscal Year: _____ Option Letter No. _____

SUBJECT: [Amount of goods/Level of service change]

In accordance with Paragraph(s) _____ of contract routing number _____, [original Routing #], between the State of Colorado Department of Transportation and [Local Agency name] covering the period of [July 1, 20____ through June 30, 20____], the state hereby exercises the option for an additional one year's performance period at the cost/price specified in [Section, Paragraph or Exhibit], and a/an [increase/decrease] in the amount of goods/services at the same rate(s) as specified in [Section, Paragraph or Exhibit].

The amount of funds available and encumbered in this contract is [increased/decreased] by [\$ amount of change] to a new total funds available of [\$ _____] to satisfy services/goods ordered under the contract for the current fiscal year, [FY ____]. The first sentence in Paragraph _____ is hereby modified accordingly. The total contract value to include all previous amendments, option letters, encumbrance letters, etc... is [\$ _____].

APPROVALS:

State of Colorado:
John W. Hickenlooper, Governor

By: _____ Date: _____
[for Executive Director, Colorado Department of Transportation]

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract 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 Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____

Department of Transportation

Date: _____

EXHIBIT D – ENCUMBRANCE LETTER

SAMPLE ENCUMBRANCE LETTER

Date:	State Fiscal Year:	Encumbrance Letter No.	Routing #

- 1) Encumber fiscal year funding in the contract.
- 2) **PROVISIONS:** In accordance with Section(s) _____ of the original Contract routing number _____ between the State of Colorado, Department of Transportation, and [Contractor's Name], covering the term [Insert Orig start date] through [Insert Current ending date], the State hereby encumbers funds for the goods/services specified in the contract for fiscal year _____.

The amount of the current Fiscal Year encumbrance is [\\$ amount of change] bringing the total actual encumbrance for the contract to [Insert New \$ Amt] as consideration for services/goods ordered under the contract for the current fiscal year _____.

Requisition #	CDOT Document #	Doc Line #	WBS or Fund Center #	Change Amount

The total contract actual encumbered value including all previous amendments, option letters, encumbrance letters, etc. is [Insert New \$ Amt].

- 3) **EFFECTIVE DATE.** The effective date of this Encumbrance Letter is upon approval of the State Controller or July 1, 20 _____, whichever is later.

STATE OF COLORADO
 John W. Hickenlooper, GOVERNOR
 Department of Transportation

By: _____

(For) Executive Director

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract 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 Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
 Robert Jaros, CPA, MBA, JD

By: _____

Department of Transportation

Date: _____

Exhibit D - Page 1 of 1

AGENDA ITEM: 2.11
MEETING DATE: 10/4/2016
TO: City Council
FROM: Finance
PRESENTER: Theresa Wilson, Budget Manager



TITLE:
August 2016 Financial Report

RECOMMENDED CITY COUNCIL ACTION:

This is an information only item. No action is required.

SUMMARY:

The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures, including detailed reports on tax revenue and health claims, as of August 31, 2016. Citywide Revenue (excluding internal transfers) of \$193.2 million is 97.4% of year to date (YTD) budget. Sales Tax collections are 5.1% above the same period in 2015, and 99.3% of the YTD budget. This data spans eight months, and the trend has been slowly rising. Building Material Use Tax is 125.3% of YTD budget. Sales and Use Tax collections combined are 102.8% of YTD budget. Citywide total expenditures of \$186,449,533 (excluding internal transfers) are 71.1% of the YTD budget.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

BACKGROUND:

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 August 31, 2016. Citywide Revenue (excluding internal transfers) of \$193,193,824 is 97.4% of year to date (YTD) budget or \$5,250,737 under the budget. Sales Tax collections are 99.3% of the YTD budget or \$201,218 below budget. Building Material Use Tax is 125.3% of YTD budget, or \$379,104 over budget. Sales and Use Tax collections combined were 102.8% of YTD budget or \$877,724 over budget. When the combined sales and use tax for the current year are compared to 2015 for the same period last year, they are higher by 1.8% or \$580,052.

Citywide total expenditures of \$186,449,533¹ (excluding internal transfers) are 71.1% of the YTD budget or \$75,654,379 under the budget.

¹⁾ Primarily due to timing of capital projects (June's report includes 2015 capital projects re-appropriated at the Council meeting on April 19, 2016).

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. August Snapshot Presentation
2. Snapshot report for August 2016

2016

AUG

SnapShot



Citywide Revenues & Expenditures	2-3
General Fund Revenues & Expenditures	4-5
Capital Projects	5
Tax Totals & Comparison	6-7
Flood Update	8-9
Geo Codes & Sales Tax SIC	10-12
Health Care Claims	13
Activity Measures	14

"Loveland: a vibrant community...surrounded by natural beauty... where you belong."



Monthly Financial Report

- ◆ Citywide Revenue, excluding transfers between funds, \$193.2 million (2.6% under budget projections)
- ◆ Sales & Use Tax Collection, \$32.1 million (2.8% above budget projections)
- ◆ Citywide Expenditures, excluding transfers between funds, \$186.4 million (28.9% below budget projections)
- ◆ Citywide Revenues exceed Expenditures by \$6.7 million; Citywide Operating Revenues exceed Operating Expenditures by \$38.3 million.
- ◆ General Fund Revenue, excluding transfers between funds, \$62.4 million (3.7% above budget projections)
- ◆ General Fund Expenditures, excluding transfers between funds, \$50.3 million, (3.3% below budget projections)
- ◆ General Fund Revenues, including transfers, exceed Expenditures, including transfers, by \$1.5 million; General Fund Year-to-Date Operating Revenues (excluding transfers) exceed Fund Year-to-Date Operating Expenditures, excluding transfers and capital, by \$12.2 million.



Sales / Use Tax Basics

August 2016	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2016	\$ 28,125,477	\$ 1,590,577	\$ 1,501,017	\$ 31,217,071
Actual 2016	27,924,259	2,290,415	1,880,121	32,094,795
% of Budget	99.3%	144.0%	125.3%	102.8%
Actual 2015	\$ 27,189,690	\$ 2,155,914	\$ 2,169,139	\$ 31,514,743
Change from prior yr	2.7%	6.2%	-13.3%	1.8%

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— Citywide Revenues & Expenditures —

Combined Statement of Revenues and Expenditures August 2016						
REVENUE		Current Month	YTD Actual	YTD Revised Budget	% of Budget	
General Governmental						
1	General Fund	\$ 7,489,385	\$ 62,442,236	\$ 60,228,758	103.7%	
2	Special Revenue	1,003,017	5,911,830	8,049,825	73.4% ¹	
3	Other Entities	1,681,440	25,332,159	23,962,501	105.7%	
4	Internal Service	1,662,123	13,360,419	12,673,322	105.4%	
5	<i>Subtotal General Gov't Operations</i>	11,835,964	107,046,644	104,914,407	102.0%	
6	Capital Projects	2,057,257	9,054,847	5,929,508	152.7%	
Enterprise Fund						
7	Water & Power	10,923,584	65,381,159	76,145,835	85.9% ²	
8	Stormwater	563,330	4,178,677	3,877,433	107.8%	
9	Golf	496,433	2,989,855	3,201,653	93.4%	
10	Solid Waste	601,260	4,542,642	4,375,725	103.8%	
11	<i>Subtotal Enterprise</i>	12,584,607	77,092,333	87,600,646	88.0%	
12	Total Revenue	\$ 26,477,828	\$ 193,193,824	\$ 198,444,561	97.4%	
	<i>Prior Year External Revenue</i>		181,036,961			
	<i>Increase (Decrease) From Prior Year</i>		6.7%			
13	Internal Transfers	930,596	15,475,383	35,509,594	43.6%	
14	Grand Total Revenues	\$ 27,408,424	\$ 208,669,207	\$ 233,954,155	89.2%	
EXPENDITURES						
General Governmental						
15	General Fund	7,006,914	48,826,699	48,407,334	100.9%	
16	Special Revenue	1,068,801	7,566,380	8,970,448	84.3%	
17	Other Entities	1,738,367	22,077,372	21,343,714	103.4%	
18	Internal Services	1,692,297	11,406,198	14,487,755	78.7%	
19	<i>Subtotal General Gov't Operations</i>	11,506,379	89,876,649	93,209,252	96.4%	
20	Capital	10,184,074	40,591,634	102,321,917	39.7%	
Enterprise Fund						
21	Water & Power	7,335,904	48,270,844	57,896,648	83.4%	
22	Stormwater	275,668	1,938,020	2,456,429	78.9%	
23	Golf	412,881	2,195,371	2,448,567	89.7%	
24	Solid Waste	602,424	3,577,015	3,771,100	94.9%	
25	<i>Subtotal Enterprise</i>	8,626,877	55,981,251	66,572,744	84.1%	
26	Total Expenditures	\$ 30,317,330	\$ 186,449,533	\$ 262,103,913	71.1%	
	<i>Prior Year External Expenditures</i>		172,441,862			
	<i>Increase (Decrease) From Prior Year</i>		8.1%			
27	Internal Transfers	948,308	15,475,383	38,560,500	40.1%	
28	Grand Total Expenditures	\$ 31,265,638	\$ 201,924,917	\$ 300,664,413	67.2%	

¹ Revenue is lower than projected due to timing of when capital projects are done, and federal grants are drawn on those projects.

² Revenue is lower than projected due to timing of when capital projects are done, and federal grants are drawn on those projects.

Special Revenue Funds: Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures, Transit, Transportation.

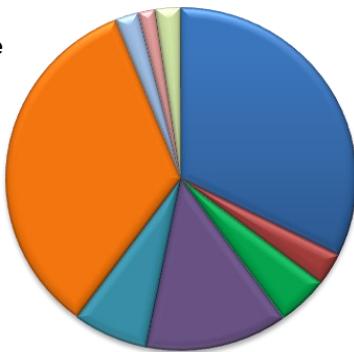
Other Entities Fund: Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority, Loveland Fire and Rescue Authority.

Internal Service Funds: Risk/Insurance, Fleet, Employee Benefits.

— Monthly Financial Report —

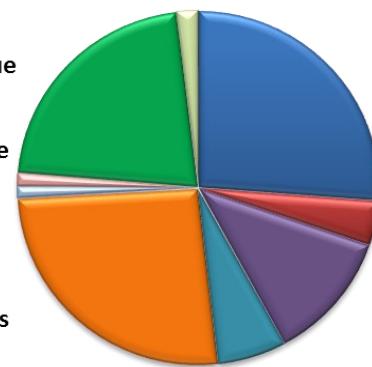
YTD Operating Revenues of \$193.2 Million

- General Fund
- Special Revenue
- Capital Projects
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Solid Waste



YTD Operating Expenditures of \$186.5 Million

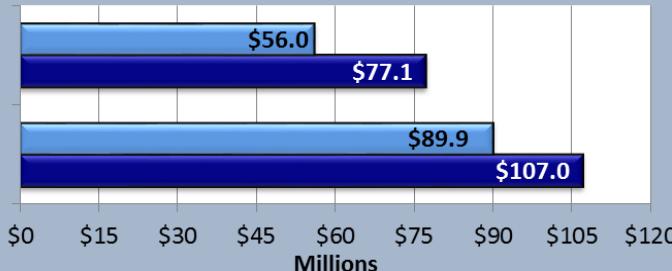
- General Fund
- Special Revenue
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Capital Projects
- Solid Waste



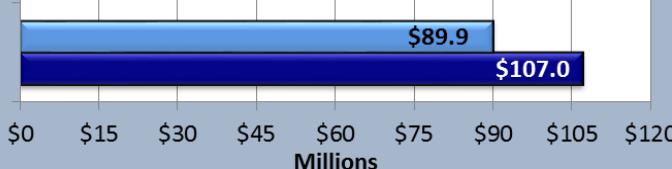
By Comparison, Excluding Transfers

■ Expenditure Actual ■ Revenue Actual

Enterprise Funds



Governmental Funds



\$0 \$15 \$30 \$45 \$60 \$75 \$90 \$105 \$120
Millions

- ◆ General Fund Revenue, excluding capital and transfers between funds, \$62.4 million (3.7% above budget projections)
 - * 3.7% above 2015 YTD
- ◆ General Fund Expenditures, excluding capital and transfers between funds, \$48.8 million (0.9% above budget projections)
 - * 10.7% above 2015 YTD
- ◆ Water & Power Revenue, excluding transfers between funds, \$65.4 million (14.1% below budget projections)
 - * 5.3% above 2015 YTD
- ◆ Water & Power Expenditures, excluding transfers between funds, \$48.3 million (16.6% below budget projections)
 - * 3.3% above 2015 YTD
- ◆ Other Entities Fund Revenue, excluding transfers between funds, \$25.3 million (5.7% above budget projections)
 - * 21.0% above 2015 YTD
- ◆ Other Entities Expenditures, excluding capital and transfers between funds, \$22.1 million (3.4% above budget projections)
 - * 10.9% above 2015 YTD

— General Fund Revenues & Expenditures —

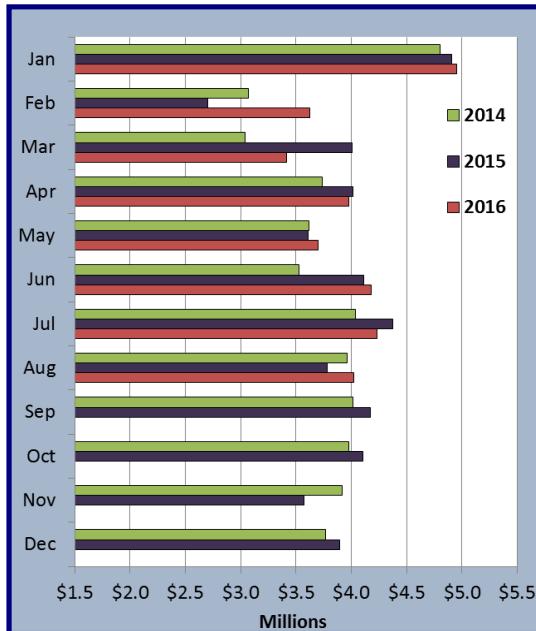
General Fund Revenue & Expenditures August 2016					
REVENUES	Current Month	YTD Actual	YTD Revised Budget	% of Budget	
1 Taxes					
2 Property tax	\$ 88,960	\$ 8,596,723	\$ 8,383,971	102.5%	
3 Sales tax	3,563,493	27,924,259	28,125,477	99.3%	
4 Building use tax	216,913	1,880,121	1,501,017	125.3%	
5 Auto use tax	243,356	2,290,415	1,590,577	144.0%	
6 Other taxes	293,789	1,895,953	1,994,813	95.0%	
7 Intergovernmental	16,848	362,272	245,315	147.7%	
8 License & Permits					
9 Building Permits	269,653	1,728,387	1,964,800	88.0% ¹	
10 Other Permits	19,168	155,470	113,680	136.8%	
11 Charges for Services	1,367,456	10,766,584	10,490,268	102.6%	
12 Fines & Forfeitures	115,275	695,740	614,630	113.2%	
13 Interest Income	15,008	296,201	218,960	135.3%	
14 Miscellaneous	1,279,465	5,850,112	4,985,250	117.3%	
15 Subtotal Operating	7,489,385	62,442,236	60,228,758	103.7%	
16 Interfund Transfers	6,850	79,800	79,800	100.0%	
17 Total Revenue	\$ 7,496,235	\$ 62,522,036	\$ 60,308,558	103.7%	
EXPENDITURES					
Operating Expenditures					
18 Legislative	9,962	105,445	100,160	105.3%	
19 Executive & Legal	253,870	1,744,005	1,686,318	103.4%	
20 City Clerk & Court Admin	48,367	434,239	482,628	90.0%	
21 Economic Development	101,082	1,539,204	3,118,156	49.4%	
22 Cultural Services	257,096	1,378,366	1,435,139	96.0%	
23 Development Services	386,255	2,614,236	3,246,254	80.5%	
24 Finance	513,200	3,370,143	3,469,737	97.1%	
25 Fire & Rescue	-	-	-	0.0%	
26 Human Resources	132,649	805,966	844,573	95.4%	
27 Information Technology	290,672	2,592,827	3,392,384	76.4%	
28 Library	314,338	2,138,383	2,284,989	93.6%	
29 Parks & Recreation	1,141,680	6,763,358	7,843,987	86.2%	
30 Police	2,123,368	14,400,490	14,508,132	99.3%	
31 Public Works	468,682	3,452,451	3,847,311	89.7%	
32 Water/ Waste Operations	-	-	-	0.0%	
33 Non-Departmental	1,339,877	8,928,296	5,740,749	155.5%	
34 Subtotal Operating	7,381,099	50,267,408	52,000,517	96.7%	
35 Internal Transfers	853,684	10,727,117	20,123,866	53.3%	
36 Total Expenditures	\$ 8,234,783	\$ 60,994,525	\$ 72,124,383	84.6%	

¹ Revenue is lower than projected due to fewer Multi-Family construction and commercial improvements.

— Capital Projects \$500,000+ —

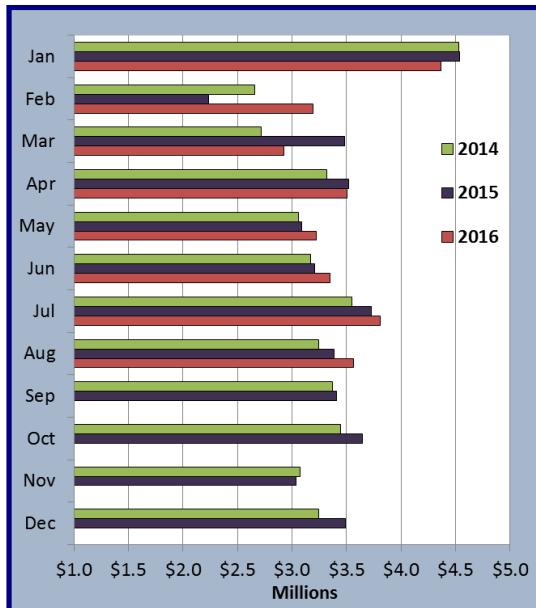
Project Title	2016 Budget	2016 Expenditures	Remaining 2016	% of 2016 Budget
Water Capital				
WTP Phase II Expansion (38 MGD)	\$ 6,972,691	\$ 5,777,748	\$ 1,194,943	82.86%
2015 Water Line Replacement	934,633	259,231	675,402	27.74%
Raw Water Capital				
Windy Gap Firming Project	2,406,660	1,118,956	1,287,704	46.49%
Wastewater Utility Capital				
WWTP Expansion	27,101,493	1,069,627	26,031,866	3.95%
Southside Lift Station	1,716,631	456,211	1,260,420	26.58%
Lakeside Terrace & Boedecker Lift Station Improvements	534,912	524,298	10,614	98.02%
Power Capital				
Phase 2 of Canyon Voltage Conversion - Glade Rd to WTP	754,250	656,792	97,458	87.08%
OH to UG conversion Circuit 411	555,660	-	555,660	0.00%
OH to UG conversion 29th St - Madison to Hwy 287	750,000	26,591	723,409	3.55%
OH to UG conversion - RR tracks N of 10th	1,400,000	-	1,400,000	0.00%
OH to UG conversion - Downtown Catalyst	1,400,000	4,364	1,395,636	0.31%
Land purchase for new substation	1,700,000	-	1,700,000	0.00%
Transfer load from 1012-621 - Crossroads to Fairgrounds	950,000	424	949,576	0.04%
Install 750 AL - Crossroads Sub N. to CR30, E. to I-25	1,000,000	-	1,000,000	0.00%
Extend feeders - Crossroads C2 into system	700,000	-	700,000	0.00%
Foothills Solar Field	5,100,000	4,788,588	311,412	93.89%
OH to UG Circuit 314 from 71st along Garfield to 29th	857,735	-	857,735	0.00%
FEMA Alt Project Foothills Substation	4,000,000	-	4,000,000	0.00%
New Switchgear & Transformer @ Crossroads Substation	600,000	508,305	91,695	84.72%
Stormwater Capital				
Benson Park Culvert Improvements	1,000,509	1,272	999,237	0.13%
Airport Basin North Outfall	1,505,773	15,124	1,490,649	1.00%
Streets Transportation Program				
Boise & 37th Intersection	932,422	-	932,422	0.00%
Boyd Lake Avenue @ Grly-Lvlnd	976,000	-	976,000	0.00%
Taft Avenue @ Big Barnes Ditch	1,232,038	186,250	1,045,788	15.12%
Boyd/US34 Signal & Intersection Improvements	1,099,040	13,035	1,086,005	1.19%
Byrd Drive Extension	1,713,000	329,746	1,383,254	19.25%
Railroad Avenue Flood Repairs FHWA@20038ER1	5,793,405	212,136	5,581,269	3.66%
All Other				
Replace General Spartan Engine	652,300	289,178	363,122	44.33%
Viestenz-Smith Mountain Park Redevelopment	3,190,600	31,759	3,158,841	1.00%
Museum Collections Storage Building	2,400,000	2,079,779	320,222	86.66%
Wilson Pedestrian Bridge & Flood Trail Reconstruction	600,000	4,105	595,895	0.68%
Fire Administration Building (FAB) Remodel	1,884,036	505,015	1,379,021	26.80%
Airport - Snow Removal Equipment Building	1,252,549	656,307	596,242	52.40%
Maintenance & Operation Center (MOC) Remodel	934,660	363,062	45,102	38.84%
Mariana Butte Flood River & Bridge Enhancements	564,091	170,991	393,100	30.31%
Open Lands Acquisition & Restoration	5,899,433	3,923,264	1,976,169	66.50%
Neighborhood Park East	1,900,000	300,000	1,600,000	15.79%

— Tax Totals and Comparisons —



Sales & Use Tax

	2014	2015	2016	2016 Budget	+ / - Budget
Jan	\$ 4,801,433	\$ 4,908,517	\$ 4,950,022	\$ 5,026,356	-1.5%
Feb	3,066,965	2,700,204	3,622,959	3,115,503	16.3%
Mar	3,037,688	4,007,386	3,411,932	3,410,801	0.0%
Apr	3,737,255	4,011,633	3,974,366	3,950,876	0.6%
May	3,614,459	3,611,468	3,699,643	3,686,850	0.3%
Jun	3,525,536	4,116,214	4,182,259	3,636,050	15.0%
Jul	4,038,555	4,375,627	4,229,851	4,286,198	-1.3%
Aug	3,962,915	3,783,694	4,023,763	4,104,437	-2.0%
Sep	4,014,321	4,170,066		4,103,238	
Oct	3,974,590	4,102,720		4,138,714	
Nov	3,919,205	3,572,713		3,898,651	
Dec	3,763,933	3,894,616		3,933,615	
YTD	\$ 29,784,806	\$ 31,514,743	\$ 32,094,795	\$ 31,217,071	2.8%



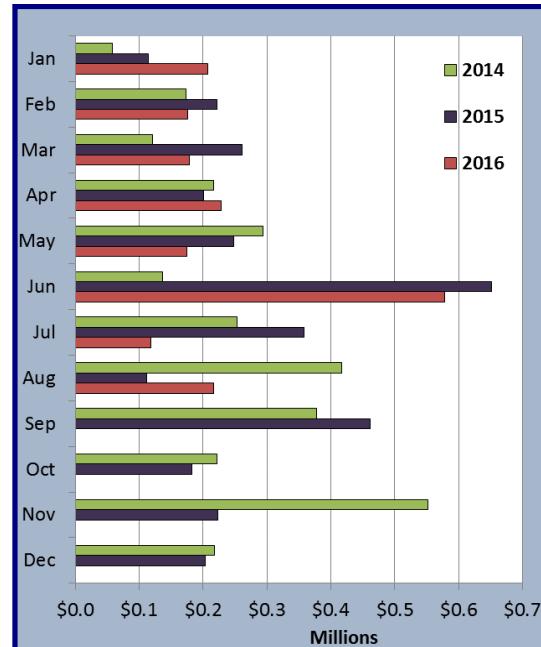
Retail Sales Tax

	2014	2015	2016	2016 Budget	+ / - Budget
Jan	\$ 4,531,650	\$ 4,535,554	\$ 4,365,416	4,697,419	-7.1%
Feb	2,658,798	2,235,775	3,190,005	2,770,381	15.1%
Mar	2,719,254	3,480,164	2,924,575	3,141,451	-6.9%
Apr	3,317,905	3,521,350	3,504,812	3,596,856	-2.6%
May	3,059,076	3,092,253	3,221,324	3,217,352	0.1%
Jun	3,170,467	3,208,195	3,346,764	3,335,420	0.3%
Jul	3,546,945	3,727,389	3,807,869	3,870,943	-1.6%
Aug	3,241,521	3,389,010	3,563,493	3,495,655	1.9%
Sep	3,374,248	3,408,259		3,563,123	
Oct	3,448,473	3,642,285		3,693,841	
Nov	3,077,404	3,034,997		3,289,036	
Dec	3,246,097	3,486,297		3,495,655	
YTD	\$26,245,616	\$27,189,690	\$27,924,258	\$28,125,477	-0.7%

Monthly Financial Report

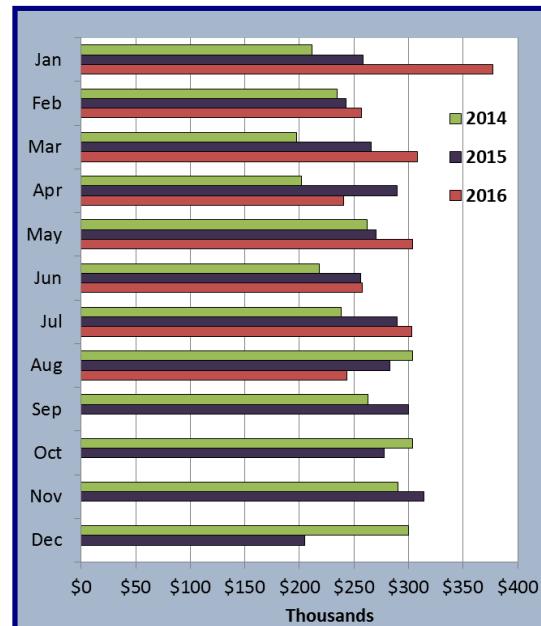
Building Materials Use Tax

	2014	2015	2016	2016 Budget	+ / - Budget
Jan	\$ 57,942	\$ 114,444	\$ 207,531	148,689	39.6%
Feb	173,295	221,517	175,706	145,302	20.9%
Mar	120,768	261,500	178,825	101,202	76.7%
Apr	217,134	200,708	229,024	182,010	25.8%
May	293,543	248,738	174,935	246,503	-29.0%
Jun	136,432	651,849	578,163	114,457	405.1%
Jul	253,077	358,806	119,024	212,345	-43.9%
Aug	417,801	111,575	216,913	350,509	-38.1%
Sep	377,319	462,146		316,605	
Oct	222,297	182,690		186,343	
Nov	551,682	223,788		362,672	
Dec	217,712	203,069		182,520	
	\$3,039,002	\$3,240,831	\$1,880,121	\$2,549,157	
YTD	\$1,669,992	\$2,169,139	\$1,880,121	\$1,501,017	25.3%

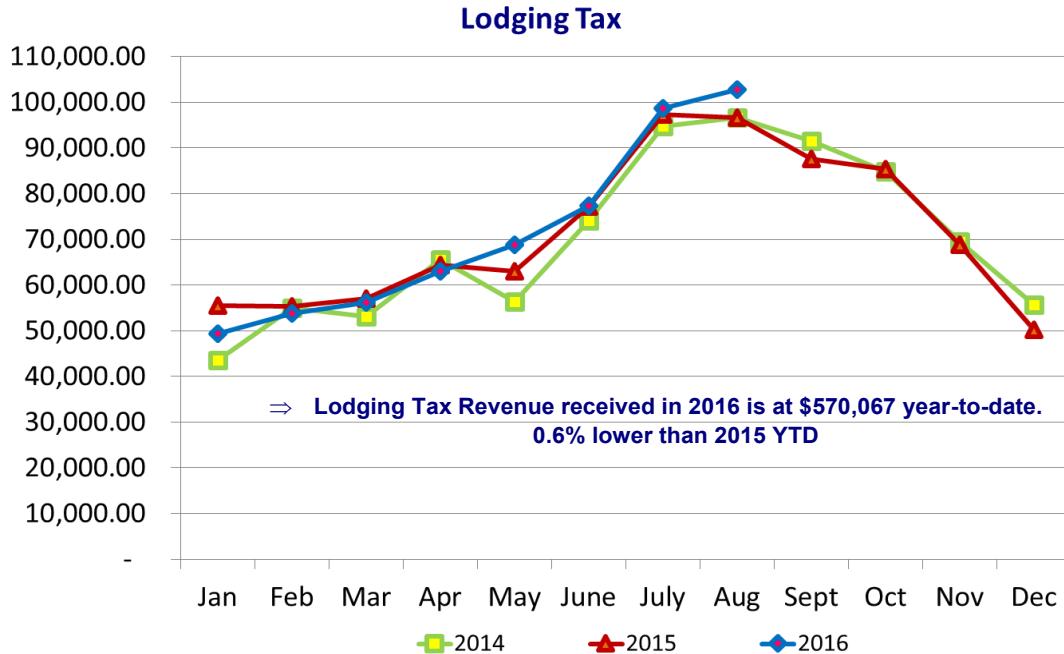


Motor Vehicle Use Tax

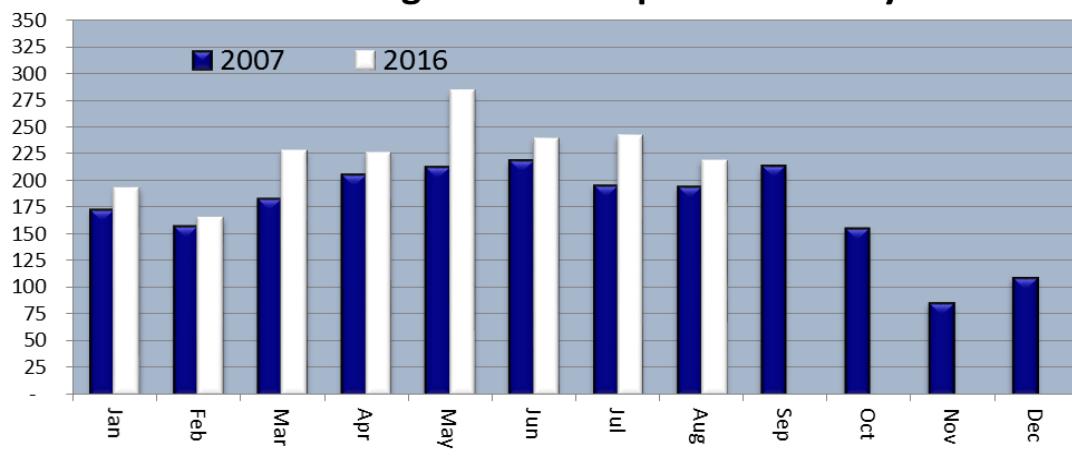
	2014	2015	2016	2016 Budget	+ / - Budget
Jan	\$ 211,841	\$ 258,519	\$ 377,075	\$ 180,248	109.2%
Feb	234,872	242,911	257,248	199,820	28.7%
Mar	197,666	265,721	308,532	168,148	83.5%
Apr	202,216	289,575	240,529	172,010	39.8%
May	261,840	270,477	303,384	222,995	36.0%
Jun	218,637	256,170	257,333	186,173	38.2%
Jul	238,533	289,432	302,958	202,910	49.3%
Aug	303,593	283,109	243,356	258,273	-5.8%
Sep	262,754	299,661		223,510	
Oct	303,820	277,746		258,530	
Nov	290,119	313,928		246,943	
Dec	300,124	205,249		255,440	
	\$3,026,015	\$3,252,500	\$2,290,415	\$2,575,000	
YTD	\$1,869,198	\$2,155,914	\$2,290,415	\$1,590,577	44.0%



— Lodging / Building Comparisons —



Building Permit Comparison History



— Monthly Flood Update —

Cost Estimates

Emergency Response	\$ 2,000,000
Business Assistance	600,000
Capital	27,906,129
Total	\$ 30,506,129

Actual Expenditures

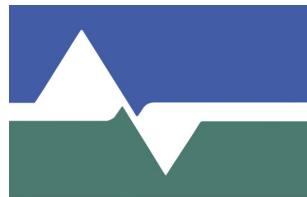
	August	To Date
Total	\$ 4,734,204	\$ 27,644,610

Reimbursements Applied For

	August	To Date
FEMA	\$ 4,019,666	\$ 15,810,991
CIRSA	-	7,119,891
Other		1,247,127
Total	\$ 4,019,666	
	\$ 24,178,009	

Reimbursements Received

	August	To Date
FEMA	\$ 4,873	\$ 8,859,782
CIRSA	-	7,119,891
Other		1,247,127
Total	\$ 4,873	
	\$ 17,226,800	

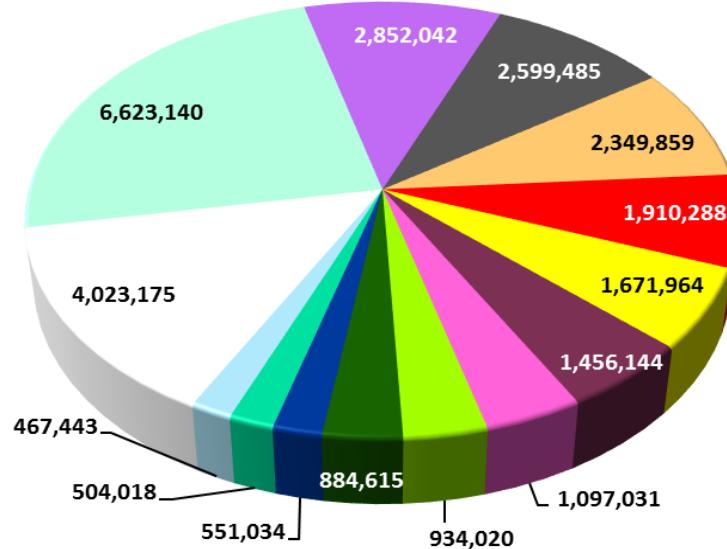


— Geographical Codes —

Geographical Area		YTD 2016	YTD 2015	Change
South East Loveland		\$ 6,623,140	\$ 6,495,414	2.0%
North West Loveland		2,852,042	2,775,235	2.8%
Centerra		2,599,485	2,612,461	-0.5%
North East Loveland		2,349,859	2,216,859	6.0%
Orchards Shopping Center		1,910,288	1,754,015	8.9%
Promenade Shops		1,671,964	1,817,759	-8.0%
Thompson Valley Shopping Center		1,456,144	1,386,804	5.0%
South West Loveland		1,097,031	1,030,527	6.5%
Outlet Mall		934,020	964,092	-3.1%
Downtown		884,615	848,694	4.2%
The Ranch		551,034	531,946	3.6%
Columbine Shopping Center		504,018	482,457	4.5%
Airport		467,443	364,194	28.4%
All Other Areas		4,023,175	3,909,233	2.9%
Total		\$27,924,258	\$27,189,690	2.7%

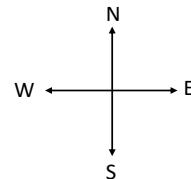
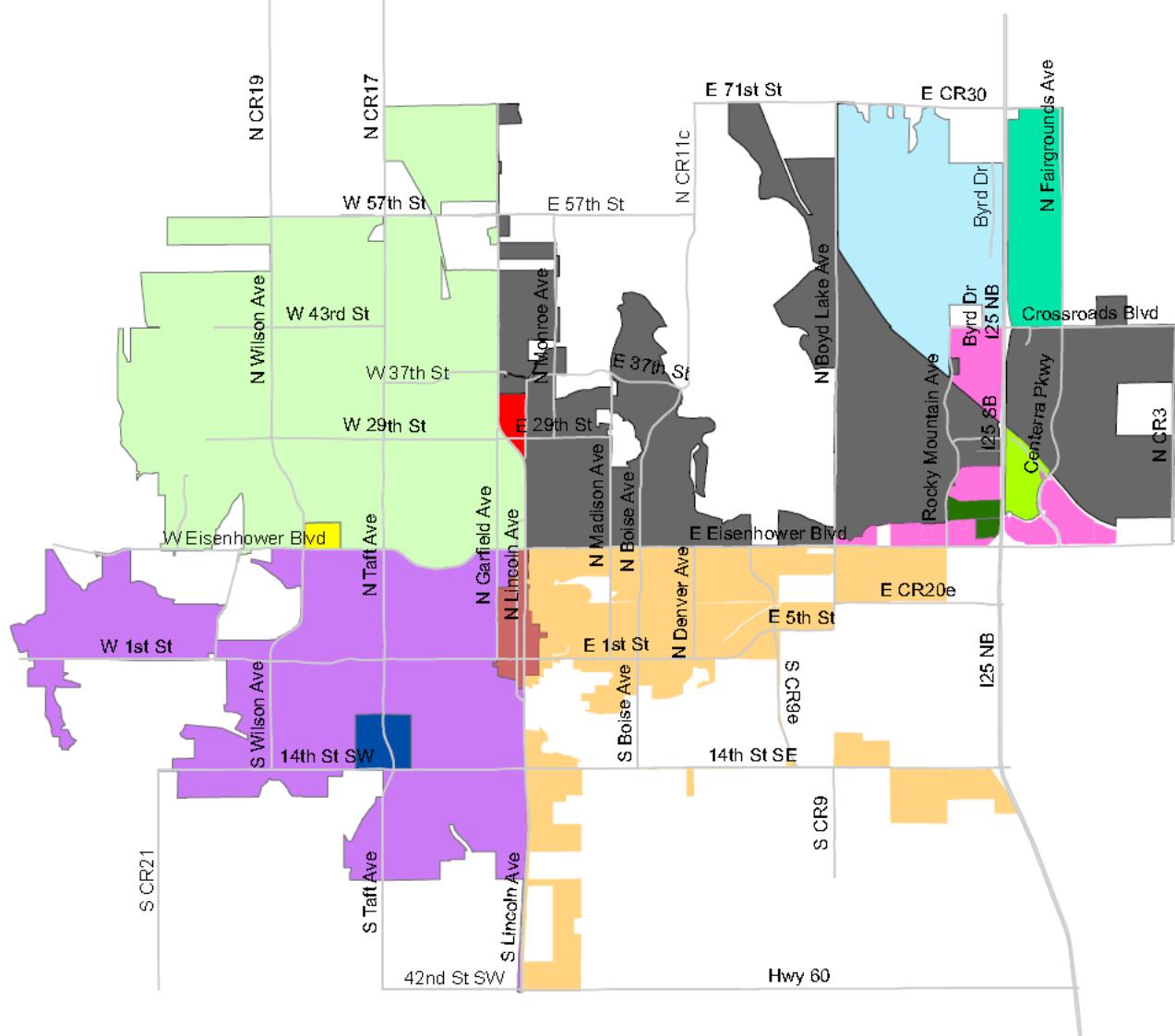
(1) Refers to sales tax remitted by vendors who are located outside of the City but make sales to customers within Loveland.

- North West Loveland
- North East Loveland
- Orchards Shopping Center
- Downtown
- Promenade Shops
- Thompson Valley Shopping Center
- Airport
- South West Loveland
- South East Loveland
- Columbine Shopping Center
- Centerra
- Outlet Mall
- The Ranch
- All Other Areas



[Map](#) →

— Geographical Codes —



— Sales Tax Collections —

Description	YTD 2016	YTD 2015	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	5,146,898	5,228,328	\$ (81,430)	-1.6%	18.4%	18.4%
Restaurants & Bars	3,737,282	3,623,147	114,135	3.2%	13.4%	31.8%
Grocery Stores & Specialty Foods	3,084,386	2,864,080	220,306	7.7%	11.0%	42.9%
Building Material & Lawn & Garden Supplies	2,390,201	2,162,509	227,692	10.5%	8.6%	51.4%
Motor Vehicle Dealers, Auto Parts & Leasing	2,129,961	2,018,016	111,945	5.5%	7.6%	59.0%
Clothing & Clothing Accessories Stores	1,782,815	1,921,698	(138,883)	-7.2%	6.4%	65.4%
Utilities	1,336,328	1,359,423	(23,095)	-1.7%	4.8%	70.2%
Sporting Goods, Hobby, Book & Music Stores	1,173,279	1,169,979	3,300	0.3%	4.2%	74.4%
Used Merchandise Stores	1,029,143	976,605	52,538	5.4%	3.7%	78.1%
Broadcasting & Telecommunications	780,510	892,368	(111,858)	-12.5%	2.8%	80.9%
Beer, Wine & Liquor Stores	719,639	684,330	35,309	5.2%	2.6%	83.5%
Consumer Goods & Commercial Equipment Rental	688,509	589,804	98,705	16.7%	2.5%	85.9%
Hotels, Motels & Other Accommodations	658,030	652,023	6,007	0.9%	2.4%	88.3%
Electronics & Appliance Stores	504,700	424,382	80,318	18.9%	1.8%	90.1%
Health & Personal Care Stores	474,275	468,582	5,693	1.2%	1.7%	91.8%
Electronic Shopping & Mail-Order Houses	441,223	391,552	49,671	12.7%	1.6%	93.4%
Furniture & Home Furnishing Stores	384,294	362,970	21,324	5.9%	1.4%	94.8%
Gasoline Stations with Convenience Stores	291,955	290,499	1,456	0.5%	1.0%	95.8%
Office Supplies, Stationery & Gift Stores	165,153	218,129	(52,976)	-24.3%	0.6%	96.4%
All Other Categories	1,005,677	891,266	114,411	12.8%	3.6%	100.0%
Total	\$27,924,258	\$ 27,189,690	\$ 734,568	2.7%	100.0%	

— Health Care Claims —

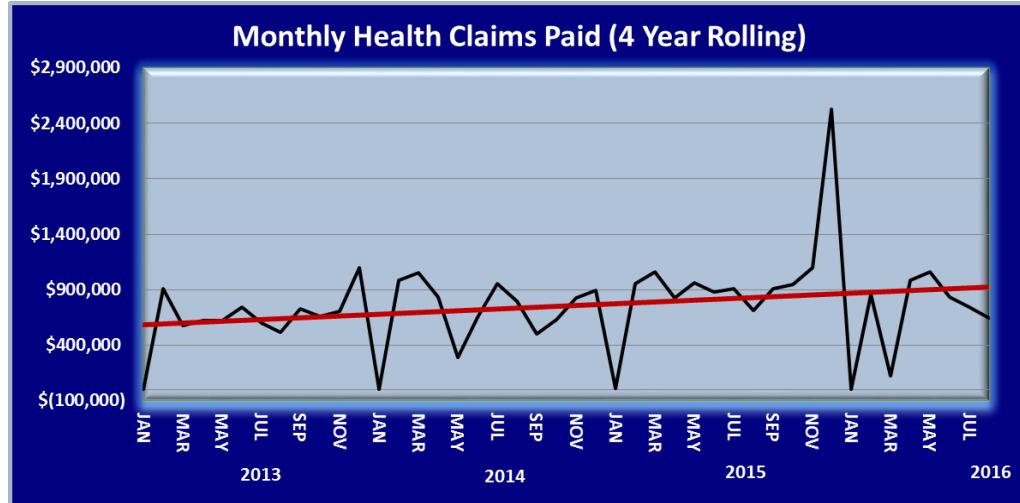
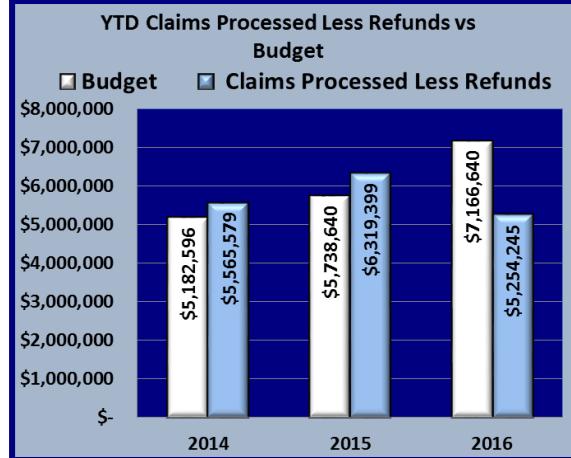
Claims Incurred

		OAP	HRA	Total
		2016	2015	Change
	Aug	740,945	289,760	1,030,705
	YTD	6,001,621	1,349,439	7,351,060
	Aug	673,999	239,341	913,340
	YTD	5,508,059	1,806,726	7,314,786
	Aug	66,946	50,419	117,365
	Aug	9.9%	21.1%	12.9%
	YTD	493,562	(457,288)	36,274
	% YTD	9.0%	-25.3%	0.5%

⇒ HRA—Health Reimbursement Arrangement

⇒ OAP—Open Access Plan

Incurred claims are total expenses the City is obligated to pay for claims, including claims paid and unpaid. Paid claims are those claims that have been paid and reconciled through the bank to-date, which may not reflect Stop Loss reimbursements or other refunds.



Comparison of YTD Claims Over \$25k				
August		2013	2014	2015
# of claims		42	50	50
YTD Cost of high claims		\$2,373,184	\$4,294,158	\$4,270,030

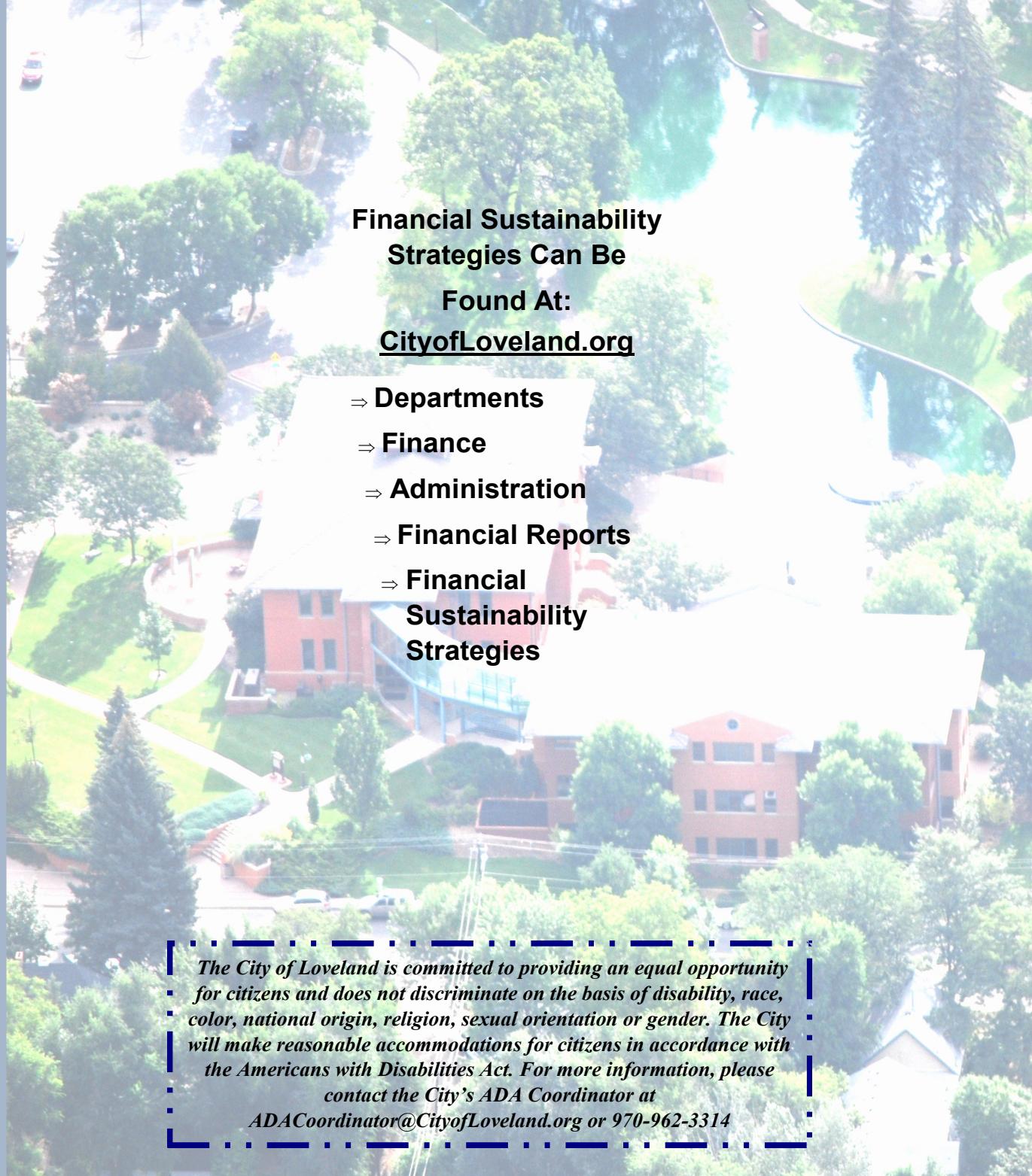
⇒ 2016 # of StopLoss claims: 4
 ⇒ Projected YTD Reimbursements: \$288,890
 (claims over \$175k paid by StopLoss Carrier)

— Activity Measures —

Measures	Aug 2014	Aug 2015	Aug 2016	2014 YTD	2015 YTD	2016 YTD	
# of Building Permits	224	183	218	1,493	1,806	1,571	
Building Permit Valuations	\$30,949,332	\$11,030,581	\$14,403,688	\$ 150,750,614	\$149,024,801	\$151,428,741	
# of Certified Occupancies	22	102	29	151	393	444	
Net # of Sales Tax Licenses	9	33	(10)	(102)	(46)	(17)	
New Residential Electric Meter Sets	33	67	119	226	553	456	
# of Utility Bills Sent	37,009	37,760	38,608	294,726	300,029	306,739	
Rounds of Golf	18,579	18,203	17,262	82,554	86,813	82,893	
\$ Average Health Claim Costs/Emp.	\$ 1,114	\$ 1,281	\$ 1,104	\$ 1,025	\$ 1,360	\$ 1,313	
KWH Demand (kH)	133,036	144,820	144,512	883,372	882,539	880,610	
KWH Purchased (kwh)	71,297,258	73,993,716	67,992,964	447,110,838	509,423,437	497,409,594	
Gallons of Water Sold	529,874,398	639,472,724	662,023,354	2,368,406,181	2,148,868,169	2,445,492,095	
# of Workers' Comp Claims	6	8	13	58	66	64	
\$ of Workers' Comp Claims	\$ 39,349	\$ 20,518	\$ 51,202	\$ 448,360	\$ 326,012	\$ 312,327	
# of Total Open Claims	17	14	16	<i>Not Cumulative</i>			
\$ of Total Open Claims	268,695	390,860	663,304	<i>Not Cumulative</i>			
\$ of Lodging Tax Collected	\$ 96,572	\$ 96,705	\$ 102,796	\$ 538,724	\$ 567,066	\$ 570,068	



— 2016 Monthly Financial Report —



Financial Sustainability
Strategies Can Be
Found At:
CityofLoveland.org

- ⇒ **Departments**
- ⇒ **Finance**
- ⇒ **Administration**
- ⇒ **Financial Reports**
- ⇒ **Financial
Sustainability
Strategies**

The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act. For more information, please contact the City's ADA Coordinator at ADACoordinator@CityofLoveland.org or 970-962-3314

SnapShot

August 2016

For more information regarding this report contact:

Brent Worthington

Finance Director

970.962.2300 or

brent.worthington@cityofloveland.org





Snapshot

August 2016

Brent Worthington
Finance Director

Presented
October 4, 2016

August 2016 Snapshot

- Citywide Revenue
 - 193.2 million, excluding transfers
 - 2.6% below budget projections
- Citywide Expenditures
 - \$186.4 million, excluding transfers
 - 28.9% below budget projections
- Citywide revenues exceed expenditures by \$6.7 million.

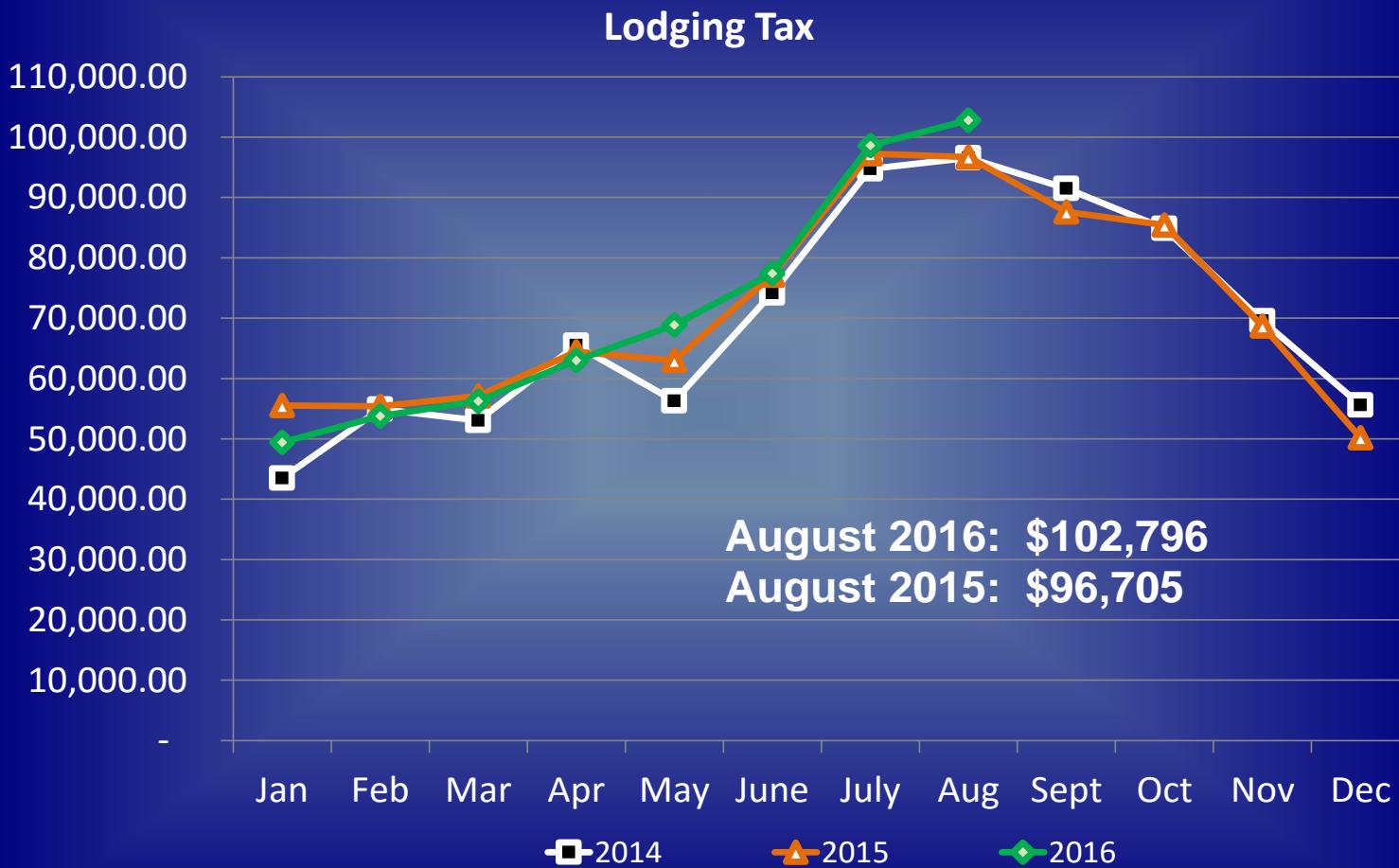
August 2016 Snapshot

- General Fund Revenue
 - \$62.4 million YTD, excluding transfers
 - 3.7% above YTD Budget
 - 3.7% above same period last year
- Sales and Use Tax Revenue
 - \$32.1 million YTD
 - 2.8% above budget projections
 - 1.8% above same period as last year
- Sales Tax only
 - \$27.9 million YTD
 - 0.7% below budget projections
 - 2.7% above same period last year

August 2016 Snapshot

- General Fund Expenditures
 - \$50.3 million YTD, excluding transfers
 - 3.3% below budget projections
- General Fund Revenues Exceed Expenditures by \$1.5 million
- Health Claims
 - August Claims \$1 million
 - 2016 YTD increased slightly by 0.5%.

August 2016 Snapshot



► Lodging tax YTD is \$570,069 (0.6% lower than 2015 YTD).



Flood Report

Cost Estimates

Emergency Response	\$ 2,000,000
Business Assistance	600,000
Capital	27,906,129
Total	\$30,506,129

Actual Expenditures

		<u>August</u>	<u>To Date</u>
Total		\$ 4,734,204	\$ 27,644,610

Reimbursements Applied For

		<u>August</u>	<u>To Date</u>
FEMA	\$ 4,019,666	\$ 15,810,991	
CIRSA	-	7,119,891	
Other		1,247,127	
Total	\$ 4,019,666	\$ 24,178,009	

Reimbursements Received

		<u>August</u>	<u>To Date</u>
FEMA	\$ 4,873	\$ 8,859,782	
CIRSA	-	7,119,891	
Other		1,247,127	
Total	\$ 4,873	\$ 17,226,800	



August 2016 Snapshot

Questions?

Brent Worthington
Finance Director

Presented
October 4, 2016

AGENDA ITEM: 2.12
MEETING DATE: 10/4/2016
TO: City Council
FROM: Alan Krcmarik
PRESENTER: Alan Krcmarik, Executive Fiscal Advisor



TITLE:
Investment Report for August 2016

RECOMMENDED CITY COUNCIL ACTION:

No Council action is required.

SUMMARY:

The budget projection for investment earnings for 2016 is \$2,199,328. On the portfolio's 2016 beginning balance this equates to an annual interest rate of 1.02%. Based on the August monthly report, the estimated yield on the fixed income securities held by USBank was at 1.32%, for total assets the yield was 1.10%. For the year-to-date, total earnings of \$1,448,163 have been posted to City fund accounts. U.S. short-term Treasury interest rates rose in August; the portfolio's change in unrealized gain for the year-to-date eased down \$1.095 million. The end of August portfolio market value is estimated to be \$216.9 million. The peak amount for the portfolio was reached before the 2013 flood when it had an estimated market value of \$226.3 million.

BACKGROUND:

At the end of August, the City's portfolio had an estimated market value of \$216.9 million. Of this amount, USBank held \$194.8 million (including accrued interest) in trust accounts; other funds are held in local government investment pools, in operating accounts at First National Bank, and a few other miscellaneous accounts. Interest rates trended to all-time record lows in 2012-2013 before rising in the second half of 2014. Through 2015 interest rates cycled down, up, down, and back up through December. The volatile swings in rates have continued into 2016. The July and August interest rates were up due to improving economic conditions in the United States and the increasing possibility of a short-term rate hike by the Federal Open Market Committee. The Committee did not increase rates on September 21, but there were three Committee members that dissented on the overall decision not to increase. City investments are in U.S. Treasury Notes, high-rated U.S. Agency Bonds, highly-rated corporate bonds, money market accounts, insured certificates of deposit and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each percent of earnings on the portfolio equates to nearly \$2.17 million annually.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

Investment Focus August 2016



Investment Focus

Monthly Investment Report

August 2016

What's in here?

<i>Focal Points /</i>	1
<i>Inflation Goal</i>	2
<i>Cash Statement</i>	3
<i>Portfolio Size /</i>	4
<i>Investment Types</i>	
<i>Transactions /</i>	5
<i>Maturity</i>	
<i>Labor Data</i>	6-7
<i>Future Scan</i>	8

The Fed's Two Goals:

Unemployment and Inflation
One has been met and the other is still not a problem

The Federal Open Market Committee established two policy goals during the Great Recession: one for the unemployment rate and the other for the growth rate in inflation. Once the unemployment rate reached 6.5% and the inflation rate reached 2.0%, it would be appropriate for short-term interest rates to rise.

The unemployment rate goal was reached a long time ago, but the inflation goal has yet to be achieved – so no rate increase yet.

continued on page 2

Focal Points

- * *The 2016 targets for the City's portfolio:*
 - 1) *interest rate = 1.02%; 2) earnings = \$2,199,328.*
- * *City investments are in high-quality, low-risk securities to comply with Colorado law and the City's investment policy.*
- * *Interest earnings posted for the month totaled \$68,582. Year-to-date earnings total \$1,448,163.*
- * *Each 1% of market value amounts to \$2.1 million.*
- * *The month-end market value shows the unrealized gain is estimated to be \$1,095,367 at the end of August.*

Type of Investment	Purchase Price	Market Price	Unrealized Gain/Loss
Checking Accounts	\$ 16,936,534	\$ 16,936,534	-
Investment Pools	\$ 5,049,140	\$ 5,049,140	-
Money Markets	\$ 35,364,404	\$ 35,364,404	-
Subtotal	\$ 57,350,078	\$ 57,350,078	-
Notes, Bonds, and CDs	\$ 158,480,208	\$ 159,575,575	\$ 1,095,367
Total Portfolio	\$ 215,830,286	\$ 216,925,653	\$ 1,095,367
Data sources	(Morgan Stanley)	(US Bank)	8/31/2016

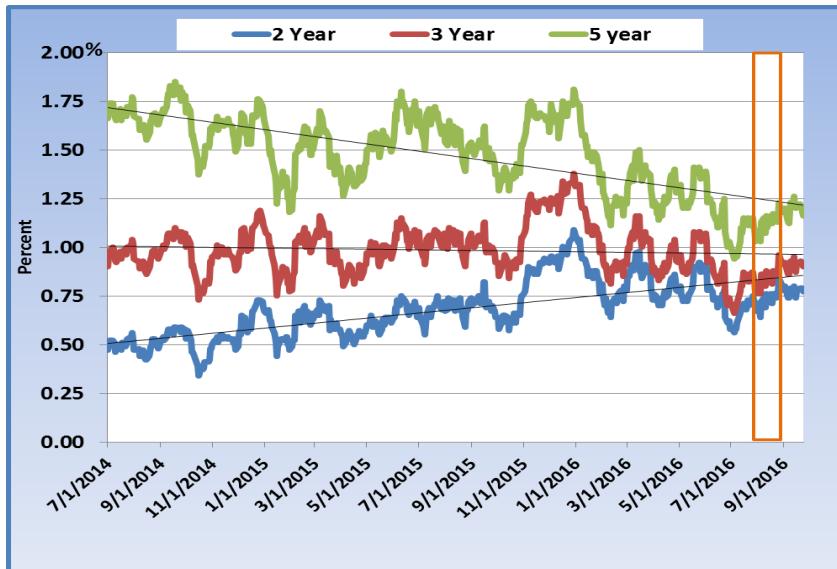
Due to rounding, column and row totals may not add exactly.

City of Loveland
500 East 3rd Street
Loveland, CO 80537



Monthly Investment Report

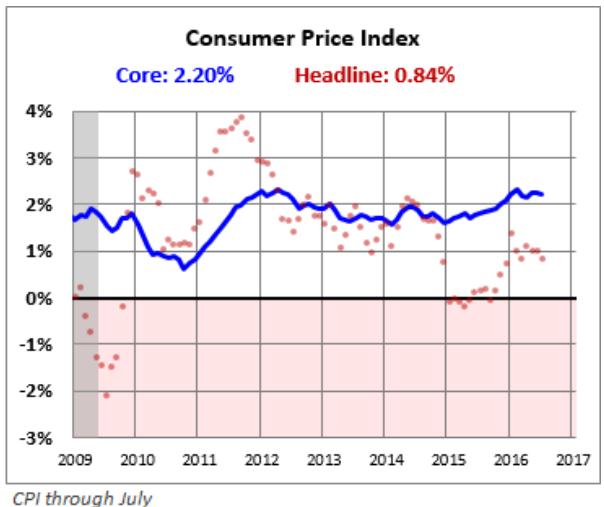
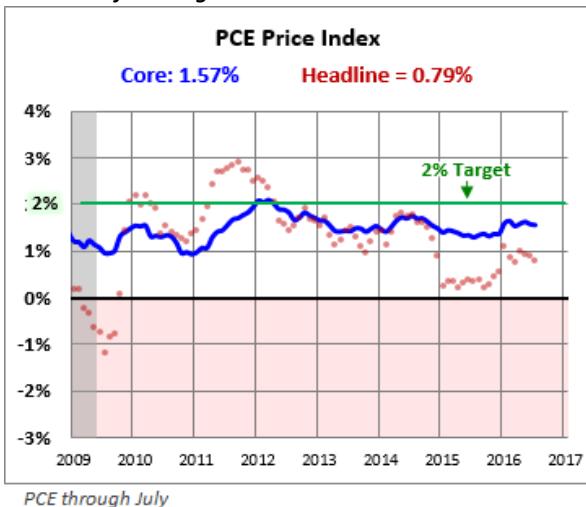
Treasury Rate Trends/ Inflation Levels



Interest rates on U.S. Treasury notes rose again in August. The 2-year note was up 13 basis points, the 3-year note rose 16 basis points, and the 5-year Treasury was also up 16 basis points.

When rates moved higher, the price of securities held in the portfolio decreased, resulting in a lower unrealized gain at month end.

Continued from Page 1.



"This close-up comparison gives us clues as to why the Federal Reserve prefers Core PCE over Core CPI as an indicator of its success in managing inflation: Core PCE is considerably less volatile than CPI. Given the Fed's twin mandates of price stability and maximizing employment, it's not surprising that in the past the less volatile Core PCE has been their metric of choice. On the other hand, the disinflationary trend in Core PCE casts doubt on the effectiveness of the Fed's monetary policy."

(Source: "Two Measures of Inflation and Fed Policy" by Jill Mislinski, in AdvisorPerspectives online, August 29, 2016.)

UNAUDITED August 2016*Bottom Line: Plus 1.2% to Beginning Balance*

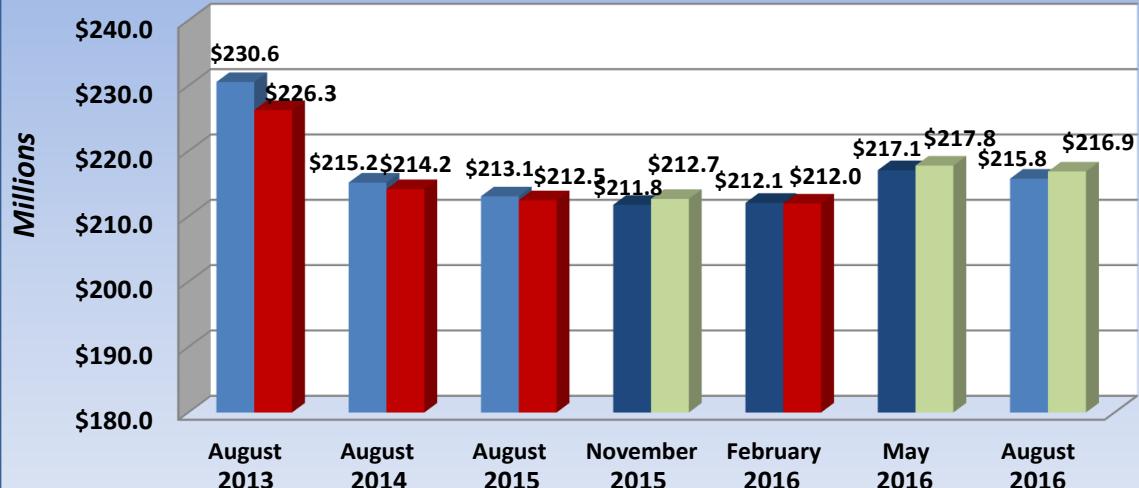
	2016 Beginning	YTD Activity	Month End Total
Restricted Reserves			
1 Capital Expansion Fees	\$ 30,529,948	\$ 3,092,350	\$ 33,622,298
2 Water System Improvement Fees	3,463,847	(1,968,385)	1,495,462
3 Raw Water Revenue - Windy Gap	21,258,069	(903,219)	20,354,851
4 Wastewater System Imp. Fees	8,190,570	340,921	8,531,491
5 Storm Drainage System Imp. Fees	2,029,191	290,279	2,319,470
6 Power Plant Investment Fees	2,882,209	(4,987,597)	(2,105,388)
7 Cemetery Perpetual Care	2,765,890	25,425	2,791,315
8 Other Restricted	31,401,906	(5,621,488)	25,780,417
9 Total Restricted	\$ 102,521,630	\$ (9,731,714)	\$ 92,789,917
Committed / Assigned			
10 General Fund	\$ 11,224,908	\$ 2,491	\$ 11,227,399
11 Enterprise Funds	6,693,603	456,659	7,150,262
12 Internal Service Funds	12,313,489	6,144,309	18,457,798
13 Total Committed / Assigned	\$ 30,232,000	\$ 6,603,460	\$ 36,835,459
14 Total Restricted/Committed/Assigned	\$ 132,753,630	\$ (3,128,254)	\$ 129,625,376
Unassigned Balance			
15 General Fund	\$ 34,406,367	\$ 1,055,823	\$ 35,462,190
16 Airport	1,830,922	272,943	2,103,865
17 Internal Service - Vehicle Maint.	5,670	2,169	7,839
18 Enterprise Funds	46,105,905	4,366,164	50,472,070
19 Total Unassigned	\$ 82,348,864	\$ 5,697,099	\$ 88,045,963
20 TOTAL FUND BALANCE	\$ 215,102,494	\$ 2,568,846	\$ 217,671,340

Source: City of Loveland Budget Office
 Due to rounding, column and row totals may not add exactly.

Monthly Investment Report

Portfolio Growth Trend / Types of Investments

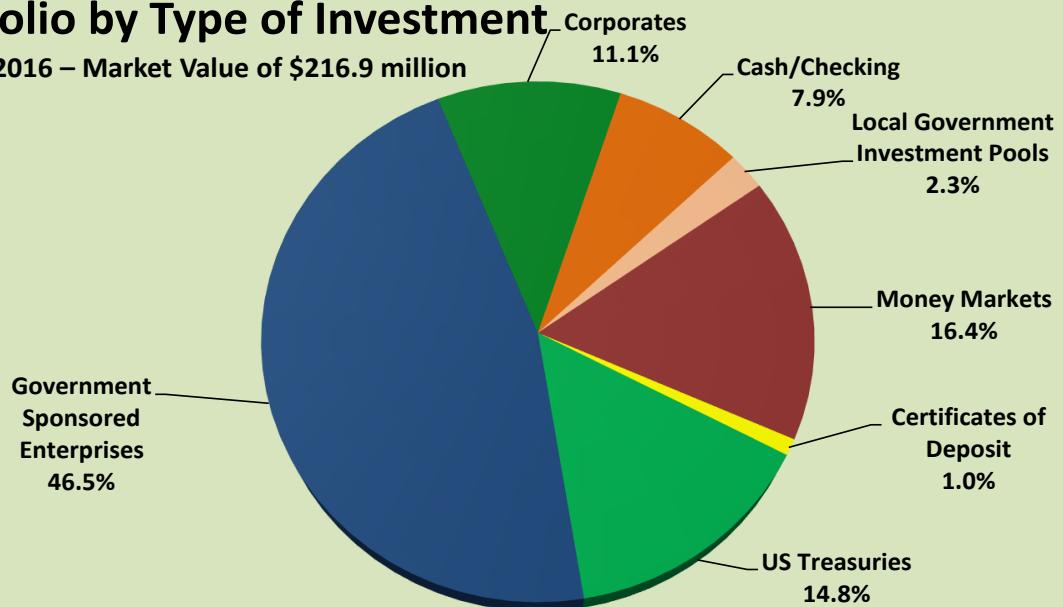
Portfolio Size Since August 2013



Blue bars show Purchase value; red or green bars show Market value (red = loss and green = gain).

Portfolio by Type of Investment

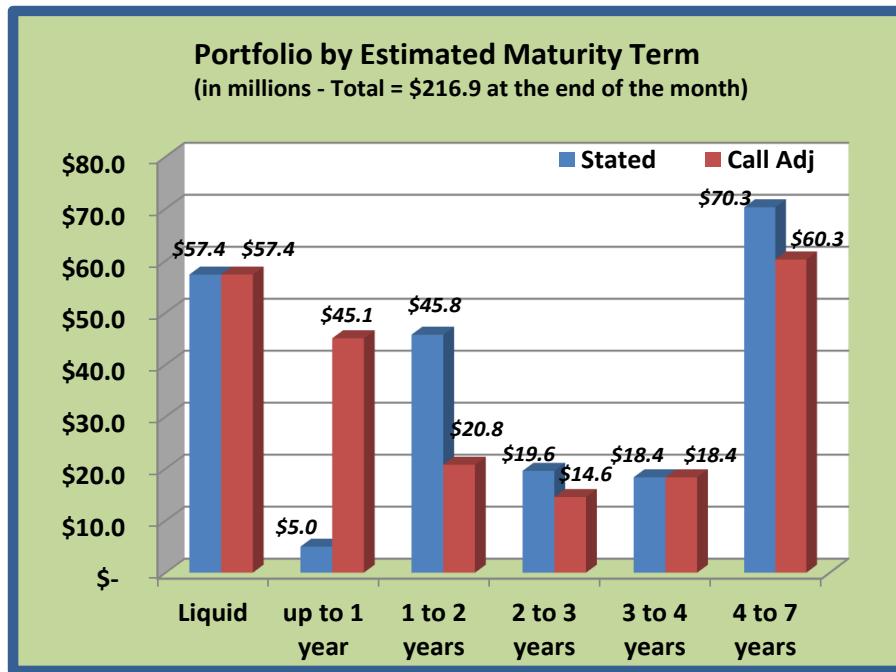
August 2016 – Market Value of \$216.9 million



August 2016

Transactions / Portfolio by Maturity

	Maturity Date	Face Value \$	Purchase \$	Rate
Purchases				
Federal Home Loan Bank	07/14/2021	\$ 5,000,000.00	\$ 4,970,900.00	1.125%
U.S. Treasury	07/31/2021	5,000,000.00	5,002,734.40	1.125%
Apple Inc.	05/06/2021	2,000,000.00	2,114,660.00	2.850%
Berkshire Hathaway	08/15/2019	2,000,000.00	2,005,300.00	1.300%
		\$14,000,000.00	\$14,093,594.40	
Maturities				
No maturities this month				
Called Bonds			Call Value \$	
Federal Farm Credit Bank	07/13/2017	\$ 5,000,000.00	\$ 5,000,000.00	0.810%
Fed. Home Loan Mortgage Corp.	05/26/2021	5,000,000.00	5,000,000.00	1.850%
		\$10,000,000.00	\$10,000,000.00	
Sales				
No sales this month				



The target interest earnings rate for 2016 is 1.02%. Rates have been volatile over recent months and reached all-time lows in June for the 10-year treasury.

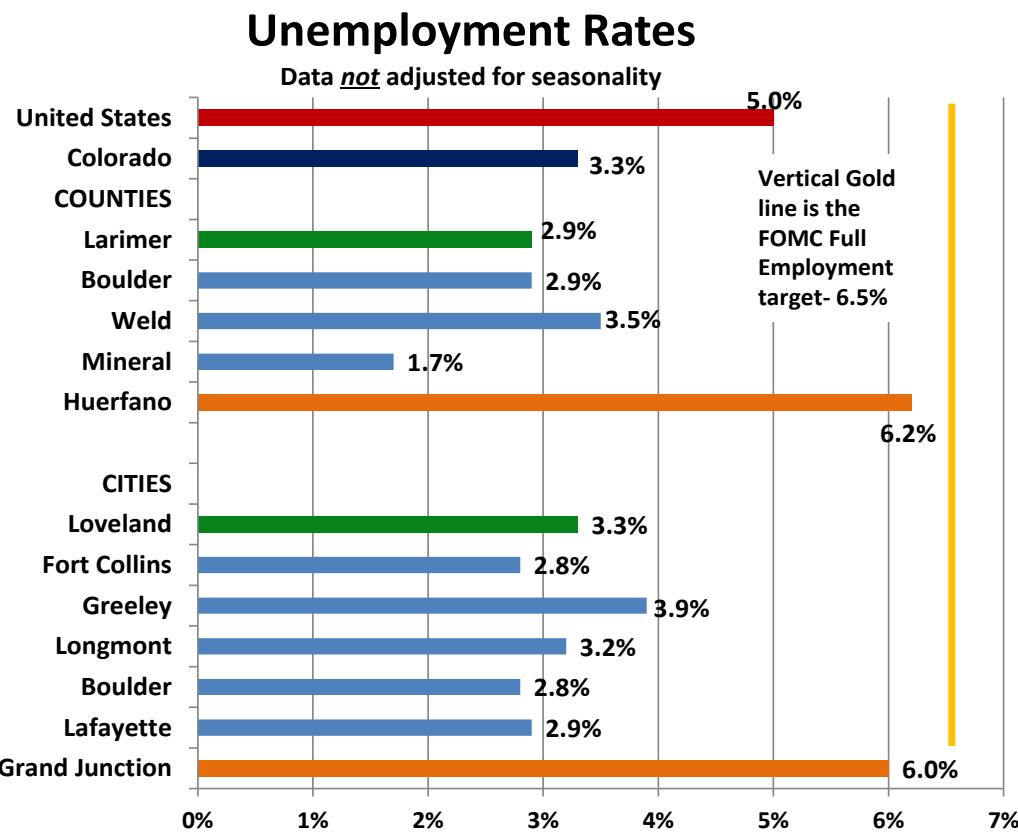
To support earnings, or to reposition the portfolio, bonds may be sold. Sales have netted \$190,948.13 this year.

Blue bars show the stated term; red bars show possible calls.

Updated Colorado Labor Data – from the Colorado Department of Labor and Employment

- ❑ Loveland's employed workforce expanded in August, **up 84** jobs from July.
- ❑ Compared to August of 2015, there are **973 more** jobs reported by Loveland residents.

Important note: It is a routine practice at the beginning of each year for the Bureau of Labor Statistics to revise estimates for prior years based on new information available and updated methodologies. Revisions to the unemployment rate and all related household survey based series as a result of the benchmark process this year were particularly significant due to a change to American Community Survey based inputs. All series were revised back to 1976.



Missing Workers Update

August 2016

Current “missing worker” estimates at a glance

Updated September 2, 2016, based on most current data available.

Total missing workers,
August 2016:
2,220,000

Unemployment rate if
missing workers were
looking for work:
6.2%

Official
unemployment rate:
4.9%

In today’s labor market, the unemployment rate drastically understates the weakness of job opportunities. This is due to the existence of a large pool of “missing workers”—potential workers who, because of weak job opportunities, are neither employed nor actively seeking a job. In other words, these are people who would be either working or looking for work if job opportunities were significantly stronger. Because jobless workers are only counted as unemployed if they are actively seeking work, these “missing workers” are not reflected in the unemployment rate. When persons marginally attached to the labor force plus those employed part time for economic reasons are added to the official unemployment rate (the 4.9% number above right), the rate rises to **9.7%** (the seasonally adjusted U-6 number; the unadjusted number is **9.7%**).

Website: <http://www.epi.org/publication/missing-workers/>





Future Scan: Fed Meeting, Stock Markets, State Employment, Recession Data

❖ The Federal Open Market Committee (with three dissenting votes) keeps rates on hold

- “At the conclusion of its two-day policy-setting meeting, the central bank’s Federal Open Market Committee voted for no change in interest rates despite months of calls from some on the Street [Wall Street] to raise rates from a 0.25% - 0.50% range. The Fed cited low inflation thanks in part to declines in energy prices and “soft” business fixed investment as the chief reasons for its decision, but left the door more clearly open for a rate rise before the end of the year.”
- Glenmede’s Casey Clark pointed out the “dots” in the so-called dot plot that indicate FOMC participants’ views of appropriate monetary policy, showed a slower pace of tightening. In addition, the Fed lowered its U.S. economic-growth outlook to 1.8% in 2016 from a 2% estimate in June. By 2018, the Fed sees a continued slow-growth environment with an annualized growth rate of 2%. The reason for that shift, Yellen said, is slow productivity growth that influences longer run interest rates. ‘The Fed’s message today is consistent with the recent softening of economic data including retail sales growth, industrial production, and the New York Fed’s Empire State Index,’ Clark said.”

(Source: “*Fed Keeps Rates on Hold as Members Become More Divided*” by Virginia Craig, in FoxBusiness.co, Sept. 21, 2016.)

❖ Stock Market Performance as World Economic Indicators for mid-August, 2016

- All eight equity indexes on our global watch list posted week-over-week gains in the September 23rd update. Eurozone markets topped the list. The U.S. S&P 500 index was in sixth place up 1.19%.
- For the year to date, it is a much different story. Great Britain’s FTSE 100 is the leader, up 10.69% as of September 23rd. India’s BSE SENSEX was up 9.77%. The S&P 500 was fourth in this list, up 5.91%.
- Looking back to March of 2009 (cycle lows), the top three performers are India (up 251.3%), the U.S.(up 220%), and Japan(up 136.4%).

(Source: “*World Markets Weekend Update: Back in Rally Mode*,” by Doug Short, September 24, 2016.)

❖ The August 2016 Colorado Employment Situation

was released September 20th. Total nonfarm payroll jobs increased by 4,100 from July to August. Over the last 12 months, nonfarm payroll jobs increased by 71,600. The latest household survey data show Loveland’s unemployment rate to be 3.3%, 1/10% lower than July. Other cities and counties showed similar decreases in their rates. The chart is on page 6. (Next Update October 21, 2016.)

(Source: Colorado Department of Labor and Employment *August 2016 Colorado Employment Situation*, September 20, 2016.)

❖ Recession Indicators:

Four indicators (Industrial Production, Nonfarm Employment, Real Personal Income, and Real Retail Sales) are the basis for determining a recession. Based on August data, Employment was **up 0.10%**, Industrial Production **down 0.43%**, and Real Retail Sales were **down 0.49%**. July Real Income was **up 0.45%**. “The US economy has been slow in recovering from the Great Recession, and the overall picture has been a mixed bag for well over a year and counting. Employment and Income have been relatively strong. Real Retail Sales have been weak at best over the past twelve months, and Industrial Production has essentially been in a recession, although optimists are hoping that the March low was a trough and IP may now be in recovery.”

(Source: *Advisor Perspectives*, Jill Mislinski, September 16, 2016.)

For more information about this report please contact:

Alan Krcmarik, Executive Fiscal Advisor 970 962-2625 Alan.Krcmarik@cityofloveland.org

Monthly Investment Report

August 2016

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City of Loveland
500 East 3rd Street
Loveland, CO 80537

AGENDA ITEM: 5.2
MEETING DATE: 10/4/2016
TO: City Council
FROM: Tami Yellico, City Attorney
PRESENTER: Leah Browder, Public Works
TITLE: Tami Yellico, City Attorney



TITLE:
A Resolution Approving An Intergovernmental Agreement (IGA) For Funding Interstate 25 Improvements

RECOMMENDED CITY COUNCIL ACTION:

Approve the Resolution

OPTIONS:

1. Adopt the action as recommended, which is the next step to the Resolution of Support adopted by City Council on November 17, 2015.
2. Deny the action, which would disrupt the regional collaboration the City entered into last year and put at risk \$10 million toward matching funds for grant-funded I-25 projects.
3. Adopt a modified action (specify in the motion).
4. Refer back to staff for further development and consideration putting the regional collaboration and associated projects at risk.

SUMMARY:

In late 2015, the municipalities of Berthoud; Estes Park; Fort Collins; Loveland; Timnath; Wellington; Windsor and Johnstown passed Resolutions of Support for the Use of Larimer County Mill Levy Funds for Interstate 25 (I-25) Improvements.

As a result, Larimer County included in their 2016 budget a temporary increase to the Road and Bridge mill levy which is offset with an equal decrease in the County's general fund mill levy thus resulting in no net increase in the mill levy. The cooperative approach between the County and participating municipalities includes utilizing revenue realized from the temporary redistribution to establish a fund to create matching monies for a partially grant-funded \$237 million project to widen a 14-mile stretch of the I-25 from State Highway 14 to State Highway 402.

The proposed IGA is the result of the collective efforts of legal representatives from all municipalities participating in this effort. It puts into place the mechanics for participating agencies to direct the increased Road and Bridge mill levy proceeds to the collaborative I-25 project fund.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

Increased Larimer County property values provide an opportunity to increase the County Road and Bridge Mill Levy within the County's total Mill Levy commencing in 2016 for a period of five years by an estimated amount of \$2 million annually without decreasing the amount shared back to the participating municipalities and without increasing the total County Mill Levy.

BACKGROUND:

I-25 is the largest unfunded infrastructure need in Northern Colorado. It affects all jurisdictions in a variety of ways: commute time, safety issues, economic development, delivery of goods and services and emergency response.

Funding: CDOT has developed a broad funding package to complete an I-25 expansion project for 14 miles between State Highway 14 to State Highway 402. The funding sources include monies from the National Freight Program, CMAQ, RPP, Transit, STP Metro, RoadX, and FASTER; as well as loan dollars against anticipated tolling revenue; local government participation through the mill levy redistribution and from Larimer and Weld counties, Berthoud, Fort Collins, Johnstown, Loveland, Timnath, and Windsor; and private funds from McWhinney.

Project: The project expands I-25 from two lanes to three lanes (north and south), replaces the Cache la Poudre Bridge and the Union Pacific Railroad Bridge north of State highway 34; expands the Kendall Parkway Crossing under I-25; and expands the Big Thompson River and Great Western Railway bridges to accommodate the new I-25 travel lanes.

Mill Levy: The temporary redistribution of mill levy proceeds does reduce current Road and Bridge mill levy distribution to municipalities. The Road and Bridge mill levy is maintained at .572. Due to a projected 13% increase in valuation, it is estimated that the City of Loveland will receive an approximate \$34,000 in additional Road and Bridge mill levy funds over the 2014 distribution of about \$260,000. These funds are currently programmed for application to road and bridge projects as is usually done.

Reflecting the support of participating municipalities, the County's 2016 budget includes an increase in the Road and Bridge mill levy by 0.423 while also enacting an offsetting decrease in the County's general Fund mill levy. Current assumptions include leaving this methodology in place for five years generating an estimated \$2 million annually and \$10 million total. The City will annually appropriate the share-back and submit payment to the County by the end of the first quarter of the following calendar year. This funding would not have been available but for Larimer County's proposal to revise its normal distribution formula to realize a local contribution to the I-25 project.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. Resolution
2. IGA
3. November 17, 2015 Resolution of Support

RESOLUTION #R-93-2016

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
FOR FUNDING INTERSTATE 25 IMPROVEMENTS**

WHEREAS, the Board of County Commissioners of Larimer County, Colorado (the “County”) and the Cities of Fort Collins and Loveland, Colorado and the Towns of Estes Park, Timnath, Berthoud, Windsor, Wellington, and Johnstown, Colorado (the “Municipalities”) desire to make improvements to Interstate 25 (“I-25”) in Northern Colorado to improve regional connectivity to commerce, health care, education and employment; and

WHEREAS, the County and the Municipalities seek to work with the Colorado Department of Transportation (“CDOT”) to expand I-25 from two lanes (north and south) to three lanes (north and south) for approximately fourteen miles between State Highway 14 and State Highway 402, replace the Cache la Poudre Bridge and the Union Pacific Railroad Bridge north of State Highway 34, expand the Kendall Parkway Crossing under I-25 and expand the Bridge over the Big Thompson River and the Bridge over the Great Western Railway to accommodate a third travel lane (collectively “Project”); and

WHEREAS, funding for the Project is proposed to include contributions from government at federal, state, county, and municipal levels and other sources; and

WHEREAS, increased property values for County property owners in 2015 have provided an opportunity to increase the County Road and Bridge Mill Levy within the County’s total Mill Levy commencing in 2016 and for a period of four years thereafter by an estimated amount sufficient to generate an additional \$2 million annually without detriment to other Larimer County programs, without decreasing the amount shared back to the Municipalities in 2015 pursuant to C.R.S. §43-2-202(2) (the “2015 Share Back”), and without increasing the total County Mill Levy; and

WHEREAS, the increased County Road and Bridge Mill Levy is projected to generate approximately \$10 million in excess of the 2015 Share Back (the “Increased Municipal Share Back”) over five years commencing with calendar year 2016 for CDOT’s use on the Project; and

WHEREAS, on November 17, 2015, the City of Loveland adopted Resolution #R-82-2015 supporting the use of Larimer County Mill Levy funds for I-25 Improvements and the other Municipalities adopted similar resolutions; and

WHEREAS, the City of Loveland finds that the Projects are in the best of interests of the City and its residents; and

WHEREAS, in order to authorize and fund the Projects, the County and the Municipalities drafted an intergovernmental agreement for funding I-25 improvements attached hereto as **Exhibit “A,”** and incorporated herein by reference (the “Agreement”); and

WHEREAS, the City is authorized to enter into the Agreement with the other

Municipalities and the County pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, *et seq.*, Colorado Revised Statutes.

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

Section 1. That the Agreement is hereby approved.

Section 2. That the City Manager is hereby authorized and directed to enter into the Agreement on behalf of the City, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That this Resolution shall go into effect as of the date and time of its adoption.

Adopted this 4th day of October, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Maseo Garcia
Assistant City Attorney

INTERGOVERNMENTAL AGREEMENT FOR FUNDING I-25 IMPROVEMENTS

This Intergovernmental Agreement for Funding I-25 Improvements (“Agreement”) is made and effective on _____, 2016, by and among the Board of County Commissioners of Larimer County, Colorado (referred to as “County”), and the City of Fort Collins, Colorado, the City of Loveland, Colorado, the Town of Estes Park, Colorado, the Town of Timnath, Colorado, the Town of Berthoud, Colorado, the Town of Windsor, Colorado, the Town of Wellington, Colorado, and the Town of Johnstown, Colorado (individually referred to as “Municipality” or collectively as “Municipalities”). (The County and Municipalities will jointly be referred to as the “Parties.”)

I. RECITALS

A. Interstate 25 (“I-25”) serves as the primary north-south highway connection for Northern Colorado, including the County and the Municipalities.

B. I-25 is the primary roadway route for regional connectivity to commerce, health care, education and employment.

C. I-25 is designated as a federal freight route.

D. I-25 in Northern Colorado is considered significantly congested such that traffic flow is impaired and quality of life is adversely affected.

E. The Colorado Department of Transportation (“CDOT”) completed an Environmental Impact Statement in August 2011 that identified and evaluated multi-modal transportation improvements along approximately 60 miles of the I-25 corridor from the Fort Collins/Wellington area to Denver. The Statement identified areas of I-25 and associated structures such as bridges that needed to be expanded and/or improved.

F. CDOT has proposed to expand I-25 from two lanes (north and south) to three lanes (north and south) for approximately fourteen miles between State Highway 14 and State Highway 402, replace the Cache la Poudre Bridge and the Union Pacific Railroad Bridge north of State Highway 34, expand the Kendall Parkway Crossing under I-25 and expand the Bridge over the Big Thompson River and the Bridge over the Great Western Railway to accommodate a third travel lane (collectively “Project”).

G. Funding for the Project is proposed to include contributions from government at federal, state, county, and municipal levels and other sources.

H. Increased property values for Larimer County property owners in 2015 have provided an opportunity to increase the County Road and Bridge Mill Levy within the County’s total Mill Levy commencing in 2016 and for a period of four years thereafter by an estimated

amount sufficient to generate an additional \$2 million annually without detriment to other County programs, without decreasing the amount shared back to the Municipalities in 2015 pursuant to C.R.S. §43-2-202(2) (the “2015 Share Back”), and without increasing the total County Mill Levy.

I. The increased County Road and Bridge Mill Levy is projected to generate approximately \$10 million in excess of the 2015 Share Back (the “Increased Municipal Share Back”) over five years commencing with calendar year 2016 for CDOT’s use on the Project.

J. The Municipalities have each adopted Resolutions expressing their willingness to contribute funds to County annually for five years for CDOT’s use on the Project subject to the terms of this Agreement.

K. County and Municipalities are authorized pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually.

II. CONSIDERATION

NOW, THEREFORE, in consideration of the covenants and obligations herein expressed, the County and Municipalities agree as follows.

III. TERMS AND CONDITIONS

1. Commencing in calendar year 2017 and continuing for calendar years 2018, 2019, 2020 and 2021, each Municipality shall pay to County from such Municipality’s general fund or such other fund as such Municipality may designate, an annual contribution in an amount equal to that portion of the Increased Municipal Share Back paid by the County to each Municipality pursuant to C.R.S. §43-2-202 (2) (“Municipality Contribution”) to be used as a portion of the “local match” for the Project, subject to the terms set forth in this Agreement.

2. County shall notify (“Notification”) each Municipality in writing no later than January 31 in calendar years 2017, 2018, 2019, 2020, and 2021 the total amount of the Increased Municipal Share Back” received by such Municipality during the previous calendar year.

3. Within 30 days after receipt of the Notification, each Municipality shall give written notice to the County stating whether or not such Municipality has budgeted and appropriated funds for the current calendar year to make its annual Municipality Contribution as set forth in Paragraph 1 above.

4. Provided the Municipality has budgeted and appropriated funds, such Municipality shall pay its Municipality Contribution to County within 60 days following such Municipality’s receipt from County of its Notification.

5. County shall contribute an amount equal to the County's share of the County Road and Bridge Mill Levy revenues received pursuant to C.R.S. §43-2-202(2) attributable to the increase in the County Road and Bridge Mill Levy specified in Recital H above ("County Contribution). No later than February 28 in calendar years 2017, 2018, 2019, 2020 and 2021, County shall give written notice to each Municipality affirming that County has (or has not) budgeted and appropriated funds for the current calendar year to make its annual County Contribution.

6. County shall deposit the County Contribution and the Municipality Contributions into a separately identifiable account ("Contributions Fund") and shall maintain records as to such account sufficient to identify all deposits and withdrawals from such account.

7. County is authorized to pay to CDOT funds in the Contributions Fund for CDOT's use in the Project pursuant to an intergovernmental agreement to be executed between County and CDOT.

8. County shall maintain accurate accounts of any and all amounts paid to CDOT from the Contributions Fund. County shall provide to Municipalities information detailing Project payments to CDOT from the Contributions Fund.

9. If County or a majority of Municipalities, after consultation with the other Parties, determines all or any part of the Project is not feasible due to inadequacy of funds or other impediments, and provided amounts remain in the Contributions Fund, County shall so notify Municipalities in writing. Within 90 days after such notification,

a. County shall make a payment to County and to each Municipality of any amount remaining in the Contributions Fund attributable to County and such Municipality's respective percentage contribution ,

OR,

b. In lieu of such payment, the Parties may agree in writing to an alternative use of the Contribution Funds, provided such alternative use benefits roads or transportation systems located within the jurisdiction(s) of the Parties so agreeing.

10. Any notice or other communication given by any party to another relating to this Agreement must be hand-delivered or sent by registered or certified mail, return receipt requested, or by overnight commercial courier, addressed to such other party at its respective addresses set forth in Exhibit "A" attached hereto and such notice or other communication will be deemed given when so hand-delivered or three (3) business days after so mailed, or the next business day after being deposited with an overnight commercial courier.

11. The obligations of the County and Municipalities to commit or expend funds after calendar year 2016 are subject to and conditioned on the annual appropriation of funds sufficient and intended to carry out said obligations by the respective governing bodies of County and Municipalities in their sole discretion.

12. This Agreement is to be construed according to its fair meaning and as if prepared by all parties hereto and is deemed to be and contain the entire understanding and agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this Agreement unless set forth in writing and signed by the Parties hereto.

13. This Agreement cannot be modified except in writing signed by all Parties.

14. This Agreement will be governed by and its terms construed under the laws of the State of Colorado. Venue for any action shall be in Larimer County, State of Colorado.

15. Nothing contained herein is deemed or should be construed by the Parties or by any third party as creating the relationship of principle and agent, a partnership or a joint venture between the Parties, or an employment relationship between the Parties.

16. This Agreement is made for the sole and exclusive benefit of County and Municipalities, their successors and assigns, and it is not made for the benefit of any third party.

17. If any term or condition of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such a term or condition, will not in any way affect any of the other terms or conditions of this Agreement, provided that the invalidity of any such term or condition does not materially prejudice any Party in their respective rights and obligations under the valid terms and conditions of this Agreement.

18. No party will be deemed in violation of this Agreement if prevented from performing any of its respective obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of public enemies, acts of superior governmental authorities, weather conditions, riots, rebellions, sabotage, or any other circumstances for which it is not responsible or that are not within its control.

19. This Agreement may be signed by the Parties in counterpart.

BOARD OF COUNTY COMMISSIONERS OF
LARIMER COUNTY, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

County Attorney

Jshdocs/county/Agreement for funding I-25 improvements Final

CITY OF FORT COLLINS, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

City Attorney

CITY OF LOVELAND, COLORADO

By: _____
Stephen C. Adams, City Manager

ATTEST:

City Clerk

Approved as to form:

City Attorney

TOWN OF ESTES PARK

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF TIMNATH, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF BERTHOUD, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF WINDSOR, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF WELLINGTON, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF JOHNSTOWN, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

EXHIBIT "A"

To County:

County Manager
Larimer County, Colorado
P.O. Box 1190
Fort Collins, CO 80522

To Fort Collins:

City Manager
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

With copy to:

City Attorney
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

To Loveland:

City Manager
City of Loveland
500 East 3rd Street, Suite 330
Loveland, CO 80537

With copy to:

City Attorney
City of Loveland
500 East 3rd Street, Suite 330
Loveland, CO 80537

To Estes Park:

Town Administrator
P.O. Box 1200
Estes Park, CO 80517

To Timnath:

Town Manager
4800 Goodman Street
Timnath, CO 80547

To Berthoud:

Town Administrator
P.O. Box 1229
Berthoud, CO 80513

To Windsor:

Town Manager
301 Walnut Street
Windsor, CO 80550

To Wellington:

The Town of Wellington
3735 Cleveland Avenue
P.O. Box 127
Wellington, CO 80549

With copy to:

March, Olive and Pharris, LLC
Attn: Brad March
1312 S. College Ave.
Fort Collins, CO 80524

To Johnstown:

Town Manager
450 S. Parish Ave.
Johnstown, CO 80534

RESOLUTION # R-82-2015

A RESOLUTION OF SUPPORT FOR IMPROVEMENTS TO INTERSTATE 25

WHEREAS, Interstate 25 (“I-25”) represents a vital connection for the communities of northern Colorado; and

WHEREAS, I-25 is an essential commuter and freight corridor and the only Colorado highway on the national freight plan; and

WHEREAS, the improvement of I-25 is essential for the economic health and wellbeing of the northern Colorado region; and

WHEREAS, the communities of northern Colorado wish to communicate the formal request of their communities and citizens; and

WHEREAS, the City of Loveland requests that the legislature consider any and all actions to expedite the improvement and expansion of north I-25.

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

Section 1. That the City of Loveland hereby requests and supports the legislature’s consideration of any and all actions to expedite the improvement and expansion of north I-25, including the following:

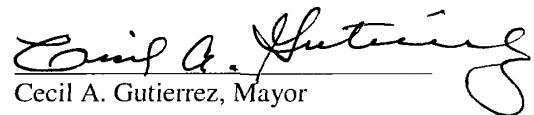
Support for a TRANS bond II ballot initiative, that must include consideration of the following:

- Support for General Fund dollars benefiting transportation (maintenance and construction);
- Support modification to Senate Bill 09-228 for maintenance designated for TRANS bond;
- Support extending Senate Bill 09-228 for 10 years;
- Support new revenue streams adopted by vote of electors, so long as they are designated for TRANS bond and the benefit goes toward transportation; and
- Support tax credit legislation for specific highway projects.

Section 2. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 17th day of November, 2015.




Cecil A. Gutierrez, Mayor

ATTEST:


Jessica D. Andrews
City Clerk

APPROVED AS TO FORM:


Tami Yetter
City Attorney

AGENDA ITEM: 5.3
MEETING DATE: 10/4/2016
TO: City Council
FROM: Tami Yellico, City Attorney
PRESENTER: Tami Yellico, City Attorney



TITLE:

A possible executive session on negotiations, legal advice, and personnel matters concerning the process for naming an interim or acting City Attorney

RECOMMENDED CITY COUNCIL ACTION:

Discussion; possible executive session

OPTIONS:

1. Adopt the action as recommended. Potential discussion regarding negotiations, legal advice and personnel matters are appropriate for executive session.
2. Deny the action.

SUMMARY:

City Council may be asked to consider formal action, including the possibility of calling an Executive Session, to consider negotiations, legal advice, and personnel matters concerning the process for naming an interim or acting city attorney.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

BACKGROUND:

On September 26, 2016, the City Attorney gave written notice of her resignation from the position effective October 26, 2016. City Council may request an executive session to discuss negotiations, personnel issues, and to receive legal advice concerning the process for naming an interim or acting city attorney.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS: