

**LOVELAND CITY COUNCIL MEETING
TUESDAY, JULY 3, 2012
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO**

THE CITY OF LOVELAND DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY IN THE PROVISION OF SERVICES. FOR DISABLED PERSONS NEEDING REASONABLE ACCOMMODATION TO ATTEND OR PARTICIPATE IN A CITY SERVICE OR PROGRAM, CALL 962-2343 OR TDD # 962-2620 AS FAR IN ADVANCE AS POSSIBLE.

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PROCLAMATION DECLARING MONTH OF JULY "LOVELAND LOVES BBQ, BANDS AND BREWS" MONTH AND JULY 14, 2012 AS "LOVELAND LOVES BBQ, BANDS AND BREWS DAY"

PROCLAMATION ENDORSING "CRUZ-IN LOVELAND" EVERY FRIDAY NIGHT OF THE SUMMER

Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items.

Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

- 1. CITY CLERK
 APPROVAL OF COUNCIL MINUTES
 Consideration of a motion approving Council minutes**

This is an administrative action to approve Council minutes from the study sessions on May 22 and June 12, 2012 and the June 5, 2012 regular meeting.

2. **CITY MANAGER**
APPOINTMENTS TO THE YOUTH ADVISORY COMMISSION
Consideration of a motion appointing recommended members and alternates to the Youth Advisory Commission for terms effective June, 2012 through May, 2013
 This is an administrative action. On May 26, 2012, four of the current Youth Advisory Commission ("YAC") members graduated from high school. Interviews were conducted by Jenni Dobson, Cathleen McEwen and some current commissioners on April 18 and May 8, 2012 to fill these vacancies. YAC would also like to reappoint commissioners and alternates who are not graduating or leaving at this time. YAC has 12 total voting commissioners and four alternates. The appointed and reappointed commissioners and alternates will serve a term from June, 2012 through May, 2013.
3. **CITY MANAGER**
BOARD & COMMISSION APPOINTMENTS
Consideration of a motion appointing or reappointing members to the Affordable Housing Commission, Construction Advisory Board, Historic Preservation Commission, Loveland Utilities Commission and Transportation Advisory Commission
 This is an administrative item recommending the appointment or reappointment of members to the Affordable Housing Commission (appointing Marcy Hoerster, Pam McCrory, and Ted Schlagenhauf each for a term effective until June 30, 2015), Construction Advisory Board (reappoint Gregg Meisinger for a term effective until June 30, 2015), Historic Preservation Commission (appoint Stacey Kersley and reappoint Trudi Manuel each for a term effective until June 30, 2015), Loveland Utilities Commission (reappoint Gary Hausman, Dan Herlihey, and John Matis each for a term effective until June 30, 2015) and the Transportation Advisory Board (reappoint Gary Thomas for a term effective until June 30, 2015).
4. **DEVELOPMENT SERVICES**
REZONE LAKES PLACE 5TH SUBDIVISION
Consideration on second reading of an ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for certain property located in the Lakes Place 5th Subdivision, City of Loveland, Larimer County, Colorado
 This is a quasi-judicial action to adopt an ordinance on second reading to rezone Outlots A, B, and C of the Lakes Place 5th Subdivision from DR-Developing Resource District to R1-Developing Low-density Residential District. The applicants are Larry Heckel and Leroy Gabriel. City Council unanimously approved the ordinance on first reading on June 5, 2012.
5. **WATER & POWER**
MUNICIPAL CODE AMENDMENT – WATER BOOSTER PUMPS & SYSTEMS
Consideration on second reading of an ordinance amending the Loveland Municipal Code at Chapter 13.04 and Chapter 19.06 concerning water booster pumps and systems
 This is a legislative action. The ordinance amends the Loveland Municipal Code at Chapter 13.04 and Chapter 19.06 regarding water booster pumps and systems. Several irrigation booster pumps have been connected to the City's water system directly after the water meter. The booster pumps create a potential for cross-contamination and create localized low pressure during operation which can result in system water pressures that do not meet minimum goals. Currently there is no regulation in the Code

for irrigation booster pumps. City Council unanimously approved the ordinance on first reading on June 5, 2012.

**6. WATER & POWER
PUBLIC HEARING**

MUNICIPAL CODE AMENDMENT - CHAPTER 19.04 CONCERNING WATER RIGHTS IN ACCORDANCE WITH THE 2012 RAW WATER MASTER PLAN

Consideration on first reading of an ordinance amending the Loveland Municipal Code at Chapter 19.04 concerning water rights in accordance with the 2012 Raw Water Master Plan

This is a legislative action to adopt an ordinance amending the Loveland Municipal Code at Chapter 19.04 concerning water rights in accordance with the 2012 Raw Water Master Plan. On June 5, 2012 the Loveland City Council unanimously approved Resolution #R-46-2012 adopting the 2012 Raw Water Master Plan. In order to implement portions of the plan, the Loveland Municipal Code at Chapter 19.04 concerning water rights must be amended.

**7. PUBLIC WORKS
PUBLIC HEARING**

SUPPLEMENTAL APPROPRIATION – GRANT FUNDS FOR TRAFFIC SIGNAL INTERCONNECT SYSTEM

Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for a federal grant to design and construct a reliable traffic signal/ITS devices interconnect system expansion along regionally significant corridors in Loveland.

This is an administrative action. The ordinance appropriates federal grant funds and the City's matching funds totaling \$1,084,000 for the construction of a traffic signal interconnect system. The grant brings a significant amount of unexpected federal funding. The City General Fund has undesignated fund balance that is available to match the grant, allowing for a significant improvement in the traffic signal system.

8. PUBLIC WORKS

AMEND COLORADO DEPARTMENT OF TRANSPORTATION AGREEMENT FOR TRAFFIC OPERATIONS CENTER UPGRADES

Consideration of Resolution #R-47-2012 approving an amendment to an Intergovernmental Agreement between the City of Loveland, Colorado and the State of Colorado, for the use and benefit of the Department of Transportation, for design and construction of building upgrades to the Loveland Traffic Operations Center

This is an administrative action to approve an amendment to an existing contract with CDOT by which the City received federal funds for the design and construction of building upgrades to the City's Traffic Operations Center. This item is necessary in order to complete the revised criteria for closing out a project with federal funding so that the City can receive the final reimbursement amount from CDOT. The original contract was approved by City Council at its September 18, 2007 meeting by adoption of Resolution #R-97-2007. The original contract included federal funds of \$120,000 and required a 17.21% Local Match in the amount of \$24,945, for a total contract amount of \$144,945. The amendment reflects the addition of \$155,000 in City "local agency overmatch" funds that were used to complete this project, raising the total project cost to \$299,945. The additional \$155,000 in City funding was included in previously-approved budgets related to the Transportation Capital Improvement Program.

9. **FINANCE**
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION – NEW PEG FEE FUND TRANSFER
Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to transfer fund balance to the new PEG Fee Fund
 This is an administrative action. The ordinance transfers fund balance of \$139,470 that has been kept in the General Fund to a new PEG Fee fund (public, educational, and governmental access) established in the 2012 budget process.
10. **DEVELOPMENT SERVICES**
REALLOCATE UNSPENT 2011 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS
Consideration of Resolution #R-48-2012 of the City of Loveland, Colorado approving the grant funding recommendation of the Loveland Affordable Housing Commission for the reallocation of certain 2011 Community Development Block Grant funds
 This is an administrative action to consider a resolution reallocating 2011-2012 Community Development Block Grant (CDBG) funding in the amount of \$54,896.67.
11. **DEVELOPMENT SERVICES**
FINDINGS & CONCLUSIONS FROM KUM & GO APPEAL
Consideration of Resolution #R-49-2012 adopting findings and conclusions regarding appeal of the Planning Commission's decision approving a type 3 zoning permit for Special Review #896 for Kum & Go Gas Station #995
 This is a quasi-judicial action to consider a resolution adopting findings and conclusions in support of the June 5, 2012 City Council approval of a type 3 zoning permit for Special Review #896 for Kum & Go Station #995. Approval of the type 3 permit upheld the Planning Commission decision on March 19, 2012 to deny an appeal of a decision by the Current Planning Manager to approve a special review for the Kum & Go gas station/convenience store. The appeal was filed by Kevin Borchers, manager of Champion K&K Enterprise.
12. **PUBLIC WORKS**
APPOINTMENT OF STEERING COMMITTEE MEMBERS TO THE NORTH FRONT RANGE TRANSIT VISION PROJECT
Consideration of a motion to appoint Joan Shaffer and Dan Hill as Loveland's members on the steering committee for the North Front Range Transit Vision project for the duration of the one year project
 This is an administrative action. The North Front Range Transit Vision project is a regional study focused on developing recommendations for decision-making and funding structures for regional transit services in the north Front Range area. A steering committee is being formed to provide the project management team with policy-level guidance on project issues, options, findings and recommendations and serve as a communication link to the communities they represent. The steering committee is comprised of an elected official and one or more community members from each of the cities sponsoring the project. Joan Shaffer and Dan Hill are recommended for appointment to the steering committee representing the City of Loveland for the duration of the one year project.

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

CITY COUNCIL

- a. **Citizens' Report** *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*
- b. **Business from Council** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*
- c. **City Manager Report**
- d. **City Attorney Report**

PROCEDURAL INFORMATION

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

13. **CITY CLERK**
PUBLIC HEARING
CHANGE TO CITY OF LOVELAND WARD BOUNDARIES
Consideration on first reading of an ordinance amending Chapter 1.24 of the Loveland Municipal Code changing the boundaries of the City's four wards
 This is an administrative action regarding redistricting the ward boundaries within the City of Loveland to meet certain requirements.
14. **CITY MANAGER**
PUBLIC HEARING
BAN ON CERTAIN OUTDOOR FIRES WITHIN CITY OF LOVELAND
Consideration on only one reading of an emergency ordinance temporarily banning certain outdoor fires within the City of Loveland
 This is a legislative action to consider an emergency ordinance to temporarily ban certain types of outdoor fires within the corporate limits of the City of Loveland. This action would be similar in many respects to the ban on "open burning" imposed by Governor Hickenlooper in his June 14, 2012, Executive Order and would be in alignment with many of the provisions that are currently in Larimer County's ban on "open fires" adopted by special resolution on June 19, 2012.
15. **FINANCE**
MAY 2012 FINANCIAL REPORT
 This is an information only item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the five months ending May 31, 2012.

**16. CITY MANAGER
INVESTMENT REPORT FOR MAY 2012**

This is an information only item. The budget estimate for investment earnings for 2012 is \$2,729,560. Through May 2012, the amount posted to the investment account is \$1,358,544 including realized gains. Actual year-to-date earnings are higher than the year-to-date projection by \$253,214. Based on the May monthly statement, the estimated annualized yield on the U.S. agencies and corporates inched up to 1.53%, still under the annual target rate of 1.7% for 2012. Reinvestment rates have trended to near record low levels and remain lower than the budget projection.

ADJOURN



PROCLAMATION

- WHEREAS** Loveland is the jewel of Northern Colorado, possessing all the amenities of an urban population center, yet maintains its small town charm, friendliness and welcoming atmosphere; and
- WHEREAS** our city aims to support local businesses including food purveyors, craft breweries, hotels, restaurants, retailers and local entertainers; and
- WHEREAS** our citizens, and local businesses desire to give back to the community through fundraising and community support; and
- WHEREAS** the success of both Loveland's SummerFest in The Rockies and Loveland Loves BBQ in recent years has encouraged event planners and sponsors to establish a combined event that celebrates summer the American way; and
- WHEREAS** The city of Loveland supports the establishment and continuing tradition of Loveland's signature July event because the festival supports the city's mission of enhancing tourism while simultaneously providing the community with an exciting event to celebrate local brews, art and entertainment;

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

LOVELAND LOVES BBQ, BANDS AND BREWS MONTH

And July 14th, as

LOVELAND LOVES BBQ, BANDS AND BREWS DAY

in Loveland, Colorado, and in so doing, urge all citizens of Loveland to attend the summer celebrations.

Signed this 3rd day of July, 2012

Cecil A. Gutierrez
 Mayor





PROCLAMATION

Recognizing “Cruz-in Loveland”

WHEREAS The City of Loveland recognizes the value of Community activities that include business cooperation and free family friendly fun; and

WHEREAS The volunteer organizers of Cruz-in Loveland successfully brought together over 40 business and media sponsors to launch this weekly event starting in April 2012; and

WHEREAS The Cruz-in Loveland organizers demonstrated high civic responsibility and responsibility for safety and legal compliance through early and detailed coordination with the Loveland Police Department; and

WHEREAS Cruz-in Loveland seeks to focus attention on the key Loveland commercial corridors of Eisenhower Boulevard (also known as US Highway 34) and the US Highway 287 corridor, Lincoln, Cleveland and Garfield Avenues; and

WHEREAS Cruz-in Loveland offers charitable sponsorship of activities by the American Cancer Society, the Humane Society and Veterans organizations; and

WHEREAS Cruz-in Loveland has re-established a weekly tradition of collectible, classic and artistic vehicles on display every Friday night of the summer;

NOW, THEREFORE, we, the City Council of Loveland, do hereby recognize, praise and endorse the Friday night summer fun of

Cruz-in Loveland

in Loveland, Colorado, and in so doing, encourage all citizens and businesses to join in the spirit and practice of “cool rides” on summer Friday nights.

Signed this 3rd day of July, 2012

Cecil A. Gutierrez
 Mayor



Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, Farley, Fogle, Taylor, McKean, Trenary, Klassen, McEwen and Shaffer. City Manager, Bill Cahill was also present.

1. POLICE

Loveland Police Department Staffing and Resource Study

Police Chief, Luke Hecker presented this item to Council as the first segment of four phases of a project to be conducted internally over the next nine months. The objective of the project is to generate a ten year financial and operational strategy for the deployment of police resources to protect the safety of employees and the community in a way that promotes employee deployment. This first phase of the project provides information on the departments current status including: background and accreditation of the agency; standards for performance and staffing level impacts; and projections of future community growth and planning. Phase 2 will be to conduct a study of surrounding Front Range communities to determine and compare goals or standards. Phase 3 will define options or alternatives needed to reach the goals or standards, from the present situation. Phase 4 will be to create an Action Plan and return to Council with recommendations for consideration. Council thanked staff for the presentation and directed staff to move forward with the study.

2. WATER & POWER

Water Utility Infrastructure Needs & Cost of Service Study Results

Water and Power Director, Steve Adams presented this item to Council to provide background information regarding increasing infrastructure investment needs in the water utilities and preliminary results from a cost-of-service study, including rate implications associated with several financing approaches. Water Utilities Manager, Chris Matkins and Jason Mumm of Stepwise Utility Advisors, spoke regarding the current conditions of the water infrastructure and the four options proposed for funding the needed system improvements. Utility Accounting Manager, Jim Lees spoke on the preliminary results of the cost of service and rate study done every five years in order to insure that the water utility is collecting an adequate amount to operate the facility and that each customer type is paying their share. Executive Fiscal Advisor, Alan Krcmarik presented information for Council's consideration on long-term bond financing to pay for the work. Council discussion ensued. Council consensus favored the higher base lower volume and the short-term internal borrowing options presented at this time. Staff was directed to move forward with 2013 budget preparations and present final study results at a regular meeting in August.

The study session was adjourned at 11:31 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, Farley, Fogle, Taylor, McKean, Trenary, Klassen, McEwen and Shaffer. Also present were the following members of the Planning Commission: Buddy Meyers, Rich Middleton, John Crescibene, Carol Dowding, Stephanie Fancher, Rob Molloy, Troy Krenning, Mike Ray and Chip Leadbetter. City Manager Bill Cahill was also present.

1. City Manager

Panel Discussion Regarding Oil and Gas Extraction and Development

Development Services Director, Greg George introduced this item to Council and Planning Commission members in attendance. On May 15, 2012, City Council approved an emergency ordinance imposing a nine month moratorium on the acceptance, processing, and approval of any applications, permits, or other approvals for oil and gas uses. The ordinance is intended to allow the City time to investigate the extent of the City's authority to regulate such uses and develop and implement appropriate regulations, if necessary, to protect the public's health, safety and welfare. A short video entitled, "Natural Gas Shale Horizontal Drilling", was shown of the drilling process of a well. Next, each of the six panelists introduced themselves to present information and answer questions following their presentations. President and Chief Executive Officer of the Colorado Oil & Gas Association, Tisha Conoly Schuller presented an educational primer on the concerns associated with oil and gas development. CDPHE Oil and Gas Liaison, Kent Kuster presented information about how the Colorado Department of Health and Environment regulates air quality, the emission control permit requirements for facilities and the associated public health impacts from oil and gas development. Loveland Fire Chief, Randy Mirowski's presentation covered the emergency response considerations necessary for a fracking emergency. CSU Associate Professor, Dr. Kenneth Carlson presented information on "The Natural Gas Initiative" addressing water issues associated with oil and gas exploration in Colorado and the Rocky Mountain region. Acting Director of Colorado Oil and Gas Conservation Commission (COGCC), Thom Kerr gave a recap of the hydraulic fracturing activity in the Loveland area and reviewed COGCC rules and regulations that directly address the concerns about environmental impacts from fracking. Sierra Club Chair, Shane Davis presented the "hidden" environmental impacts of fracking in Colorado.

Mayor Gutierrez opened the Public Comment portion of the meeting at 11:35 p.m. and nine people spoke. Public Comment was closed at 12:01 a.m. City Manager, Bill Cahill stated that Council direction was not being sought at this meeting. However, staff will continue to research and seek direction from Council as needed in the development of the appropriate regulations over the next few months.

The study session was adjourned at 12:04 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

CALL TO ORDER Mayor Gutierrez called the regular meeting of the Loveland City Council to order on the above date at 6:30 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL Roll was called and the following responded: Gutierrez, McEwen, Farley, Klassen, Shaffer, Trenary, McKean, Fogle and Taylor.

PROCLAMATION Councilor Taylor read a proclamation declaring June 27, 2012 as "Bike Week". The proclamation was received by the proclamation was received by Robin Hildenbrand of the Loveland Pedal Club.

PROCLAMATION

WHEREAS, the City of Loveland is dedicated to providing safe and alternative modes of transportation; and
WHEREAS, the benefits of bicycling are numerous, both to the individual and to the community as a whole; and
WHEREAS, the City of Loveland received a Bicycle Friendly Community Honorable Mention recognition from the League of American Bicyclists in 2010.
WHEREAS, the City of Loveland adopted a comprehensive Bicycle and Pedestrian Master Plan on May 1, 2012.
WHEREAS, our fair city maintains nearly 140 miles of bicycle routes, lanes and trails; and
WHEREAS, persons of all ages and abilities are encouraged to use helmets for their protection; and
WHEREAS, the month of June has been declared as Bike Month to recognize and encourage bicycling as a viable source of transportation and recreation.

NOW, THEREFORE, we, the City Council of the City of Loveland, do hereby proclaim the week of June 25 through June 29, 2012 as

BIKE WEEK

in Loveland and encourage citizens to try bicycling as an alternative transportation method and to participate in Bike-to-Work Day on Wednesday, June 27.
Signed this 5th day of June, 2012.
Cecil A. Gutierrez, Mayor

PRESENTATIONS:

1. Mayor Gutierrez presented Resolution #R-37-2012 to Brian Moeck and thanked him for outstanding service to the City of Loveland.

RESOLUTION #R-37-2012

A RESOLUTION RECOGNIZING AND THANKING RETIRING PLATTE RIVER POWER AUTHORITY GENERAL MANAGER AND FORMER CITY OF LOVELAND EMPLOYEE BRIAN H. MOECK FOR OUTSTANDING SERVICE TO THE CITY OF LOVELAND

WHEREAS, Brian H. Moeck graduated from California State University in 1969 with a degree in electrical engineering; and
WHEREAS, in 1984, Brian was hired as an Electrical Engineer by the City of Loveland Department of Light and Power; and
WHEREAS, from 1987 to 1993, Brian served as the Director of the Department of Light and Power; and
WHEREAS, from 1993 to August 1995, Brian served as the Deputy City Manager of the City of Loveland; and
WHEREAS, from August 1995 until May 1999, Brian served as the City Manager for the City of Loveland; and
WHEREAS, in May 1999, Brian accepted the position of General Manager at Platte River Power Authority ("Platte River"); and

WHEREAS, as the fourth General Manager of Platte River, Brian provided solid and steady guidance and served well the four owner cities, including the City of Loveland; and

WHEREAS, during Brian's tenure at Platte River, Brian led his team to numerous accomplishments, including: installation of several natural-gas turbines at the Rawhide Energy Station, which accommodated a 49% increase in peak system demand; enhancement of the transmission system reliability by constructing additional 230-kilovolt transmission lines into Fort Collins, Longmont, and Loveland; remaining the only Colorado generating utility never to have an environmental violation; earning multiple credit upgrades, raising Platte River's bond rating to AA, comparable to the nation's highest-rated Joint Action Agencies; and maintaining the lowest wholesale electric rates in Colorado; and

WHEREAS, Brian's loyalty, dedication, and service to Platte River, the City of Loveland, and the other owner cities throughout his career has been of the highest level and quality; and

WHEREAS, due to Brian's wisdom, environmental stewardship, insight, and cost-saving efforts for the City of Loveland and Platte River, the citizens of Loveland have been well served; and

WHEREAS, Brian has used his outstanding leadership skills for the betterment of the community by serving on the Loveland Chamber of Commerce Board and the Loveland Economic Development Council Board, and providing leadership for the United Way of Larimer County; and

WHEREAS, Brian now ends his forty-three year career, leaving to spend leisurely time visiting grandkids, partaking in physical activities, eating three square meals a day at Daddy O's Green Onion Restaurant, and "doing whatever retired guys do."

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

Section 1. That the City Council hereby thanks Brian for his many years of outstanding service to the City of Loveland and the citizens of Loveland. Brian's strong leadership and vision for Loveland's utilities and the community has been invaluable and essential to Loveland becoming, and remaining in the future, a desirable and wonderful place to live, work, play, and raise a family.

Section 2. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 5th day of June, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

2. Vaughn Baker with the Rocky Mountain National Park service gave a spring briefing on park activities.

PROCEDURAL INFORMATION

Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items. Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to speak on any of the items or public hearings listed on the Consent Agenda. Councilor McEwen moved

to approve the Consent Agenda. The motion was seconded by Councilor Klassen and a roll call vote was taken with all councilors present voting in favor thereof.

1. CITY CLERK

Approval of Council Minutes

Motion

Administrative Action: The minutes from the May 8, 2012 study session and May 15, 2012 regular meeting were approved.

2. CITY MANAGER

Change of Meeting Date & Time – Volunteer Firefighters’ Pension Board

Resolution #R-38-2012

Legislative Action: Resolution #R-38-2012 amending the scheduled meeting dates of the Volunteer Firefighters’ Pension Board was approved.

RESOLUTION #R-38-2012

A RESOLUTION AMENDING THE SCHEDULED MEETING DATES OF THE VOLUNTEER FIREFIGHTERS’ PENSION BOARD

WHEREAS, on December 6, 2011, City Council adopted Resolution #R-81-2011 setting forth the 2012 meeting dates for the City’s boards and commissions, including the Volunteer Firefighters’ Pension Board (the “Board”); and

WHEREAS, the Board meeting dates are currently set on the second Thursday of February, May, August and November of each calendar year at 1:30 p.m. in the City Manager’s Conference Room, 500 East Third Street, Loveland, Colorado; and

WHEREAS, due to scheduling conflicts among the Board members and liaisons, and multiple overlapping boards and commissions meetings, the Board unanimously approved a motion on February 9, 2012, to recommend that City Council change the Board meeting dates to avoid such conflicts; and

WHEREAS, such recommendation would move the Board’s meeting dates from the second Thursday of February, May, August and November of each calendar year to the third Wednesday of February, May, August and November of each calendar year.

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

Section 1. That the meeting time and dates adopted in Resolution #R-81-2011 are hereby amended to change the Board’s meeting dates from the second Thursday of February, May, August and November of each calendar year to the third Wednesday of February, May, August and November of each calendar year. The meeting location and time shall remain the same: City Manager’s Conference Room, 500 East Third Street, Loveland, Colorado at 1:30 p.m.

Section 2. That Resolution #R-81-2011, as amended herein and by prior resolutions, shall remain in full force and effect.

Section 3. That pursuant to City Code Section 2.14.020 B., the City Clerk is directed to publish the revised meeting dates established by this Resolution within seven days after the date of this Resolution in a newspaper of general circulation in the City and in addition post such notice of revised meeting dates in a conspicuous place in the City Municipal Building.

Section 4. That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this 5th day of June, 2012.
Cecil A. Gutierrez, Mayor
Attest: Teresa G. Andrews, City Clerk

3. FIRE & RESCUE

Municipal Code Amendment and Adoption of local Emergency Operations Plan, 2012 Revisions

Ord. #5686

Legislative Action: "AN ORDINANCE ADOPTING THE CITY OF LOVELAND EMERGENCY OPERATIONS PLAN AND AMENDING SECTION 2.72.010 OF THE LOVELAND MUNICIPAL CODE CONCERNING THE COMPREHENSIVE DISASTER PLAN" was approved and ordered published on second reading.

4. LOVELAND FIRE RESCUE AUTHORITY

Approval of Supplemental Budget Appropriation

Resolution #R-39-2012

Administrative Action: Resolution #R-39-2012 to approve Loveland Fire Rescue Authority 2012 supplemental budget and appropriation for rollover and new projects and FEMA grant match was approved.

RESOLUTION #R-39-2012

A RESOLUTION TO APPROVE LOVELAND FIRE RESCUE AUTHORITY 2012 SUPPLEMENTAL BUDGET AND APPROPRIATION FOR ROLLOVER AND NEW PROJECTS AND FEMA GRANT MATCH

WHEREAS, on May 1, 2012 the City Council appropriated funds, as authorized by Section 11-6(a) of the Loveland City Charter, from the City's 2011 budget to the City's 2012 budget in order to provide funds to the Loveland Fire Rescue Authority ("Authority") for projects approved but not completed in 2011; and

WHEREAS, on May 15, 2012, the City Council appropriated supplemental funds, as authorized by Section 11-6(a) of the Loveland City Charter, from the City's 2011 budget to the City's 2012 budget in order to provide matching funds for the programming and installation of radios pursuant to a FEMA grant requirement; and

WHEREAS, on May 10, 2012, the Authority's Board passed Resolution R-005 approving the Authority's supplemental budget and appropriation of the funds from the City of Loveland for approved and new projects and the FEMA grant match; and

WHEREAS, Section 4.1 of the Intergovernmental Agreement establishing the Authority requires approval from the City Council and the Board of the Loveland Rural Fire Protection District for the Authority's budget and appropriation to become effective; and

WHEREAS, on May 2, 2012, the Loveland Rural Fire Protection District Board approved the Authority's supplemental budget and appropriation; and

WHEREAS, City Council desires to approve the Authority's supplemental budget appropriation of the funds provided by the City.

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

Section 1. That the Authority's 2012 Supplemental Budget and Appropriation of additional funds from the City of Loveland is hereby approved.

Section 2. That this Resolution shall go into effect as of the date and time of its adoption.

ADOPTED this 5th day of June, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

5. WATER & POWER

Municipal Code Amendment – Water Booster Pumps & Systems

1st Rdg & P.H.

Legislative Action: A public hearing was held and "AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 13.04 AND CHAPTER 19.06

CONCERNING WATER BOOSTER PUMPS AND SYSTEMS" was approved and ordered published on first reading.

6. Public Works

Contract Award to expand and remodel Loveland Fire Station #6 building

Motion

Administrative Action: The motion awarding a construction contract to Golden Triangle Construction to expand and remodel Loveland Fire Station #6 building in the amount of \$655,009, a contingency of \$65,000 and to authorize the City Manager to execute the contract on behalf of the City was approved.

7. Library

Statement of Policy

Resolution #R-40-2012

Legislative Action: Resolution #R-40-2012 approving the Statement of Policy of the Loveland Public Library was approved.

RESOLUTION # R-40-2012

A RESOLUTION APPROVING THE STATEMENT OF POLICY OF THE LOVELAND PUBLIC LIBRARY

WHEREAS, the Library Board of the City of Loveland ("Board") periodically reviews, revises and recommends certain policies and procedures to govern the Loveland Public Library; and

WHEREAS, the Board has reviewed and revised the Statement of Policy of the Loveland Public Library that was last updated on April 1, 2008 and approved by City Council pursuant to Resolution #R-36-2008; and

WHEREAS, the Board recommends that City Council adopt the revised Statement of Policy of the Loveland Public Library ("Statement of Policy") attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, City Council has reviewed and approves the Statement of Policy.

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

Section 1. That the Statement of Policy is hereby approved and adopted as the policies and procedures for the Loveland Public Library, and all previous statements of policy of the Loveland Public Library approved by the City Council are hereby repealed and superseded in all respects by the Statement of Policy attached hereto as Exhibit A.

Section 2. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this 5th day of June, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A, Statement of Policy, is available in the City Clerk's Office

8. Library & Cultural Services

Fees for New Services

Resolution #R-41-2012

Administrative Action: Resolution #R-41-2012 amending Resolution #R-62-2011 and the 2012 Schedule of Rates, Charges and Fees for city services other than services provided by the Water and Power Department the Stormwater Enterprise was approved.

RESOLUTION # R-41-2012

A RESOLUTION AMENDING RESOLUTION #R-62-2011 AND THE 2012 SCHEDULE OF RATES, CHARGES AND FEES FOR CITY SERVICES, OTHER THAN SERVICES PROVIDED BY THE WATER AND POWER DEPARTMENT AND THE STORMWATER ENTERPRISE

WHEREAS, on October 4, 2011, City Council adopted Resolution #R-62-2011 setting the rates, charges and fees for services provided by the City of Loveland (the "City"), other than fees imposed for services of the Water and Power Department and Storm Water Enterprise, for calendar year 2012; and

WHEREAS, the after adoption of Resolution #R-62-2011 setting the rates, charges and fees for City service, the Library expansion project and the Rialto Theater Center project were completed and additional charges for use of new facilities and services in connection with these new facilities were determined; and

WHEREAS, this Resolution is intended amend Resolution #R-62-2011 to add such new rates, charges, and fees related to the new Library and Rialto Theater Center facilities.

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

Section 1. That the 2012 schedule of rates, charges and fees for City services, other than services of the Water and Power Department and the Storm Water Enterprise, adopted by Resolution #R-62-2011 is hereby amended by the addition of the new rates, charges and fees as shown below:

CULTURAL SERVICES DEPARTMENT/RIALTO THEATER	
Description	2012 Fee
Videoconference service	
During Normal Operating Hours	\$200 per hour
Other Times	\$300 per hour
Yamaha C7 Grand Piano Rental	\$75/day of use
Piano Tuning (if requested – tuning by Rialto tuner)	\$150 each

LOVELAND PUBLIC LIBRARY	
Description	2012 Fee
Videoconference service	
During Normal Operating Hours	\$200 per hour
Other Times	\$300 per hour
Rental of iLearn computer classroom to commercial organization	\$50 per hour

Section 2. This Resolution amends the rates, charges, and fees for 2012 adopted by Resolution R#-62-2012 for all City services, other than services of the Water and Power Department and the Storm Water Enterprise, provided on or after January 1, 2012.

Section 3. This Resolution shall take effect as of the date of its adoption.

ADOPTED 5th day of June, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

9. PUBLIC WORKS

Delegation of Authority to file applications for FTA Grants

Resolution #R-42-2012

Administrative Action: Resolution #R-42-2012 authorizing the filing of applications with the Federal Transit Administration, an operating administration of the United States Department of Transportation, for federal transportation assistance authorized by 49 U.S.C. Chapter 53, Title 23 of the United States code, and other federal statutes administered by the Federal Transit Administration was approved.

RESOLUTION #R-42-2012

A RESOLUTION AUTHORIZING THE FILING OF APPLICATIONS WITH THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION ASSISTANCE AUTHORIZED BY 49 U.S.C. CHAPTER 53, TITLE 23 OF THE UNITED STATES CODE, AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION

WHEREAS, the Federal Transportation Administrator has been delegated authority to award federal financial assistance for transportation projects; and

WHEREAS, grants or cooperative agreements for federal financial assistance will impose certain obligations on the City, and may require the City to provide the local share of project costs; and

WHEREAS, the City has provided or will provide all annual certifications and assurances to the Federal Transit Administration required for the projects.

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

Section 1. That the City Manager, or his designee, is hereby authorized to execute and file applications for federal assistance on behalf of the City of Loveland, Colorado with the Federal Transit Administration for federal financial assistance authorized by 49 U.S.C. Chapter 53, Title 23 of the United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration. The City has received authority from the City of Fort Collins, as the Designated Recipient, to apply for Urbanized Area Formula Program assistance authorized by 49 U.S.C. § 5307.

Section 2. That the City Manager, or his designee, is hereby authorized to execute and file with the City's applications the annual certifications, assurances, and other documents the Federal Transit Administration requires before awarding a federal assistance grant or cooperative agreement.

Section 3. That the City Manager is hereby authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of the City.

Section 4. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 5th day of June, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

10. PUBLIC WORKS

Grant Utility Easement to Public Service Company of Colorado

Resolution #R-43-2012

Administrative Action: Resolution #R-43-2012 granting a non-exclusive utility easement to Public Service Company of Colorado for installation and maintenance of gas, oil, and associated communication facilities was approved.

RESOLUTION #R-43-2012

A RESOLUTION GRANTING A NON-EXCLUSIVE UTILITY EASEMENT TO PUBLIC SERVICE COMPANY OF COLORADO FOR INSTALLATION AND MAINTENANCE OF GAS, OIL, AND ASSOCIATED COMMUNICATION FACILITIES

WHEREAS, Public Service Company of Colorado ("PSCo") has requested that the City of Loveland grant PSCo a non-exclusive utility easement for installation and maintenance of gas, oil, and associated communication facilities within a portion of real property owned by the City along the south side of State Highway 402 between County Road 7 and Interstate 25; and

WHEREAS, the Public Works Department reviewed PSCo's request and found that the proposed installation would not affect the City's operations at that location; and

WHEREAS, the City Council desires to grant the requested easement on the terms and conditions set forth in the "Public Service Company of Colorado Easement."

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

Section 1. That the "Public Service Company of Colorado Easement," attached hereto as Exhibit A and incorporated herein by reference ("Easement"), is hereby approved.

Section 2. That the City Manager and the City Clerk are hereby authorized and directed to execute the Easement on behalf of the City of Loveland.

Section 3. That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form or substance of the Easement as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

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

ADOPTED this 5th day of June, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk
 Exhibit A is available in the City Clerk's Office

11. DEVELOPMENT SERVICES

Rezone Lakes Place 5th Subdivision

1ST Rdg & P.H.

Quasi-judicial Action: A public hearing was held and "AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN THE LAKES PLACE 5TH SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO" was approved and ordered published on first reading.

12. PUBLIC WORKS

Façade Grant for Loveland Aleworks

Resolution #R-44-2012

Administrative Action: Resolution #R-44-2011 of the Loveland Urban Renewal Authority awarding a Façade Incentive Grant to the owner and tenant of the building located at 118 West 4th Street and authorizing a Façade Incentive Grant Agreement was approved.
 RESOLUTION #R-44-2012

A RESOLUTION OF THE LOVELAND URBAN RENEWAL AUTHORITY AWARDING A FAÇADE INCENTIVE GRANT TO THE OWNER AND TENANT OF THE BUILDING LOCATED AT 118 WEST 4TH STREET AND AUTHORIZING A FAÇADE INCENTIVE GRANT AGREEMENT

WHEREAS, on November 20, 2007, the Loveland City Council, acting as the Board of Commissioners ("Board") of the Loveland Urban Renewal Authority ("LURA"), approved Resolution #R-118-2007 creating the Façade Incentive Grant Program; and

WHEREAS, the Façade Incentive Grant Program is intended to: (a) promote improvements to structures in the Downtown Urban Renewal Plan Area ("Plan Area"); (b) preserve the unique character of Downtown Loveland's historic buildings by providing greater leverage to private investment and historic preservation monies; and (c) encourage aesthetic compatibility for improvements to façades of non-historic structures by providing leverage to private investment monies; and

WHEREAS, under the Façade Incentive Grant Program, Façade Incentive Grants are available to applicants for property that lies within the boundaries of the Plan Area; and

WHEREAS, the Façade Incentive Grant Program provides funds of up to ten percent (10%) of the total project costs, not to exceed one hundred percent (100%) of the eligible costs of improving, refurbishing, and/or reconstructing building façades within the Plan Area, pursuant to a competitive grant process, and subject to the execution of a façade incentive grant agreement between the LURA and the applicant; and

WHEREAS, in January 2012, Illogical Brewing Company, LLC, doing business as Loveland Aleworks ("Applicant"), filed an application ("Application") for a Façade Incentive Grant for purposes of making certain façade improvements ("Project") to the building ("Building") rented by the Applicant and located at 118 West 4th Street ("Property") in Downtown Loveland; and

WHEREAS, on May 1, 2012, the Loveland Downtown Team reviewed the Application and adopted a motion recommending that the City Council, acting as the Board of the LURA, adopt a resolution awarding a Façade Incentive Grant to the Applicant and to the Building's owner, Ada M. Johnson Family Partnership, LTD ("Owner," and together with the Applicant, the "Recipients"), in the amount of \$35,000.00 ("Grant Amount"); and

WHEREAS, the LURA desires to award a Façade Incentive Grant in the Grant Amount to the Recipients for the Project on the terms and conditions set forth in the Façade Incentive Grant Agreement attached hereto as Exhibit A and incorporated herein by reference; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, ACTING AS THE BOARD OF COMMISSIONERS OF THE LOVELAND URBAN RENEWAL AUTHORITY:

Section 1. That the Board hereby finds that the Project: (a) includes improvements of a public nature at least equal in value to the Grant Amount; (b) eliminates blight and prevents the development or spread of blight in the Plan Area; and (c)

further the redevelopment of the Property in a manner benefitting the public interest and consistent with the Urban Renewal Plan adopted by the LURA for the Plan Area.

Section 2. That the Board hereby awards a Façade Incentive Grant in the Grant Amount to the Recipients for the Project.

Section 3. That the Board hereby approves the form of the Façade Incentive Grant Agreement ("Agreement") attached hereto as Exhibit A, and delegates to the City Manager, on behalf of the LURA, the authority to administer the terms and conditions of the Agreement, including, without limitation, the power to grant extensions of Commencement Date and Completion Date as set forth therein.

Section 4. That the Board hereby authorizes the City Manager, on behalf of the LURA, to enter into the Agreement with the Recipients. The City Manager, in consultation with the City Attorney, may modify the Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City and the LURA.

Section 5. That the Recipients shall have thirty (30) calendar days from the effective date of this Resolution in which to sign the Agreement. If either Recipient fails to sign the Agreement on or before said date, the award made in Section 2 shall automatically be rescinded; provided, however, that the City Manager may, prior to said date, extend the date for signature upon written request of either Recipient for good cause shown.

Section 6. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 5th day of June, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

13. CITY CLERK

Revision to City of Loveland Ward Boundaries

Motion Administrative Action: A motion to direct staff to bring an ordinance on first reading for the purpose of redistricting Loveland ward boundaries was approved.

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports None

b) Business from Council

Trenary Councilor Trenary highlighted a fundraiser to benefit American Military Family on July 4, 2012, at North Lake Park in Loveland. A local resident owns the very same 1919 Dodge Brothers Touring Automobile that was used in the famous movie "It's a Wonderful Life" has agreed to bring the car to the park on Wednesday July 4th and allow paying customers be photographed by it.

Klassen Councilor Klassen talked about the National Sculpture Society "Sculpture Celebration Weekend" May 17 – 20, 2012. He highlighted the evening events at Sylvan Dale Ranch and La Quinta. He also asked for improvements to the sound quality in the Police Institute at the Police & Courts building. On June 8, 2012 the Museum is presenting a program on Mariano Medina, the frontiersman, trapper, Army scout and Indian fighter who became the Big Thompson Valley's first settler.

Shaffer Councilor Shaffer met with citizens and city engineers at the "mini"-roundabout at the intersection of Garfield Avenue and 7th Street, adjacent to Truscott Elementary. The City of Loveland Visual Arts Commission is celebrating the installation of five new sculptures

in downtown Loveland on Friday, June 8th, 2012 from 6:00-7:30 p.m. at the Rialto Theater Center as part of the one year on-loan sculpture program The Art Advocacy Program (TAAP). The Rotarian district conference is in Loveland this weekend.

Gutierrez

Mayor Gutierrez thanked Councilor Ralph Trenary and Tony DuMosch for their contributions to the Memorial Day events including "Remember Our Fallen" exhibit honoring Colorado military personnel who have died since 9-11. The Mayor mentioned the Wings of Freedom tour will be at the Loveland-Fort Collins Airport from July 6 through July 8, 2012.

Mayor Gutierrez extended thanks to Water & Power Director Steve Adams and staff for their work on the Annual Tri-City and Water Districts Water Board meeting. He would like have the presentation by Eric Wilkinson, general manager of Northern Colorado Water Conservancy District, be presented to City Council.

The City of Loveland received from the National Sculpture Society, the Herbert Adams Memorial award which the society gives to a person or facility that is a major contributor to the preservation and art of sculpture. This is the first time that a city was given the award for its support of American sculpture.

McKean

Councilor McKean announce a Ward III meeting on June 12, 2012 at 8:00 am at the former Agilent campus.

c) City Manager Report

None

d) City Attorney Report

None

PROCEDURAL INFORMATION

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

14. Development Services

Appeal of Zoning Permit for Kum and Go Gas Station

Motion & P.H.

Quasi-judicial Action: The Mayor explained the appeal processed and opened the public hearing at 7:39 p.m. Current Planning Manager Bob Paulsen introduced this item to Council. Also present were the appellant, Kevin Borchers and Phil Hoey representing the applicant. This is a quasi-judicial action to consider an appeal of Planning Commission's approval of a special review use and decision to issue a type 3 zoning permit for a Kum & Go gas station and convenience store. The appellant, Kevin Borchers, is the managing partner of the adjacent Sylmar Mobile Home Park. The primary issue is the height and adequacy of a proposed sound wall that would be built along the property line between the gas station and the mobile home park. The Planning Commission approved an 8-foot high sound wall as recommended by staff and as

proposed by Kum & Go. The appellant, however, believes that an 8-foot wall is insufficient to mitigate noise generated on the gas station site and that a 10-foot high wall is needed to protect adjacent residents. As a de novo hearing, the presentation of new and additional evidence is permitted.

The appellant Kevin Borchers spoke in opposition of allowing a Kum & Go at this location and provided Council with a list of 931 names of people who wanted Council to deny approval of the project. Tim Ward, 1519 Sylmar Pl spoke in opposition of a Kum & Go at this location. James Anstett, current owner of the Kum & Go property encouraged City Council to support Planning Commission's recommendation.

The Mayor closed the public hearing at 8:32 p.m. Discussion ensued. Councilor McEwen Move to approve a type 3 zoning permit for Special Review #896 for Kum and Go Station #995 based on findings in Section IX and subject to the conditions set forth in Section X of the Planning Commission staff report dated March 12, 2012, with condition #9 as modified in Motion A of the March 19, 2012 Planning Commission staff report and attached hereto as Exhibit A further modified as follows: with respect as to subparagraph g. of paragraph 9 of Exhibit A to read as follows: "Construction of the Wall Extension shall be completed and approved by the City prior to issuance of the Certificate of Occupancy for the Kum and Go project unless Kum and Go deposits with the City funds or a letter of credit acceptable to the City sufficient to ensure future construction of the Wall Extension." Exhibit A shall also be modified to require a ten (10) foot high sound wall on the south boundary line extending along the first ninety (90) feet of the driveway and an eight (8) foot wall thereafter westward along the remainder of the south boundary line and a wall extending fifty (50) feet southward along Boise Avenue. Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

EXHIBIT A

PLANNING COMMISSION MOTION MARCH 19, 2012

Commissioner Fancher made a motion to direct the Current Planning Division to issue a Type 3 zoning permit for Special Review #896 for Kum & Go Station #995 to be located on Lots 10 and 11, Block 1 of the Brown's Corner Addition, Loveland, Colorado, based on the findings in Section IX and subject to the conditions set forth in Section X of the City staff report dated March 12, 2012, with the following modification:

A. Move to direct the Current Planning Division to issue a Type 3 zoning permit for Special Review #896 for Kum & Go Station #995 to be located on Lots 10 and 11, Block 1 of the Brown's Corner Addition, Loveland, Colorado, based on the findings in Section IX and subject to the conditions set forth in Section X of the City staff report dated March 12, 2012, with the following modification:

1) Current Planning Condition #9 shall be revised to read as follows:

9. The proposed the Sound Wall shall be 8 feet in height and constructed on the Kum & Go property, adjacent to the common property line with the mobile home park to the south.

a. The exact location of the Sound Wall shall be subject to approval by the Current Planning Manager to ensure that the Sound Wall meets City requirements for structures in a utility easement.

b. If temporary or permanent easements are required to locate the Sound Wall adjacent to the common property line with the mobile home park, the owner of the mobile home park and Kum & Go (the "Parties") shall work in good faith to agree upon the terms of such easements.

c. At no time shall the City compel the owner of the mobile home park to agree to grant any such easements.

d. Kum & Go shall pay the total costs to extend the Sound Wall (the "Wall Extension") in a southerly direction from the southeast corner of the Kum & Go property for a total distance of 30 feet. Total costs shall include the costs to construct the Wall Extension and to obtain any required building permit or variance.

- e. If the Wall Extension is to exceed 6 feet 3 inches in height, then construction of the Wall Extension shall be subject to approval of a variance by the City.
- f. Construction of the Sound Wall shall be completed and approved by the City prior to issuance of a ~~footing and foundation~~ or full building permit for the Kum & Go project.
- g. Construction of the Wall Extension shall be completed and approved by the City prior to issuance of a Certificate of Occupancy for the Kum & Go project.
- h. If no easements are received from the owner of the adjacent mobile home park within 10 calendar days after the final decision by the Planning Commission, or in the case of an appeal to City Council, within 5 calendar days after the final decision by City Council, then the Sound Wall shall be constructed at the located shown Exhibit A, subject to approval by the Current Planning Manager, and no Wall Extension shall be required.

BY CONSENSUS OF COUNCIL ITEMS 18 AND 19 WERE REMOVED FROM THE REGULAR AGENDA.

15. Development Services

Grant Funding Recommendations

Resolution #R-45-2012

Administrative Action: Community Partnership Manager Alison Hade introduced this item to Council. This is an administrative action to adopt a resolution approving the 2012 grant allocation recommendations of the Human Services Commission and the Affordable Housing Commission. Councilor McEwen moved to approve Resolution #R-45-2012 of the City Council of the City of Loveland, Colorado approving the 2012 grant funding recommendations of the Loveland Human Service Commission and the Loveland Affordable Housing Commission. A roll call vote was taken with eight Councilors voting in favor and Councilor McKean voting against.

RESOLUTION #R-45-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING THE 2012 GRANT FUNDING RECOMMENDATIONS OF THE LOVELAND HUMAN SERVICES COMMISSION AND THE LOVELAND AFFORDABLE HOUSING COMMISSION

WHEREAS, the City of Loveland, Colorado recognizes the valuable services provided by human services agencies in the Loveland community; and

WHEREAS, the City Council of the City of Loveland recognizes the need to provide opportunities for the well-being of less fortunate citizens; and

WHEREAS, the City has established the Human Services Grant Program to provide financial assistance to agencies meeting the human services needs in the community; and

WHEREAS, the City has budgeted \$450,000 in the 2012 City of Loveland budget for the Human Services Grant Program; and

WHEREAS, the City receives federal Community Development Block Grant funds through the U.S. Department of Housing and Urban Development to assist in meeting the housing needs for Loveland citizens with low incomes; and

WHEREAS, the City anticipates receiving a total of \$288,239 in Community Development Block Grant funds for the 2012-2013 federal fiscal year; and

WHEREAS, the City Council has charged the Human Services Commission with the task of reviewing all grant applications made to the City for Human Services Grant funds and for Community Development Block Grant funds, except for "bricks and mortar" applications that are housing related, and making a funding recommendation to the City Council regarding such grant funds distribution; and

WHEREAS, the City Council has charged the Affordable Housing Commission with the task of reviewing all "bricks and mortar" grant applications made to the City for Community Development Block Grant funds related to housing and making a recommendation to the City Council regarding such grant funds distribution; and

WHEREAS, the Human Services Commission and the Affordable Housing Commission have reviewed all grant applications made to the City for Human Services Grant funds and Community Development Block Grant funds, and have made a recommendation to the City Council regarding distribution of those grant funds; and

WHEREAS, the City Council desires to approve the grant funding recommendations of the Human Services Commission and the Affordable Housing Commission.

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

Section 1. That the 2012 grant funding recommendations of the Human Services Commission regarding the distribution of Human Services Grant funds are hereby approved in the following amounts to the following agencies, subject to execution of a recipient contract with the City of Loveland by the agency on or before August 31, 2012:

Agency	Total Grant Amount
Alliance for Suicide Prevention	\$2,590
Alternatives to Violence	\$38,907
Boys & Girls Club	\$28,255
Center for Adult Learning	\$21,083
Community Kitchen	\$6,577
Court Appointed Special Adv.	\$13,585
Crossroads Safehouse	\$18,035
Disabled Resource Services	\$14,598
Elderhaus	\$13,792
Food Bank for Larimer County	\$23,414
House of Neighborly Service	\$54,096
Larimer Center for Mental Health (Touchstone)	\$24,503
Larimer Center for Mental Health/Loveland	
Community Health Center – Model Partnership	\$10,000
Larimer County Partners	\$5,212
Matthews House	\$21,335
Meals on Wheels	\$29,895
Northern Colorado AIDS Project	\$5,711
Project Self-Sufficiency	\$12,648
Rehab and Visiting Nurses Assoc	\$15,253
Respite Care	\$12,071
Senior Alternatives in Transp.	\$6,260
Thompson R2J	\$7,875
Thompson Valley Preschool	\$10,829
Turning Point Center	\$14,334
United Way 2-1-1	\$3,056
WINGS	\$10,471
Women's Resource Center	\$25,615
Total Grant Amount	\$450,000

Section 2. That the 2012 grant funding recommendations of the Human Services Commission and the Affordable Housing Commission for the 2012 Community Development Block Grant Program are hereby approved in the following amounts to the following agencies, subject to: (a) the approval of the U.S. Department of Housing and Urban Development and the allocation and receipt of Community Development Block Grant funds to the City of Loveland in 2012; (b) City Council budget and appropriation of such allocated federal funding; and (c) execution of a subrecipient contract with the City of Loveland by the agency or project owner on or before December 31, 2012:

Agency	Total Grant Amount
ArtSpace	\$35,000

Crossroads Safehouse	\$ 2,827
Habitat for Humanity	\$24,977
House of Neighborly Service	\$21,233
Housing Authority of the City of Loveland	\$110,580
Neighbor to Neighbor	\$19,175
Volunteers of America	\$16,800
City of Loveland Program Administration	\$57,647
Total Grant Amount	\$288,239

Section 3. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 5th day of June, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

16. Water & Power

2012 Raw Water Master Plan

Resolution #R-46-2012

Legislative Action: Greg Dewey, Water & Power Department introduced this item to Council. This is a legislative action to adopt the 2012 Raw Water Master Plan and to amend the 2005 Comprehensive Master Plan by addition of the 2012 Raw Water Master Plan as a functional (component) plan element. Councilor McEwen moved to approve Resolution #R-46-2012 adopting the 2012 Raw Water Master Plan of the City of Loveland and amending the 2005 Comprehensive Master Plan by addition of the 2012 Raw Water Master Plan as a functional (component) plan element. Councilor Klassen seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

RESOLUTION #R-46-2012

A RESOLUTION ADOPTING THE 2012 RAW WATER MASTER PLAN OF THE CITY OF LOVELAND AND AMENDING THE 2005 COMPREHENSIVE MASTER PLAN BY ADDITION OF THE 2012 RAW WATER MASTER PLAN AS A FUNCTIONAL (COMPONENT) PLAN ELEMENT

WHEREAS, on November 15, 2005 by Resolution #R-95-2005, the City Council of the City of Loveland adopted the City's first Raw Water Master Plan ("2005 Raw Water Master Plan") to be used by the City to develop and compare policy options to meet the future raw water needs of the City; and

WHEREAS, Water and Power Department staff prepared an update to the 2005 Raw Water Master Plan, the draft of which was referred to throughout 2011 as the 2011 Raw Water Master Plan ("2011 Raw Water Master Plan"); and

WHEREAS, on October 19, 2011, the Loveland Utilities Commission adopted a motion recommending that the City Council adopt the 2011 Raw Water Master Plan; and

WHEREAS, on October 27, 2011, the Construction Advisory Board adopted a motion recommending that the City Council adopt the 2011 Raw Water Master Plan; and

WHEREAS, on November 14, 2011, the Planning Commission adopted a resolution recommending that the City Council amend the 2005 Comprehensive Master Plan by addition of the 2011 Raw Water Master Plan as a functional (component) plan element, and making certain findings in support of that recommendation as required by Section 6.0 of the 2005 Comprehensive Master Plan; and

WHEREAS, the 2011 Raw Water Master Plan was subsequently modified to reflect several substantive changes recommended by the City Council at a study session held on December 13, 2011, and was retitled the "2012 Raw Water Master Plan"; and

WHEREAS, on January 17, 2012, the City Council considered the 2012 Raw Water Master Plan and directed staff to address certain questions and an alternative proposal, and take the 2012 Raw Water Master Plan and the alternative proposal back through the advisory boards and public process for further consideration and comment; and

WHEREAS, on April 4, 2012, the Loveland Utilities Commission held a special meeting to receive public comment on the 2012 Raw Water Master Plan and the alternative proposal; and

WHEREAS, on April 25, 2012, the Construction Advisory Board adopted a second motion recommending that the City Council adopt the 2012 Raw Water Master Plan; and

WHEREAS, on May 16, 2012, the Loveland Utilities Commission adopted a second motion recommending that the City Council adopt the 2012 Raw Water Master Plan; and

WHEREAS, the City Council desires to adopt the 2012 Raw Water Master Plan and amend the 2005 Comprehensive Master Plan by addition of the 2012 Raw Water Master Plan as in the best interest of the citizens and rate payers of the City of Loveland.

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

Section 1. That the 2012 Raw Water Master Plan, a copy of which is on file with the Loveland City Clerk, is hereby adopted and shall be used by the City to develop and compare policy options to meet the future raw water needs of the City.

Section 2. That the City Council hereby adopts and incorporates by reference the findings set forth in Resolution #11-02 adopted by the Planning Commission on November 14, 2011.

Section 3. That the 2005 Comprehensive Master Plan is hereby amended by the addition of the 2012 Raw Water Master Plan as a functional (component) plan element.

Section 4. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 5th day of June, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

17. Economic Development

Destination Loveland Brand Ratification

Motion

Administrative Action: Visitors Services Coordinator Cindy Mackin introduced this item to City Council. This is a formal action by City Council to affirm support for the brand selected by the Community Marketing Commission on May 16, 2012 to market Loveland as a destination for visitors. The following public comments were made: Jack Cantley of Sweetheart City Wines would like to see the "heart" stay; Linda Hughey, Community Marketing Commission chair spoke in support; Mindy Moree, Loveland Chamber of Commerce CEO spoke in support; Diana McKinny spoke in support; Kurt Albers spoke in support. Councilor McEwen made a motion to ratify the Community Marketing Commission's selection of the Destination Loveland Brand: "Loveland Colorado: Everything You Love", as the official brand to market the City of Loveland for purposes of tourism. Councilor Shaffer seconded the motion and a roll call vote was taken with seven voting in favor and Councilors Klassen and Fogle voting against. The Mayor thanked all members of the Community Marketing Commission for their work on establishing this brand.

18. Finance

**April 2012 Financial Report
 Information Only**

removed from the agenda

19. City Manager

**Investment Report for April 2012
 Information Only**

removed from the agenda

City Council Regular Meeting
June 5, 2012
Page 16 of 16

ADJOURNMENT

Having no further business to come before Council, the June 5, 2012 Regular Meeting was adjourned at 11:07 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor



CITY OF LOVELAND
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 2
MEETING DATE: 7/3/2012
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill

TITLE:

Appointments to Youth Advisory Commission

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion appointing the recommended members and alternates to the Youth Advisory Commission for terms effective June, 2012 through May, 2013.

OPTIONS:

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

DESCRIPTION:

This is an administrative item recommending appointments of members to the Youth Advisory Commission.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible
-

SUMMARY:

On May 26, 2012, four of the current **Youth Advisory Commission** ("YAC") members graduated from high school. Interviews were conducted by Jenni Dobson, Cathleen McEwen and some current commissioners on April 18 and May 8, 2012 to fill these vacancies. YAC would also like to reappoint commissioners and alternates who are not graduating or leaving at this time. YAC has 12 total voting commissioners and four alternates. YAC recommends the following for appointments or reappointments to serve as members and alternates from June, 2012 through May, 2013.

Reappoint as YAC Commissioners

Hope Skeen
Natalie Howard
Erik Trenary
Alison Geroche
Logan Peiffer
Wesley Walton
Mallory Leach
Reid Maynard

Appoint as YAC Commissioners

Dylan Crescibene
Alvin Perry
Andrew Woodward
Michal Bower

Appoint as YAC Alternates

Briana Rousey
Emilee Mendoza
Gibb Charron
Mattea Wabeke

REVIEWED BY CITY MANAGER:

William D. Cabill

LIST OF ATTACHMENTS:

None



CITY OF LOVELAND
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 3
MEETING DATE: 7/3/2012
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill

TITLE:

Appointments to boards and commissions

RECOMMENDED CITY COUNCIL ACTION:

- Motion to appoint Marcy Hoerster, Pam McCrory, and Ted Schlagenhauf to the Affordable Housing Commission, each for a term effective until June 30, 2015.
- Motion to reappoint Gregg Meisinger to the Construction Advisory Board for a term effective until June 30, 2015.
- Motion to appoint Stacey Kersley and to reappoint Trudi Manuel to the Historic Preservation Commission, each for a term effective until June 30, 2015.
- Motion to reappoint Gary Hausman, Dan Herlihey, and John Matis to Loveland Utilities Commission, each for a term effective until June 30, 2015.
- Motion to reappoint Gary Thomas to the Transportation Advisory Board for a term effective until June 30, 2015.

OPTIONS:

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

DESCRIPTION:

This is an administrative item recommending the appointment or reappointment of members to the Affordable Housing Commission, Construction Advisory Board, Historic Preservation Commission, Loveland Utilities Commission and the Transportation Advisory Board.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

Pamela McCrory was appointed to the **Affordable Housing** Commission on December 20, 2011, for a partial term effective until June 30, 2012. The *Handbook for Boards and Commissions* states:

"Any person who has served less than 50% of a full term will be eligible for consecutive reappointment for a full term, pursuant to the following process:

1. 90 days prior to the partial term expiration, a letter will be sent by the City Manager's Office to the member advising the member that he or she must notify the City Manager's Office in writing within 15 days of the date of the letter if the member desires to be reappointed to the board or commission. If the member provides such notification and if the member remains otherwise eligible to serve on the board or commission, the member shall be recommended to the City Council for reappointment without the need for solicitation of applicants and interviews."

Ms. McCrory indicated her desire to be reappointed to the commission for a full term. The interview committee recommends the appointment of Pam McCrory to the Affordable Housing Commission for a three year term effective until June 30, 2015. Interviews of the two applicants for remaining terms were conducted June 5, 2012 and the committee also recommends the appointment of Marcy Hoerster and Ted Schlagenhauf to the Affordable Housing Commission, each for a three year term effective until June 30, 2015.

Two applications were received for three vacancies on the **Construction Advisory Board**. The interview committee recommends the reappointment of Gregg Meisinger for a full term effective until June 30, 2015. Recruiting continues for the remaining vacancies.

During the Spring recruiting, the **Historic Preservation Commission** ("HPC") had three term vacancies. Three applications were submitted, and one application was subsequently withdrawn by the applicant. Interviews were held with the remaining two applicants. Stacey Kersley is recommended for appointment and Trudi Manuel is recommended for reappointment to HPC, each for a term effective until June 30, 2015. Recruiting continues for the remaining vacancy.

The recent Spring recruiting for boards and commissions resulted in applications from the three incumbents on **Loveland Utilities Commission** ("LUC") for reappointment. Gary Hausman, Dan Heriley, and John Matis are recommended for reappointment to LUC, each for a term effective until June 30, 2015.

The **Transportation Advisory Board** ("TAB") has two term vacancies and one partial-term vacancy. During the recent recruiting cycle, Gary Thomas, incumbent, was the only person who submitted an application. Gary is recommended for reappointment to TAB for a term effective until June 30, 2015. Recruiting continues for the remaining vacancies.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

None



CITY OF LOVELAND
 DEVELOPMENT SERVICES DEPARTMENT
 Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 4
MEETING DATE: 7/3/2012
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Brian Burson, Current Planning Division

TITLE:

An ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for certain property located in the Lakes Place 5th Subdivision, City of Loveland, Larimer County, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Move to make the findings in Section VIII of the May 14, 2012 Planning Commission staff report and adopt, on second reading, an ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for certain property located in the Lakes Place 5th Subdivision, City of Loveland, Larimer County, Colorado.

OPTIONS:

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

DESCRIPTION:

This is a consideration of a quasi-judicial action to adopt an ordinance on second reading to rezone Outlots A, B, and C of the Lakes Place 5th Subdivision from DR-Developing Resource District to R1-Developing Low-density Residential District. The applicants are Larry Heckel and Leroy Gabriel.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

These three outlots were originally platted with the Lakes Place 5h Subdivision and form a small, narrow, triangular strip of land located along the east side of North Boise Avenue. Staff believes these outlots were initially zoned DR to accommodate possible alignment and grade of Boise Avenue, the final design of which had not been finalized at the time. Final street design determined that these outlots were not needed for inclusion in the street right-of-way. These outlots can now be made available for inclusion in the adjacent private lots. Before they can be merged into these adjacent lots, they must be rezoned to match the zoning of those lots. Merging these outlots with the adjacent lots would slightly increase the lot sizes, making them more similar to other lots in the immediate neighborhood.

On June 5, 2012, the City Council conducted a public hearing for the application and adopted the ordinance, on first reading, by unanimous vote on the Consent Agenda. Since first reading, there have been no revisions to the application, and no inquiries or concerns have been received from the applicants, neighborhood or general public.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

- A. Ordinance
- B. Vicinity map
- C. Rezoning map

FIRST READING: June 5, 2012

SECOND READING: July 3, 2012

ORDINANCE

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN THE LAKES PLACE 5TH SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

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

Section 1. That Section 18.04.040 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 territory located within the Lakes Place 5th Subdivision, City of Loveland, Larimer County, Colorado, and more particularly described as:

OUTLOTS A, B, AND C OF LAKES PLACE FIFTH SUBDIVISION ACCORDING TO THE FINAL PLAT RECORDED OCTOBER 24, 2007 AT RECEPTION NUMBER 20070080507 OF LARIMER COUNTY, COLORADO RECORDS SITUATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Considering the Easterly Right-of-Way line of North Boise Avenue as bearing North 24°00'00" East, according to the Recorded Plat of Lakes Place Fifth Subdivision, with all bearings contained herein relative thereto:

Beginning at the Southwesterly corner of said Outlot A;
thence North 24°00'00" East, along the Southeasterly right-of-way of North Boise Avenue, being the Westerly boundary line of said Outlots A, B, and C, a distance of 198.90 feet;
thence South 12°52'08" West, along the Easterly boundary line of said Outlots A, B, and C, a distance of 194.94 feet;
thence North 77°28'01" West, along the Southerly boundary line of said Outlot A, a distance of 38.40 feet to the POINT OF BEGINNING.

Which territory is now included within the boundaries designated as DR-Developing Resource District and which territory shall be included within the boundaries of the district designated as follows:

R1 – DEVELOPING LOW-DENSITY RESIDENTIAL DISTRICT

Containing 3,743 square feet or 0.086 acres, more or less.

Section 2. That the development of the property shall be subject to all applicable provisions of the **R1 – DEVELOPING LOW-DENSITY RESIDENTIAL DISTRICT**.

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.

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

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

Signed this 3rd day of July, 2012.

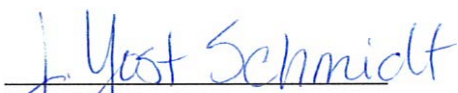
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Cecil A. Gutierrez, Mayor

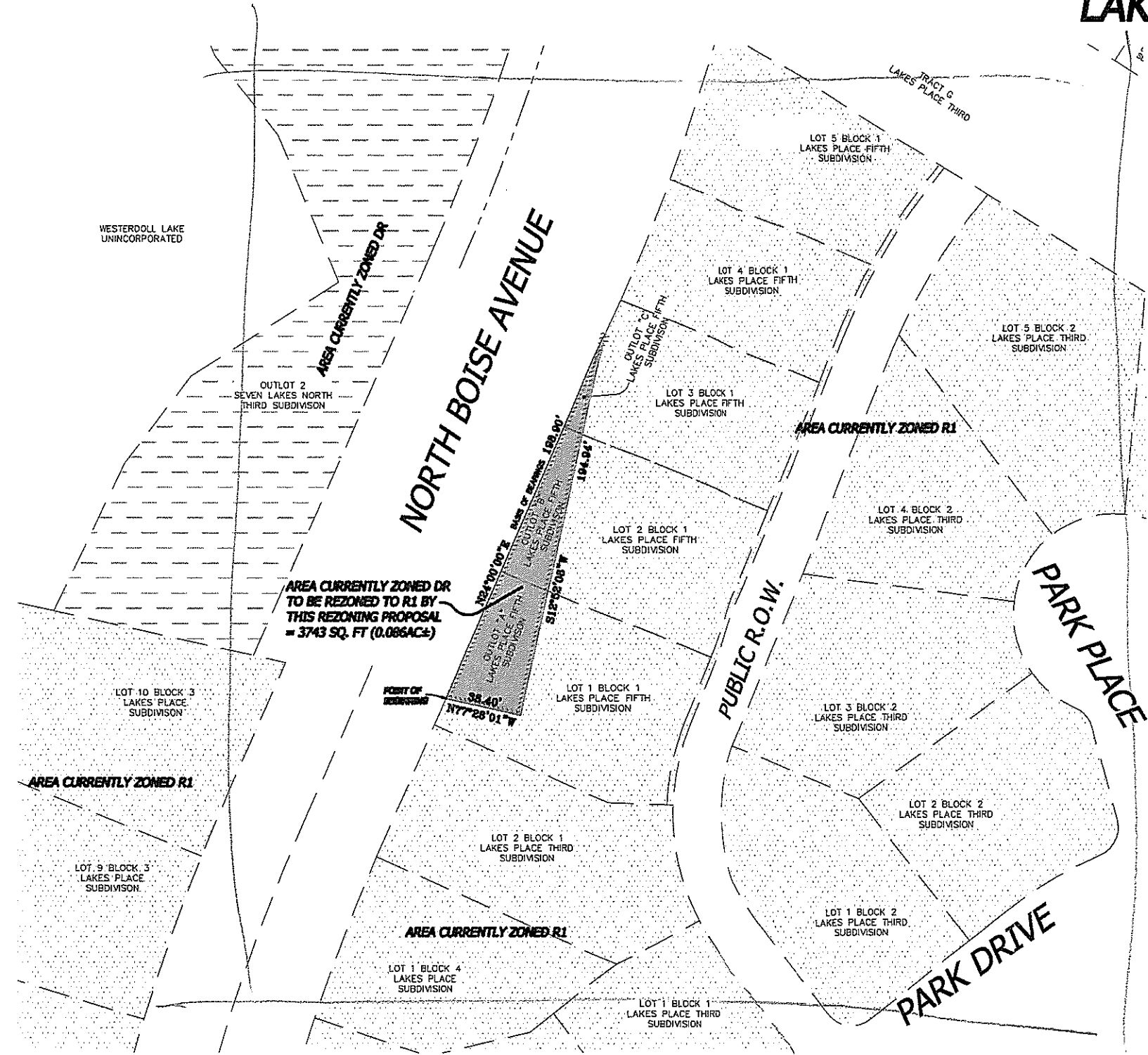
APPROVED AS TO FORM:



Deputy City Attorney



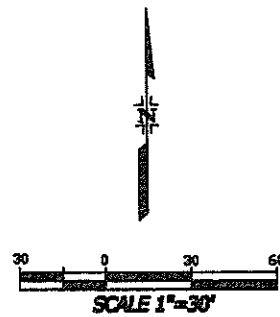
REZONING EXHIBIT MAP LAKES PLACE FIFTH SUBDIVISION OUTLOTS A, B, AND C



LEGAL DESCRIPTION OF PROPERTY TO BE REZONED

Outlots A, B, and C of Lakes Place Fifth Subdivision according to the final plat recorded October 24, 2007 at reception number 20070080507 of Larimer County, Colorado records situated in a portion of the Northwest Quarter of Section 7, Township 5 North, Range 68 West of the Sixth Principal Meridian, City of Loveland, County of Larimer, Colorado, more particularly described as follows:
 Considering the Easery Right-of-Way line of North Boise Avenue as bearing North 24°00'00" East, according to the Recorded Plat of Lakes Place Fifth Subdivision, with all bearings contained herein relative thereto:
 Beginning at the Southwesterly corner of said Outlot A;
 thence North 24°00'00" East, along the Southwesterly right-of-way of North Boise Avenue, being the Westerly boundary line of said Outlots A, B, and C, a distance of 198.90 feet;
 thence South 12°52'08" West, along the Easterly boundary line of said Outlots A, B, and C, a distance of 194.94 feet;
 thence North 77°28'01" West, along the Southerly boundary line of said Outlot A, a distance of 38.40 feet to the POINT OF BEGINNING.

Containing 3,743 square feet or 0.086 acres, more or less.



PROPERTY OWNER'S
 LARRY A. HECKEL and LEROY P. GAERZEL
 2094 PARK DRIVE
 LOVELAND, CO. 80538

PREPARED BY:
 CDS ENGINEERING CORP.
 165 2nd STREET SW
 LOVELAND, CO. 80537
 DECEMBER 6, 2011

DATE	RECORD OF ISSUE	BY
12-08-11	INITIAL ISSUE	MJD
03-05-12	addressed comments	

CDS
 Corporation
 Engineering

165 2nd St. S.W., Loveland, Colorado 80537, Tele: (970) 647-8800
 "Licensing Engineers and Professional Construction Managers"
 CIVIL / STRUCTURAL ENGINEERING, GEOTECHNICAL AND FOUNDATION ENGINEERING,
 SURVEYING, LAND AND MARINE SURVEYING, PLANNING, LAND AND CONSTRUCTION SURVEYS
 AND ALL TYPES OF SPECIALTY TESTING AND FIELD INSPECTIONS

CLIENT AND PROJECT:
 LARRY HECKEL - OUTLOTS 'A', 'B', AND 'C'
 LAKES PLACE 5TH SUBDIVISION

LEGAL DESCRIPTION:
 REZONING EXHIBIT MAP

DESIGNED:	
DRAWN:	MJD
CHECKED:	
APPROVED:	
DATE:	DECEMBER 9, 2011
MODEL:	
SCALE:	1"=30'
PROJECT NO.	11-3713
REVISION NO.	
DRAWING NO.	SHEET
	1 OF 1



CITY OF LOVELAND
WATER & POWER DEPARTMENT
 200 North Wilson • Loveland, Colorado 80537
 (970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: 5
MEETING DATE: 7/3/2012
TO: City Council
FROM: Melissa Morin, Chris Matkins, Water & Power Department
PRESENTER: Chris Matkins, Water Utilities Manager

TITLE: Consideration of an ordinance amending the Loveland Municipal Code at Chapter 13.04 and Chapter 19.06 concerning water booster pumps and systems

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading

OPTIONS:

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

DESCRIPTION:

This is a legislative action. This ordinance amends Loveland Municipal Code at Chapter 13.04 and Chapter 19.06 regarding the water booster pumps and systems.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

Several irrigation booster pumps have been connected to the City's water system directly after the water meter. The booster pumps create a potential for cross-contamination and create a localized low pressure during operation which can result in system water pressures that do not meet minimum goals. Currently there is no regulation in the Code for irrigation booster pumps; and regulation is required to provide the city protection from contamination entering into the City's drinking water as well as to ensure adequate system water pressures to all users.

The Department's full concerns related to irrigation pump systems include:

1. **Booster pumps directly connected (piped) to the city's water distribution system present an increased cross connection risk to the public's health and safety.** The Department's water system responsibility ends at the water meter and the features installed downstream of the meter are considered the Owner's service line (private) and are not monitored or inspected by the Department. Except for optional Hydrozone plans the Department does not review irrigation design plans. The Department's responsibility is to minimize these risks in providing safe, potable drinking water. The Department cannot rely on an HOA's expertise, funding, and maintenance programs to properly maintain irrigation pumps and guarantee the public's health and safety.
2. **Installation of pumps on irrigation taps can result in a negative pressure impact to adjacent tap holders (i.e., lower water pressures).** In worst case scenarios, this impact may lower system water pressures below the City's minimum pressure service goals.
3. **Installation of pumps on irrigation taps can result in flows that exceed the rated capacity of the water meters.** This may lead to inaccurate billing and increased meter maintenance costs incurred by the City.

Based on these concerns, authority should be added to the Municipal Code to strengthen the Department's authority to prohibit them from being installed within the system. These concerns were echoed by a majority of neighboring front-range cities and water districts that also prohibit irrigation pumps. Staff conducted a survey that found fifteen of the seventeen water providers contacted do not allow irrigation booster pumps for the reasons outlined above.

The Department will continue to allow flexibility in irrigation design for those systems which provide an air-gap between the city's potable water distribution system and the proposed, private irrigation system. There is adequate pressure throughout the city's water system to supply irrigation flows without the use of private booster pumps. Areas with minimum system pressure goals (25 to 40 psi) may require irrigation system designers to increase their design effort to develop an adequate irrigation distribution system. Modern irrigation systems can operate on low pressures (as low as 25 psi) with proper design efforts.

The attached ordinance describes the following three (3) code amendments:

Section 1:

The change to Chapter 13.04 clarifies that all domestic water pressure booster systems (for interior domestic, commercial, and industrial plumbing and fire suppression) shall be designed to the International Plumbing Code. This clarification will convey to the public that booster pumps are allowed for interior plumbing systems and are not affected by the prohibition of irrigation booster pumps as described in Section 3

Section 2:

The first change to Chapter 19.06 revises the table within part A to remove a potential to mistakenly infer that the City will guarantee specific flows through an irrigation meter. The Table was revised to omit meters greater than 1 inch in size; this is due to the development of better design in larger meters. The Table was also revised to clarify that flows listed in the table are stipulated as maximum flows, if available (*ie, if the pressures and capacity of the City's potable*

system will provide them). Due to variability within the water distribution system, the City does not guarantee water flows for a specific meter size.

Section 3:

The final change to Chapter 19.06 provides an authority in the Municipal Code for the city to prohibit irrigation booster pumps connected directly (piped, with no air-gap) to the city's potable water system.

To date Water & Power staff:

- brought this item to LUC on June 18, 2008. LUC passed the motion unanimously.
- brought this item to the Construction Advisory Board (CAB) on July 23, 2008. CAB members had several concerns and requested that any modification ensure that flexibility is allowed in the design of irrigation systems for irrigators who are faced with lower than expected system water pressures.
- modified the ordinance and brought the revised item to LUC on December 14, 2011 as part of the Staff Report. LUC comments concerned "grandfathering in" existing irrigation booster pumps.
- modified the ordinance and brought the revised item to CAB on January 25, 2012. CAB was supportive of the modified ordinance and unanimously adopted a motion recommending that city council adopt the ordinance.
- brought this item to LUC on March 28, 2012. LUC unanimously adopted a motion recommending that city council adopt the ordinance.

This item went to City Council on June 5, 2012 and passed unanimously on first reading.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

Attachment A: Ordinance

FIRST READING June 5, 2012

SECOND READING July 3, 2012

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 13.04 AND CHAPTER 19.06 CONCERNING WATER BOOSTER PUMPS AND SYSTEMS

WHEREAS, pursuant to Article 12 of the Colorado Primary Drinking Water Regulations, it is City’s responsibility to protect its drinking water from the backflow of any substance into the public water supply by instituting a cross-connection control program; and

WHEREAS, the City desires to ensure and protect adequate system pressures to all water utility customers; and

WHEREAS, the City Council desires to regulate the installation and use of water booster pumps and systems connected directly to the City’s potable water system for the public’s health, safety, and welfare.

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

Section 1. That Chapter 13.04 of the Loveland Municipal Code is hereby amended by addition of a new Section 13.04.207 to read as follows:

13.04.207 Domestic water pressure booster systems.

All domestic water pressure booster systems shall meet the requirements of the International Plumbing Code, as adopted by the city.

Section 2. That subsection A of Section 19.06.060 of the Loveland Municipal Code is hereby amended to read as follows:

19.06.060 Dedicated irrigation meter capacity.

A. Irrigation systems utilizing dedicated irrigation meters shall be designed based on the available flow through the meter at the project site, but shall not exceed the flows set forth in the following table:

Meter Size	Maximum Continuous Design Flow (If Available)
¾ inch	15 gallons per minute
1 inch	25 gallons per minute

For meters larger than 1-inch, the irrigation system designer shall be responsible for verifying minimum system pressures occurring seasonally and throughout the day (especially during peak demand periods).

Section 3. That Chapter 19.06 of the Loveland Municipal Code is hereby amended by addition of a new Section 19.06.065 to read as follows:

19.06.065 Irrigation booster pumps prohibited.

The installation or operation of an irrigation booster pump in water service lines that are directly fed by the city's water distribution system is prohibited. Notwithstanding anything herein to the contrary, any such irrigation booster pumps installed prior to June 5, 2012 may continue in operation without violating this section, but may not be replaced.

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

ADOPTED this 3rd day of July, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



CITY OF LOVELAND
WATER & POWER DEPARTMENT
200 North Wilson • Loveland, Colorado 80537
(970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: 6
MEETING DATE: 7/3/2012
TO: City Council
FROM: Steve Adams, Water & Power Department
PRESENTER: Greg Dewey, Water & Power Department

TITLE:

An ordinance amending the Loveland Municipal Code at Chapter 19.04 concerning water rights in accordance with the 2012 Raw Water Master Plan

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and adopt the ordinance on first reading. The Loveland Utilities Commission (LUC) unanimously recommends adoption.

OPTIONS:

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

DESCRIPTION:

This is a legislative action to adopt an ordinance amending the Loveland Municipal Code at Chapter 19.04 concerning water rights in accordance with the 2012 Raw Water Master Plan.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible
-

SUMMARY:

The attached ordinance amends the Loveland Municipal Code in accordance with the 2012 Raw Water Master Plan. The City of Loveland has a long history of planning for the water supply needs of the community. In 2005, Loveland City Council adopted a Raw Water Master Plan. An element of this adopted plan called for the plan to be reviewed and updated periodically; about every 5 years or so. The 2012 Raw Water Master Plan reflects the work of that effort and recommends steps for the City to take in ensuring a reliable water supply for the future. The

LUC and Construction Advisory Board (CAB) unanimously recommended adoption of the 2012 Raw Water Master Plan. On June 5, 2012 the Loveland City Council unanimously approved Resolution #R-46-2012 adopting the 2012 Raw Water Master Plan.

In order to implement portions of the 2012 Raw Water Master Plan, the Loveland Municipal Code at Chapter 19.04 concerning water rights must be amended. The attached redline ordinance illustrates the proposed amendments.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Draft Ordinance (illustrating proposed amendments in redline)
Ordinance

FIRST READING June 5, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 19.04 REGARDING WATER RIGHTS IN ACCORDANCE WITH THE 2012 RAW WATER MASTER PLAN

WHEREAS,

WHEREAS,

WHEREAS,

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

Section 1. That Section 19.04.018 of the Loveland Municipal Code is hereby amended to read as follows:

19.04.018 Value of water bank credit.

A. The value of water bank credit received in exchange for water rights transferred to the city shall be determined at the time such water bank credit is applied to satisfy the city’s water rights requirements.

~~A.~~ B. _____ The current value of ditch water rights shall be as follows:

Ditch/Ditch Company	Value	
	<u>With Payment of the Native Raw Water Storage Fee</u>	<u>Without Payment of the Native Raw Water Storage Fee</u>
Barnes	3.24 <u>3.32</u> acre-feet of water per inch	<u>0.86</u> acre-feet of water per inch
Big Thompson Ditch & Manufacturing Company	189.11 <u>186.57</u> acre-feet of water per share	<u>70.90</u> acre-feet of water per share
Buckingham Irrigation Company (George Rist Ditch)	6.07 <u>6.36</u> acre-feet of water per share	<u>0.38</u> acre-feet of water per share
Chubbuck Ditch	2.97 <u>2.94</u> acre-feet of water per inch	<u>0.41</u> acre-feet of water per inch
Louden Irrigating Canal and Reservoir Company	11.05 <u>12.17</u> acre-feet of water per share	<u>2.43</u> acre-feet of water per share
South Side Ditch Company	4.22 <u>4.55</u> acre-feet of	<u>1.46</u> acre-feet of water

	water per share	<u>per share</u>
--	-----------------	------------------

The values set forth in the table above represent the historical average yield of each ditch as stated in Spronk Water Engineers’ Raw Water Supply Yield Analysis Update dated December 15, 2004. These values are subject to change at any time by ordinance of city council. The value of water bank credit received in exchange for transferring to the city ditch water rights not set forth in the table above shall be determined by city council by resolution on a case-by-case basis at the time such water bank credit is applied to satisfy the city’s water rights requirements. The native raw water storage fee applicable to each ditch or ditch company is set forth in Section 19.04.045.

BC. The current value of Colorado-Big Thompson Project units shall be one (1) acre-foot per unit.

Section 2. That Section 19.04.040 of the Loveland Municipal Code is hereby amended to read as follows:

19.04.040 ~~Methods of satisfying water rights requirements; restrictions.~~

~~A. The~~ To satisfy the city’s water rights requirements, ~~may be met by any one or combination of the following methods:~~ 1. The applicant may must apply water bank credit in an amount sufficient to satisfy the city’s water rights requirements; ~~provided, however, that a~~ A minimum of ~~forty-fifty~~ percent (450%) of every transaction to satisfy such requirement must include water bank credits received in exchange for Colorado-Big Thompson Project units transferred to the city or water bank credits acquired from the City by cash purchase, or by paying the cash-in-lieu price (“450% Rule”). If the acre-feet requirement resulting from the 450% Rule results in a fractional requirement of less than 0.50 acre-feet, it may be rounded down to the nearest acre-foot.

~~2. The applicant may pay the cash-in-lieu fee to satisfy the city’s water rights requirements for up to a maximum of four (4) acre-feet of water.~~

~~a. For water rights requirements of four (4) acre-feet or less, the applicant may pay the cash-in-lieu fee to satisfy all or part of the total water rights requirements. If cash-in-lieu payment is made to satisfy only part of the total water rights requirements said payment may be used to satisfy all or part of the acre-foot requirement resulting from the 40% rule set forth in subsection A. above.~~

~~b. For water rights requirement of more than four (4) acre-feet, the applicant may only pay the cash-in-lieu fee where such payment would not resulting in a reduction of the 40% rule set forth in subsection A. In other words, said payment may not be used to satisfy the acre-foot requirement resulting from the 40% Rule set forth in subsection A. above.~~

~~c. The cash-in-lieu fee shall be equal to: the market price of one (1) Colorado-Big Thompson Project unit as recognized by resolution of the Loveland utilities commission, divided by the yield (in acre-feet) of one (1) Colorado-Big Thompson Unit as set forth in Section 19.04.018.B, with the resulting quotient multiplied by 1.03. Said fee shall be calculated in accordance with the resolution in effect at the time such payment is due.~~

Section 3. That Chapter 19.04 of the Loveland Municipal Code is hereby amended by addition of a new Section 19.04.041 to read as follows:

19.04.041 Cash-in-lieu price.

The cash-in-lieu price shall be equal to: the market price of one (1) Colorado-Big Thompson Project unit as recognized by resolution of the Loveland utilities commission, divided by the yield (in acre-feet) of one (1) Colorado-Big Thompson Unit as set forth in Section 19.04.018.B, with the resulting quotient multiplied by 1.05. Said fee shall be calculated in accordance with the resolution in effect at the time such payment is due.

Section 4. That Section 19.04.045 of the Loveland Municipal Code is hereby amended to read as follows:

19.04.045 Native raw water storage fee.

- A. When credit in the city’s water bank received in exchange for the transfer of ditch water rights to the city is applied to satisfy the city’s water rights requirements, it shall be subject to the native raw water storage fee [unless exempted under subsection B. or C. below](#). Said fee shall be calculated and due at the time such water bank credit is applied to satisfy the city’s water rights requirements as provided in Sections 13.04.245.C and 19.04.020. The current native raw water storage fees [applicable to each ditch or ditch company](#) shall be as follows:

Ditch / Ditch Company	Native Raw Water Storage Fee Per Acre-Foot
Barnes Ditch	\$5,750
Big Thompson Ditch & Manufacturing Company	\$3,530
Buckingham Irrigation Company (George Rist Ditch)	\$7,400
Chubbuck Ditch	\$7,400
Louden Irrigating Canal and Reservoir Company	\$6,850
South Side Ditch Company	\$6,770

The native raw water storage fees set forth in the table above are taken from the city’s [2012 Raw Water Master Plan](#), adopted by city council by resolution on ~~November 15, 2005~~ [June 5, 2012](#). These values are subject to change at any time by ordinance of city council. The native raw water storage fee applicable to water bank credit received in exchange for transferring to the city ditch water rights not set forth in the table above shall be determined by city council by resolution on a case-by-case basis at the time such water bank credit is applied to satisfy the city’s water rights requirements. The native raw water storage fee shall not apply to water bank credits received in exchange for the transfer of Colorado-Big Thompson Project units to the city or water bank credits acquired from the city by cash payment or to payments of the cash-in-lieu [feeprice](#).

- B. When credit in the city’s water bank received in exchange for the transfer of ditch water rights to the city on or before July 20, 1995 is applied to satisfy the city’s water rights

requirements, it shall not be subject to the native raw water storage fee, notwithstanding the provisions of subsection A. above.

C. When water bank credit is applied to satisfy the city's water rights requirements, the person applying the credit may choose not to pay the native raw water storage fee set forth above, in which case the value of the credit shall be decreased in accordance with the table set forth in subsection B. of Section 19.04.018.

Section 5. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this _____ day of July, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shawn L. Oltus
Assistant City Attorney

FIRST READING July 3, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 19.04 CONCERNING WATER RIGHTS IN ACCORDANCE WITH THE 2012 RAW WATER MASTER PLAN

WHEREAS, on June 5, 2012, the City Council adopted Resolution #R-46-2012 adopting the 2012 Raw Water Master Plan of the City of Loveland; and

WHEREAS, the City Council desires to amend the Loveland Municipal Code at Chapter 19.04 in accordance with 2012 Raw Water Master Plan.

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

Section 1. That Section 19.04.018 of the Loveland Municipal Code is hereby amended to read as follows:

19.04.018 Value of water bank credit.

- A. The value of water bank credit received in exchange for water rights transferred to the city shall be determined at the time such water bank credit is applied to satisfy the city’s water rights requirements.
- B. The current value of ditch water rights shall be as follows:

Ditch/Ditch Company	Value	
	With Payment of the Native Raw Water Storage Fee	Without Payment of the Native Raw Water Storage Fee
Barnes	3.32 acre-feet of water per inch	0.86 acre-feet of water per inch
Big Thompson Ditch & Manufacturing Company	186.57 acre-feet of water per share	70.90 acre-feet of water per share
Buckingham Irrigation Company (George Rist Ditch)	6.36 acre-feet of water per share	0.38 acre-feet of water per share
Chubbuck Ditch	2.94 acre-feet of water per inch	0.41 acre-feet of water per inch
Louden Irrigating Canal and Reservoir Company	12.17 acre-feet of water per share	2.43 acre-feet of water per share
South Side Ditch Company	4.55 acre-feet of water per share	1.46 acre-feet of water per share

The values set forth in the table above represent the historical average yield of each ditch as stated in Spronk Water Engineers' Raw Water Supply Yield Analysis Update dated January 2012. These values are subject to change at any time by ordinance of city council. The value of water bank credit received in exchange for transferring to the city ditch water rights not set forth in the table above shall be determined by city council by resolution on a case-by-case basis at the time such water bank credit is applied to satisfy the city's water rights requirements. The native raw water storage fee applicable to each ditch or ditch company is set forth in Section 19.04.045.

- C. The current value of Colorado-Big Thompson Project units shall be one (1) acre-foot per unit.

Section 2. That Section 19.04.040 of the Loveland Municipal Code is hereby amended to read as follows:

19.04.040 Satisfying water rights requirements.

To satisfy the city's water rights requirements, the applicant must apply water bank credit in an amount sufficient to satisfy the city's water rights requirements. A minimum of fifty percent (50%) of every transaction to satisfy such requirement must include water bank credits received in exchange for Colorado-Big Thompson Project units transferred to the city or water bank credits acquired from the City by cash purchase, or by paying the cash-in-lieu price ("50% Rule"). If the acre-feet requirement resulting from the 50% Rule results in a fractional requirement of less than 0.50 acre-feet, it may be rounded down to the nearest acre-foot.

Section 3. That Chapter 19.04 of the Loveland Municipal Code is hereby amended by addition of a new Section 19.04.041 to read as follows:

19.04.041 Cash-in-lieu price.

The cash-in-lieu price shall be equal to the market price of one (1) Colorado-Big Thompson Project unit as recognized by resolution of the Loveland utilities commission, divided by the yield (in acre-feet) of one (1) Colorado-Big Thompson Unit as set forth in Section 19.04.018.B, with the resulting quotient multiplied by 1.05. Said fee shall be calculated in accordance with the resolution in effect at the time such payment is due.

Section 4. That Section 19.04.045 of the Loveland Municipal Code is hereby amended to read as follows:

19.04.045 Native raw water storage fee.

- A. When credit in the city's water bank received in exchange for the transfer of ditch water rights to the city is applied to satisfy the city's water rights requirements, it shall be subject to the native raw water storage fee unless exempted under subsection B. or C. below. Said fee shall be calculated and due at the time such water bank credit is applied to satisfy the city's water rights requirements as provided in Sections 13.04.245.C and 19.04.020. The current native raw water storage fee applicable to each ditch or ditch company shall be as follows:

Ditch / Ditch Company	Native Raw Water Storage Fee Per Acre-Foot
Barnes Ditch	\$5,750
Big Thompson Ditch & Manufacturing Company	\$3,530
Buckingham Irrigation Company (George Rist Ditch)	\$7,400
Chubbuck Ditch	\$7,400
Louden Irrigating Canal and Reservoir Company	\$6,850
South Side Ditch Company	\$6,770

The native raw water storage fees set forth in the table above are taken from the city’s 2012 Raw Water Master Plan, adopted by city council by resolution on June 5, 2012. These values are subject to change at any time by ordinance of city council. The native raw water storage fee applicable to water bank credit received in exchange for transferring to the city ditch water rights not set forth in the table above shall be determined by city council by resolution on a case-by-case basis at the time such water bank credit is applied to satisfy the city’s water rights requirements. The native raw water storage fee shall not apply to water bank credits received in exchange for the transfer of Colorado-Big Thompson Project units to the city or water bank credits acquired from the city by cash payment or to payments of the cash-in-lieu price.

- B. When credit in the city’s water bank received in exchange for the transfer of ditch water rights to the city on or before July 20, 1995 is applied to satisfy the city’s water rights requirements, it shall not be subject to the native raw water storage fee, notwithstanding the provisions of subsection A. above.
- C. When water bank credit is applied to satisfy the city’s water rights requirements, the person applying the credit may choose not to pay the native raw water storage fee set forth above, in which case the value of the credit shall be decreased in accordance with the table set forth in subsection B. of Section 19.04.018.

Section 5. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this ____ day of July, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shawn L. Oltus
Assistant City Attorney



CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: 7
MEETING DATE: 7/3/2012
TO: City Council
FROM: Keith Reester, Public Works Department
PRESENTER: Dave Klockeman, PE, City Engineer

TITLE:

Public Hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for a federal grant to design and construct a reliable traffic signal/ITS devices interconnect system expansion along regionally significant corridors in Loveland.

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the ordinance on first reading

OPTIONS:

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

DESCRIPTION:

This is an administrative action. The ordinance appropriates federal grant funds and the City's matching funds totaling \$1,084,000 for the construction of a traffic signal interconnect system.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The grant brings a significant amount of unexpected federal funding. The City General Fund has undesignated fund balance that is available to match the grant, allowing for a significant improvement in the traffic signal system.

SUMMARY:

This project would design and construct a reliable fiber optics traffic signal/ITS devices interconnect system expansion along regionally significant corridors in Loveland. The project would include fiber optics for portions of US 34, US 287, Colorado Highway 402, SW 14th Street (US 287 to Taft), Taft Avenue and Wilson Avenue and provide high-speed, reliable communications from field devices back to the Loveland Traffic Operations (TOC) at 105 W. 5th Street.

Over half of the City's 96 signals run on individual time base clocks that can get out of step periodically thereby hindering traffic signal progression. Reliable high speed communications from this project will almost eliminate this problem and allow communications to video cameras, weather stations, traffic count stations to the TOC for smoother flow.

Reduction in vehicle delays and air pollution will be accomplished in at least 3 ways:

1. Reliable high-speed communication for traffic signal coordination via interconnect will keep signals in coordination.
2. Signal timing plan changes can be implemented directly from the TOC for every day needs to be more responsive to changing traffic patterns.
3. Traffic accidents and other incidents including construction traffic control can be accommodated by signal timing changes from the TOC.
4. Reduction in corridor travel times should average at least 5-10% during the heavily congested times thereby reducing associated emissions.

This project is completely compatible with the City's updated signal system and signal controllers. Recently, some of these locations were updated with wireless radios as a temporary measure. These radios will be located to other locations off of the main system in order to further expand the system capabilities and expand our ability to manage the entire signal system remotely, including high traffic school flasher locations. In addition, the completed fiber network will allow opportunities for upgraded communication to the City's Fire Stations, parks, and golf courses, through the use of portions of the fiber cable bundle not being used for traffic (the fiber comes in bundles of 12).

The conceptual layout of the fiber network was determined as part of the Traffic Division's Intelligent Transportation System (ITS) 5 Year Plan, presented to City Council at the March 9, 2010 Study Session. At that meeting, City Council supported the efforts and Staff was encouraged to pursue funding opportunities within the existing Transportation Capital Improvement Program and from outside sources.

This project was submitted to the MPO for funding as part of the October 2010 Call for Projects request. The City was notified of the availability of this Federal funding in late February 2012 and that it will become available in June 2012. The Federal Highway Administration (FHWA) has requested that the additional funds be used as soon as possible. It is anticipated that a contract can be completed with CDOT by August 2012 and that the funding can be fully spent within 12 months. (The completion of the design is minimal with the majority of the time placing conduit and pulling the actual fiber optic cable.)

Cost:	Federal:	\$ 884,000
	Local Match:	\$183,762
	Local Overmatch:	<u>\$ 16,238</u>
	Local Subtotal	\$200,000 <u>\$ 200,000</u>
	Project Total:	\$1,084,000

* Local Match Funds are defined as funding required to be provided by a local entity as part of the Federal grant process. For CMAQ Funds, a Local Agency Match is required (17.21 percent of the total of the Local Match Funds added to the Federal Funds).

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

The 2012 Transportation Capital Improvement Program funding had been previously committed, creating an issue with providing the \$200,000 in necessary Local Match. This funding is required to be available prior to the completion of the contract with CDOT as a condition of that document.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for a federal grant to design and construct a reliable traffic signal/its devices interconnect system expansion along regionally significant corridors in Loveland.

FIRST READING July 3, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR A FEDERAL GRANT TO DESIGN AND CONSTRUCT A RELIABLE TRAFFIC SIGNAL/ITS DEVICES INTERCONNECT SYSTEM EXPANSION ALONG REGIONALLY SIGNIFICANT CORRIDORS IN LOVELAND

WHEREAS, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2012, 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 \$200,000 from Undesignated Fund Balance in the General Fund 100 and revenues from a Federal Grant in the amount of \$884,000 in the Capital Projects Fund 120 are available for appropriation. Revenues in the total amount of \$1,084,000 are hereby appropriated for the construction of a traffic signal interconnect system and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund 100 - Fiber Optic Project**

Revenues	
Fund Balance	200,000
Total Revenue	200,000
Appropriations	
100-91-999-0000-47120-TS1201 Transfer to Capital Projects Fund	200,000
Total Appropriations	200,000

**Supplemental Budget
Capital Projects Fund 120 - Fiber Optic Project**

Revenues

120-00-000-0000-37100-TS1201 Transfer from General Fund	200,000
120-23-232-1701-32000-TS1201 Federal Grant	884,000

Total Revenue **1,084,000**

Appropriations

120-23-232-1701-49355-TS1201 Design	16,000
120-23-232-1701-49360-TS1201 Construction	1,068,000

Total Appropriations **1,084,000**

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

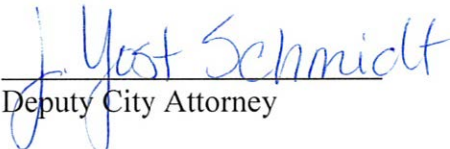
ADOPTED this ___ day of July, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
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AGENDA ITEM: 8
MEETING DATE: 7/3/2012
TO: City Council
FROM: David Klockeman, City Engineer, Public Works Department
PRESENTER: Dave Klockeman, City Engineer, Public Works Department

TITLE:

A Resolution approving an amendment to an Intergovernmental Agreement between the City of Loveland, Colorado and the State of Colorado, for the use and benefit of the Department of Transportation, for design and construction of building upgrades to the Loveland Traffic Operations Center

RECOMMENDED CITY COUNCIL ACTION:

Adopt a resolution approving an amendment to the contract between the City and CDOT for design and construction of building upgrades to the Loveland Traffic Operations Center.

OPTIONS:

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

DESCRIPTION:

This is an administrative action to approve an amendment to an existing contract with CDOT by which the City received federal funds for the design and construction of building upgrades to the City's Traffic Operations Center. This item is necessary in order to complete the revised criteria for closing out a project with federal funding so that the City can receive the final reimbursement amount from CDOT. The original contract was approved by City Council at its September 18, 2007 meeting by adoption of Resolution #R-97-2007. The original contract included federal funds of \$120,000 and required a 17.21% Local Match in the amount of \$24,945, for a total contract amount of \$144,945. The amendment reflects the addition of \$155,000 in City "local agency overmatch" funds that were used to complete this project, raising the total project cost to \$299,945. The additional \$155,000 in City funding was included in previously-approved budgets related to the Transportation Capital Improvement Program.

BUDGET IMPACT:

- Positive
 Negative

Neutral or negligible

Funding for this project had been programmed in the City Transportation Capital Improvement Plan approved by City Council in previous City budgets.

SUMMARY:

In 2007, the City of Loveland received a federal grant, through the North Front Range Metropolitan Planning Organization call for projects process, to design and construct building upgrades to the City's Traffic Operations Center. The original contract included federal funds of \$120,000 and required a 17.21% Local Match in the amount of \$24,945, for a total contract amount of \$144,945. Per the contract, any additional costs to complete the project were the City's responsibility, and the additional costs, if any, were simply to be reported to CDOT. The project was completed in 2011, and the required completion and closeout paperwork was submitted for review and approval so that the final reimbursement could be processed.

As part of the closeout process, the City learned that between the time the original contract was executed and the project was completed, the Federal Highway Administration (FHWA) instituted a new requirement that all project costs be reported in a more formal manner. To address that requirement, CDOT updated their rules to require a contract amendment prior to final closeout reflecting the total project cost, including any additional funds, even if they are only local agency overmatch funds with no impact on CDOT or others. This amendment shows the additional \$155,000 in City "local agency overmatch" funds that were used to complete the project, raising the overall project total amount to \$299,945. The additional \$155,000 in City funds was included in previously-approved budgets related to the Transportation Capital Improvement Program.

REVIEWED BY CITY MANAGER:

William D. Cavill

LIST OF ATTACHMENTS:

Resolution

Contract Amendment (attached to the Resolution as Exhibit A)

RESOLUTION #R-47-2012

A RESOLUTION APPROVING AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, FOR THE USE AND BENEFIT OF THE DEPARTMENT OF TRANSPORTATION, FOR DESIGN AND CONSTRUCTION OF BUILDING UPGRADES TO THE LOVELAND TRAFFIC OPERATIONS CENTER

WHEREAS, on January 3, 2008, the City of Loveland, Colorado and the State of Colorado, for the use and benefit of the Department of Transportation (“CDOT”), entered into an intergovernmental agreement for design and construction of building upgrades to the Loveland Traffic Operations Center (“Contract”); and

WHEREAS, the Contract provided federal funds in the amount of \$120,000, and required a local match in the amount of \$24,945; and

WHEREAS, the City and CDOT desire to amend the Contract to increase the total project cost by addition of a local agency overmatch in the amount of \$155,000; and

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

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

Section 1. That the Contract Amendment, attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Contract Amendment 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 Contract Amendment on behalf of the City.

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

ADOPTED this 3rd day of July, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shawn L. Oltus
Assistant City Attorney

CONTRACT AMENDMENT

Amendment # 1	Original Contract # 08 HA4 00024 Project # STU M830-039 (16282)	PO # 271001474	Amendment CMS # 35554
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1) PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between City of Loveland and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of Transportation, (hereinafter called "CDOT").

2) EFFECTIVE DATE AND ENFORCEABILITY

This Amendment 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 Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3) FACTUAL RECITALS

The Parties entered into the Contract for design and construction for building upgrades for the Loveland Traffic Operations Center.

4) CONSIDERATION-COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this Amendment. Such Special Provisions dated 1-1-09 are attached hereto and incorporated by reference herein as **Section 29**.

5) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6) MODIFICATIONS.

The Amendment and all prior amendments thereto, if any, are modified as follows:

A. The following will be deleted from the contract in its entirety:

i. Section 25. Funding Letters

The State may allocate more or less funds available on this contract using a Funding Letter substantially equivalent to Exhibit F and bearing the approval of the State Controller or his designee. The funding letter shall not be deemed valid until it shall have been approved by the State Controller or his designee.

B. The following will be added to the contract:

i. Option Letters

Option Letters may be used to extend Agreement term, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. These options are limited to the specific scenarios listed below. The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Following are the applications for the individual options under the Option Letter form:

Option 1 – Level of service change within current term due to unexpected overmatch in an overbid situation only. In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is

only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding.

The State may unilaterally increase the total dollars of this contract as stipulated by the executed Option Letter (Exhibit F), which will bring the maximum amount payable under this contract to the amount indicated in Exhibit C-1 attached to the executed Option Letter (future changes to Exhibit C shall be labeled as C-2, C-3, etc., as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

Option 2 – Option to add overlapping phase without increasing contract dollars. The State may require the contractor to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in Exhibit A and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to Exhibit F. If the State exercises this option, the contract will be considered to include this option provision.

Option 3 – To update funding (increases and/or decreases) with a new Exhibit C. This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (Exhibit C) in the Original Contract with an updated Exhibit C-1 (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc.).

The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in Exhibit C-1, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to Exhibit F. If the State exercises this option, the contract will be considered to include this option provision.

ii. Exhibit K

FFATA Federal Provisions attached hereto and incorporated herein by this reference are hereby added to the Basic Contract.

iii. Section 12 Revised Federal Requirements – hereto and incorporated herein replaces Section 12 of the Basic Contract.

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

iv. Section 30 Statewide Contract Management System – hereto and incorporated herein by this reference is hereby added to the Basic Contract.

--STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

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

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

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

v. Exhibit C-1

Exhibit C to the Basic Contract shall be removed and replaced in its entirety by Exhibit C-1 attached hereto and incorporated herein by this reference. All references in the Basic Contract to Exhibit C shall be removed and replaced by Exhibit C-1.

7) START DATE

This Amendment shall take effect upon the date of the State Controller's Signature.

8) ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

9) AVAILABLE FUNDS

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

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

**THE LOCAL AGENCY
City of Loveland**

By: Bill Hange
Title: City Traffic Engineer

*Signature

Date: _____

STATE OF COLORADO

John W. Hickenlooper, GOVERNOR
Colorado Department of Transportation
Russell George, Executive Director

By: Timothy J. Harris, P.E. Chief Engineer

Date: _____

2nd Local Agency signature if needed

By:
Title:

*Signature

Date: _____

LEGAL REVIEW

John W. Suthers, Attorney General

By: _____
Signature - Assistant Attorney General

Date: _____

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

**STATE CONTROLLER
David J. McDermott, CPA**

By: _____

Colorado Department of Transportation

Date: _____

29. EXHIBIT C-1 – FUNDING PROVISIONS

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$299,945.00 which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds				
(82.79% of Participating Costs)				\$120,000.00
b. Local Agency Matching Funds				
(17.21% of Participating Costs)				\$24,945.00
c. Local Agency Overmatch				
(100% of Costs)				\$155,000.00
TOTAL BUDGETED FUNDS				\$299,945.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share				\$0.00
(0% of Participating Costs)				
b. Local Share				
Local Agency Share of Participating Costs		\$0.00		
Local Agency Share of Non-Participating Costs		\$0.00		
Estimated to be Billed to Local Agency				\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$120,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
c. State Funds Budgeted (1b)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$120,000.00
FOR CDOT ENCUMBRANCE PURPOSES				
Net to be encumbered as follows:				\$299,945.00
WBS Element 16282.10.40	Design	3020		\$50,000.00
WBS Element 16282.10.35	Const.	3301		\$249,945.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20 2050) to 17.21% Local Agency funds, it being understood that such ratio applies only to the \$144,945.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$144,945.00, and additional federal funds are made available for the Work, the Local Agency shall pay 17.21% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$144,945.00, then the amounts of State and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$120,000.00 (For CDOT accounting purposes, the federal funds of \$120,000.00, Local Agency matching funds of \$24,945.00, and Local Agency Overmatch funds of \$155,000.00 will be encumbered for a total encumbrance of \$249,945.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ***** Note - \$249,945.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment ***** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

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

i. Expenditure less than \$500,000

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

ii. Expenditure exceeding than \$500,000-Highway Funds Only

If the Sub-The Local Agency expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure exceeding than \$500,000-Multiple Funding Sources

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

iv. Independent CPA

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

Exhibit K

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As
Amended
As of 10-15-10

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

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
 - 1.1. **"Award"** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:
 - 1.1.1. Grants;
 - 1.1.2. Contracts;
 - 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
 - 1.1.4. Loans;
 - 1.1.5. Loan Guarantees;
 - 1.1.6. Subsidies;
 - 1.1.7. Insurance;
 - 1.1.8. Food commodities;
 - 1.1.9. Direct appropriations;
 - 1.1.10. Assessed and voluntary contributions; and
 - 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award does not include:

 - 1.1.12. Technical assistance, which provides services in lieu of money;
 - 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
 - 1.1.14. Any award classified for security purposes; or
 - 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
 - 1.2. **"Central Contractor Registration (CCR)"** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.bpn.gov/ccr>.
 - 1.3. **"Contract"** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
 - 1.4. **"Contractor"** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
 - 1.5. **"Data Universal Numbering System (DUNS) Number"** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity.

Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.

- 1.6. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;
- 1.6.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 1.6.2. A foreign public entity;
 - 1.6.3. A domestic or foreign non-profit organization;
 - 1.6.4. A domestic or foreign for-profit organization; and
 - 1.6.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.7. **"Executive"** means an officer, managing partner or any other employee in a management position.
- 1.8. **"Federal Award Identification Number (FAIN)"** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.9. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."
- 1.10. **"Prime Recipient"** means a Colorado State agency or institution of higher education that receives an Award.
- 1.11. **"Subaward"** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient's support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.12. **"Subrecipient"** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee.
- 1.13. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's Central Contractor Registration (CCR) profile, if applicable.
- 1.14. **"Supplemental Provisions"** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.15. **"Total Compensation"** means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **"Transparency Act"** means the Federal Funding Accountability and Transparency Act of 2006

(Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

- 1.17 **"Vendor"** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.
2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements.**
- 3.1. **CCR.** Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update the CCR information at least annually after the initial registration, and more frequently if required by changes in its information.
- 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in CCR for each of its five most highly compensated Executives for the preceding fiscal year if:
- 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
- 4.2. In the preceding fiscal year, Contractor received:
- 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to CCR and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these supplemental provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is

subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

- 7. Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.
- 7.1 To CCR.** A Subrecipient shall register in CCR and report the following data elements in CCR *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
- 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 CCR.
 - 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.

Section 29**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. §§1346(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 contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this 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 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

(FMLAWRK)
 PROJECT STU M830-039, (16282)
 REGION 4(pw)

Rev 09/03
 08 HA4 00024
 SAP ID 271000544

CONTRACT

THIS CONTRACT made this 3rd day of January 2008, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and the City of Loveland, 105 W. 5th Street, Loveland, Colorado, 80537, CDOT Vendor #: 2000033, hereinafter referred to as the "Contractor" or the "Local Agency."

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 3020, GL Acct. 4231200011, WBS Element 16282.10.40 (Contract Encumbrance Amount: \$20,000.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to Title I, Subtitle A, Section 1108 of the "Transportation Equity Act for the 21st Century" of 1998 (TEA-21) and/or the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and will in the future be allocated for transportation projects requested by Local Agencies and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA"), hereinafter referred to as the "Program."
4. Pursuant to § 43-1-223, C.R.S. and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State.
5. The Local Agency has requested that a certain local transportation project be funded as part of the Program, and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that, before the Work begins, form #463 may be revised as a result of design changes made by CDOT, in

coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the Work described in form #463, as it may be revised.

6. Federal-aid funds have been made available for project STU M830-039 (16282), which shall consist of design and construction for building upgrades for the Loveland Traffic Operations Center, referred to as the "Project" or the "Work." Such Work will be performed in Loveland, Colorado, specifically described in Exhibit A.

7. The matching ratio for this federal aid project is 82.79% federal-aid funds to 17.21% Local Agency funds, it being understood that such ratio applies only to such costs as are eligible for federal participation, it being further understood that all non-participating costs shall be borne by the Local Agency at 100%.

8. The Local Agency desires to comply with the Federal Provisions and other applicable requirements, including the State's general administration and supervision of the Project through this contract, in order to obtain federal funds.

9. The Local Agency has estimated the total cost of the Work and is prepared to provide its match share of the cost, as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this contract and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as Exhibit B.

10. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and Exhibit B.

11. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.

12. The Local Agency can more advantageously perform the Work.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Project or the Work under this contract shall consist of design and construction for building upgrades for the Loveland Traffic Operations Center in Loveland, Colorado as more specifically described in Exhibit A.

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 29 of this contract
2. This contract

3. Exhibit A (Scope of Work)
4. Exhibit C (Funding Provisions)
5. Exhibit D (Certification for Federal-Aid Contracts)
6. Exhibit E (DBE Requirements)
7. Exhibit F (Contract Modification Tools)
8. Other Exhibits in descending order of their attachment.

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State, FHWA and the Local Agency.

Section 4. Project Funding Provisions

The Local Agency has estimated the total cost of the Work and is prepared to provide its match share of the cost, as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this contract and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as Exhibit B.

The funding provisions for the Project are attached hereto as Exhibit C. The Local Agency shall provide its share of the funds for the Project as outlined in Exhibit C.

Section 5. Project Payment Provisions

A. The State will reimburse the Local Agency for the federal-aid share of the project charges after the State's review and approval of such charges, subject to the terms and conditions of this contract. However, any charges incurred by the Local Agency prior to the date of FHWA authorization for the Project and prior to the date this contract is executed by the State Controller or his designee will not be reimbursed absent specific FHWA and State Controller approval thereof.

B. The State will reimburse the Local Agency's reasonable, allocable, allowable costs of performance of the Work, not exceeding the maximum total amount described in Exhibit C. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:

1. in accordance with the provisions of Exhibit C and with the terms and conditions of this contract;
2. necessary for the accomplishment of the Work;
3. reasonable in the amount for the goods and services provided;

4. actual net cost to the Local Agency (i.e. the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred);
5. incurred for Work performed after the effective date of this contract;
6. satisfactorily documented.

C. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted for in a manner consistent with this contract and project objectives.

1. All allowable costs charged to the project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

D. Upon execution of this contract, the State is authorized, in its discretion, to perform any necessary administrative support services pursuant to this contract. These services may be performed prior to and in preparation for any conditions or requirements of this contract, including prior FHWA approval of Work. The Local Agency understands and agrees that the State may perform such services, and that payments for such services shall be at no cost to the State but shall be as provided for in Exhibit C. At the request of the Local Agency, the State shall also provide other assistance pursuant to this contract as may be agreed in writing. In the event that federal-aid project funds remain available for payment, the Local Agency understands and agrees the costs of any such services and assistance shall be paid to the State from project funds at the applicable rate. However, in the event that such funding is not made available or is withdrawn for this contract, or if the Local Agency terminates this contract prior to project approval or completion for any reason, then all actual incurred costs of such services and assistance provided by the State shall be the sole expense of the Local Agency.

E. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:

1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties

hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).

2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.

F. The Local Agency will prepare and submit to the State, no more than monthly, charges for costs incurred relative to the project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format to be supplied by the State.

G. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.

1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
3. Incorrect payments to the Local Agency due to omission, error, fraud or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
4. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State's election.

Section 6. State and Local Agency Commitments

The Local Agency Contract Administration Checklist in Exhibit G describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The "Responsible Party" referred to in this contract means the Responsible Party as identified in the Local Agency Contract Administration Checklist in Exhibit G.

- A. Design [if applicable]

1. If the Work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the responsible party shall comply with the following requirements, as applicable:

- a. perform or provide the Plans, to the extent required by the nature of the Work.
- b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
- c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.
- d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
- e. stamp the Plans produced by a Colorado Registered Professional Engineer.
- f. provide final assembly of Plans and contract documents.
- g. be responsible for the Plans being accurate and complete.
- h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.

2. If the Local Agency is the responsible party:

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

Local Agency does enter into a contract with a consultant for the Work:

- (1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(d) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.
- (2) it shall ensure that all changes in the consultant contract have prior approval by the State and FHWA. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.
- (3) it shall require that all consultant billings under that contract shall comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
- (4) it (or its consultant) shall use the CDOT procedures described in Exhibit H to administer that design consultant subcontract, to comply with 23 CFR 172.5(b) and (d).
- (5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local Agency's attorney/authorized representative certifying compliance with Exhibit H and 23 CFR 172.5(b) and (d).
- (6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) "The design work under this contract shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third party beneficiary of this contract for that purpose."
 - (b) "Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project."
 - (c) "The consultant shall review the construction contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work."

- d. The State, in its discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State and FHWA requirements.

B. Construction [if applicable]

1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Local Agency Contract Administration Checklist. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.
2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct project conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
3. If the Local Agency is the responsible party:
 - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
 - b. if bids are to be let for the construction of the project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.
 - (1) in advertising and awarding the bid for the construction of a federal-aid project, the Local Agency shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency/contractor shall incorporate Form 1273 (Exhibit I) in its

entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).

- (2) the Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.
- (3) by indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project. This paragraph also applies to projects advertised and awarded by the State.

c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.

- (1) Such work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
- (2) An alternative to the above is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 CFR Part 31.
- (3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction § 109.04.
- (4) All force account work shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

D. State's obligations

1. The State will perform a final project inspection prior to project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Local Agency Contract Administration Checklist, Exhibit G, within the Work of this contract.

Section 7. ROW Acquisition and Relocation

Prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable State and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with all federal and state statutes, regulations, CDOT policies and procedures, 49 CFR Part 24, the government wide Uniform Act regulation, the FHWA Project Development Guide and CDOT's Right of Way Operations Manual.

Allocation of Responsibilities can be as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Operation Manual. The manual is located at http://www.dot.state.co.us/ROW_Manual/.

Section 8. Utilities

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

Section 9. Railroads

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part

of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

1. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
2. Obtaining the railroad's detailed estimate of the cost of the Work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 10. Environmental Obligations

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

Section 11. Maintenance Obligations

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 12. Federal Requirements

The Local Agency and/or their contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. The contractor shall also require compliance with these statutes and regulations in subgrant agreements permitted under this contract. A listing of certain federal and state laws that may be applicable are described in Exhibit J.

Section 13. 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 14. Termination Provisions

This contract may be terminated as follows:

A. 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.

B. 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.

C. 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 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 15. 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 16. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 4, 1420 2nd Street, Greeley, CO 80631. 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:

Wendy Turner
CDOT Region 4
Project Manager
1420 2nd Street
Greeley, CO 80631
970-350-2182

If to the Local Agency:

Bill Hange
City of Loveland
105 W. 5th Street
Loveland, Colorado 80537
(970) 962-2528

Section 17. 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 18. 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 19. 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 20. 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 21. 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.

Section 22. 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 23. 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 24. 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.

Section 25. Funding Letters

The State may allocate more or less funds available on this contract using a Funding Letter substantially equivalent to Exhibit F and bearing the approval of the State Controller or his designee. The funding letter shall not be deemed valid until it shall have been approved by the State Controller or his designee.

Section 26. Disadvantaged Business Enterprise (DBE)

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

Section 27. 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 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 28. Single Audit Act Amendment

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

- a) If the Sub-Grantee expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.
- b) If the Sub-Grantee expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.
- b) If the Sub-Grantee expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.
- c) Single Audit can only be conducted by an independent CPA, not by an auditor on staff.
- d) An audit is an allowable direct or indirect cost.

Section 29.

SPECIAL PROVISIONS

The 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 deemed valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY.** CRS 24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

[Applicable Only to Intergovernmental Contracts] 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, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

4. **INDEPENDENT CONTRACTOR.** 4 CCR 801-2. 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 or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.
5. **NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.
6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall 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 will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.
7. **[Not Applicable to Intergovernmental Contracts] VENDOR OFFSET.** CRS 24-30-202 (1) and 24-30-202.4. The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (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 or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.
8. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has 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 paragraph, the State may exercise any remedy available at law or 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.** 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.
10. **[Not Applicable to Intergovernmental Contracts]. ILLEGAL ALIENS - PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS.** CRS 8-17.5-101 and 24-76.5-101. Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. 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 represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and Contractor shall be liable for actual and consequential damages.
Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

Revised October 25, 2006

Effective Date of Special Provisions: August 7, 2006

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:
BILL RITTER, JR., GOVERNOR

City of Loveland
Legal Name of Contracting Entity

By Pamela Hultor
Executive Director
Department of Transportation

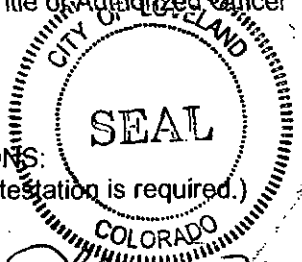
2000033
CDOT Vendor Number

Don F. Williams
Signature of Authorized Officer

LEGAL REVIEW:
JOHN W. SUTHERS
ATTORNEY GENERAL

Don F. Williams, City Manager
Print Name & Title of Authorized Officer

By Kathryn E. Young



APPROVED AS TO FORM

CORPORATIONS:
(A corporate attestation is required.)

BY: Shawn Little
ASSISTANT CITY ATTORNEY

Attest (Seal) By Jannet M. Weaver
(Corporate Secretary or Equivalent, or Town/City/County Clerk)
here, if available) Deputy Clerk

(Place corporate seal)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
LESLIE M. SHENEFELT

By Leslie M. Shenefelt
Date January 3, 2007

Exhibit A

COLORADO DEPARTMENT OF TRANSPORTATION DESIGN DATA Page 1 to 3 Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised		Orig. Date: 04/18/2007	Project Code # (SA#): 16282	STIP#: SNF5788
		Rev. Date:	Project #: STU M830-030	
		Revision #: 0	PE Project Code: 16282	
		Region #: 04	Project Description: Loveland Traffic Operations Center	
Submitted By PM: TURNERW		Approved by Program Engineer:		
Date:		County: 069		
Revised by:		Municipality: Loveland		
Date:		System Code: Z-Not on any Federal System		
		Oversight By: A-Exempt		
		Planned Length: 0.100		
Geographic Location: CITY OF LOVELAND TRAFFIC OPERATIONS CENTER, 105, W. 5TH				
Type of Terrain: Urban				
Description of Proposed Construction/Improvement (Attach map showing site location) BUILDING UPGRADES FOR THE TRAFFIC OPERATIONS CENTER				

1 Project Characteristics (Proposed)		Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input checked="" type="checkbox"/> None	
<input type="checkbox"/> Lighting	<input type="checkbox"/> Handicap Ramps	<input type="checkbox"/> Traffic Control Signals	<input type="checkbox"/> Striping
<input type="checkbox"/> Curb and Gutter	<input type="checkbox"/> Curb Only	<input type="checkbox"/> Left-Turn Slots	<input type="checkbox"/> Continuous Width-
<input type="checkbox"/> Sidewalk Width-	<input type="checkbox"/> Bikeway Width-	<input type="checkbox"/> Right-Turn Slots	<input type="checkbox"/> Continuous Width-
<input type="checkbox"/> Parking Lane Width-	<input type="checkbox"/> DeSouls	Signing	<input type="checkbox"/> Construction <input type="checkbox"/> Permanent
<input type="checkbox"/> Landscaping requirements (description):		<input type="checkbox"/> Other (description):	

2 Right of Way	Yes/No	Est. #
ROW &/or Perm. Easement Required	No	_____
Relocation Required	No	_____
Temporary Easement Required	No	_____
Changes in Access:	No	_____
Changes to Connecting Roads:	No	_____

3 Utilities (list names of known utility companies)

4 Railroad Crossings	# of Crossings:
Recommendations:	

5 Environmental	Type: None	Approved On:	Under Project Code:	Project #: 16282
Comments:				

6 Coordination	
<input type="checkbox"/> Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office	Irrigation Ditch Name:
<input type="checkbox"/> New Traffic Ordinance Required <input type="checkbox"/> Modify Schedule of Existing Ordinance	Municipality: Loveland
Other:	

7 Construction Method	Advertised By: Local	NoAd Reason:	Entity / Agency Contact Name: Bill Hange	Phone #: 970-662-2528
------------------------------	----------------------	--------------	--	-----------------------

8 Safety Considerations		Project Under: Other <u>STU</u> criteria	Guardrail meets current standards: No
<input type="checkbox"/> Variance in Minimum Design Standards Required		<input type="checkbox"/> Safety project not at standards addressed	Comments:
<input type="checkbox"/> Justification Attached	<input type="checkbox"/> Request to be Submitted		
<input type="checkbox"/> Bridge (see Item 12)	<input type="checkbox"/> See Remarks		
<input type="checkbox"/> Stage Construction (explain in remarks)			
3R projects			
Safety Evaluation Complete (date):			

Exhibit A

Page 2 of 3		Project Code #(SA#): 18262		Project #: STU M830-039		Revise date:						
Use Columns A, B, C, D and/or E to identify facility described below												
		A-		B-		C-		D-		E-		
9 Traffic												
Current Year	ADT											
	DHV											
	DHV % Trucks											
Future Year	ADT											
	DHV											
Facility Location	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial		<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial		<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial		<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial		<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial		<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial	
	<input type="checkbox"/> Residential <input type="checkbox"/> Other		<input type="checkbox"/> Residential <input type="checkbox"/> Other		<input type="checkbox"/> Residential <input type="checkbox"/> Other		<input type="checkbox"/> Residential <input type="checkbox"/> Other		<input type="checkbox"/> Residential <input type="checkbox"/> Other		<input type="checkbox"/> Residential <input type="checkbox"/> Other	
10 Roadway Class												
Route												
Rept	0.000											
Endpt	0.000											
Functional Classification	N											
Facility type	0											
Rural Code	0											
11 Design Standards												
	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate	Standard	Existing	Proposed	Ultimate
Design Variance Required (substandard items are identified with an * in 1 st column & clarify as design variance with CDOT Form #464)												
Width of Travel Lanes												
Shoulder width (inside)												
Shoulder width (outside)												
Design Speed												
Cross Slope												
Max. superelevation rate												
Min. Radius												
Min. Horizontal SSD												
Min. Vertical SSD												
Max Grade												
Design Decision Letter Required (substandard items are identified with an * in 1 st column & clarify with decision letter)												
Typical Section Type												
# of Travel Lanes												
Side Slope (ft. / 1")												
Median Width												
Posted Speed												

Exhibit A

Page 3 of 3	Project Code #(SA#): 16282	Project #: STU M1830-039	Revise Date:						
12 Major Structures S= to stay, R= to be removed, P= proposed new structure									
Structure ID#	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built
Proposed Treatment of Bridges to Remain in Place(address bridge rat, capacity, and allowable surfacing thickness):									
13 Remarks									
City of Loveland is responsible for Design, ROW, utilities, ad, award, and construction management.									

Exhibit B

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

RESOLUTION #R- 97-2007**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LOVELAND, COLORADO APPROVING AN
AGREEMENT BETWEEN THE STATE OF COLORADO,
FOR THE USE AND BENEFIT OF THE DEPARTMENT OF
TRANSPORTATION, AND THE CITY OF LOVELAND**

WHEREAS, part 2 of Article 1 of Title 29, C.R.S. authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City of Loveland desires to design upgrades to the Traffic Operations Center (the "Project"); and

WHEREAS, the State of Colorado, acting through the Colorado Department of Transportation ("CDOT"), is responsible for the general administration and supervision of the performance of projects under the program through which federal-aid funds may be made available; and

WHEREAS, federal funds are available for a portion of the Project; and

WHEREAS, the matching ratio for the federal aid is approximately 82.79% federal-aid funds to 17.21% City funds with all non-participating costs to be borne by the City; and

WHEREAS, the City and CDOT desire to enter into an Agreement, a copy of which is attached hereto and incorporated herein as Exhibit A, to define the division of responsibilities with regard to the Project; and

WHEREAS, the City Council desires to approve the Agreement on behalf of the City of Loveland; and

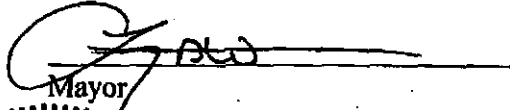
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF LOVELAND, COLORADO:**

Section 1. The Agreement between the City of Loveland and the State of Colorado, for the use and benefit of the Colorado Department of Transportation, a copy of which is attached hereto and incorporated herein as Exhibit A, is hereby approved.

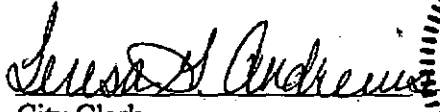
Section 2. The City Manager is authorized, following consultation with the City Attorney, to approve changes to the form of the Agreement provided that such changes do not impair the intended purpose of the Agreement.

Section 3. The City Manager and the City Clerk are authorized and directed to execute the Agreement on behalf of the City of Loveland.

Adopted this 18 day of September, 2007.


Mayor

ATTEST:


City Clerk



APPROVED AS TO FORM:


Assistant City Attorney

EXHIBIT C FUNDING PROVISIONS

- A. The Local Agency has estimated the total cost the Work to be \$144,945.00 which is to be funded as follows:

1 BUDGETED FUNDS		
a. Federal Funds		\$120,000.00
(82.79% of Participating Costs)		
b. Local Agency Matching Funds		\$24,945.00
(17.21% of Participating Costs)		
Local Agency Matching for CDOT - Incurred Non-		
c. Participating Costs		\$0.00
(Including Non-Participating Indirects)		
TOTAL BUDGETED FUNDS		\$144,945.00
2 ESTIMATED CDOT-INCURRED COSTS		
a. Federal Share		\$0.00
(0% of Participating Costs)		
b. Local Share		
Local Agency Share of Participating Costs	\$0.00	
Non-Participating Costs (Including Non-		
Participating Indirects)	\$0.00	
Estimated to be Billed to Local Agency		\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS		\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY		
a. Federal Funds Budgeted (1a)		\$120,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)		\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		\$120,000.00

<p>4. NOTE: This contract will only encumber \$20,000.00 of Design Phase funding.</p> <p>Construction funds (\$124,945.00 will be encumbered at a later date by amendment or Funding Letter (<i>Exhibit F</i>), after the Federal funds are authorized.</p>			
<p>FOR CDOT ENCUMBRANCE PURPOSES</p>			
<p>Total Encumbrance Amount</p>			\$20,000.00
<p>Less ROW Acquisition 3111 and/or ROW Relocation 3109</p>			\$0.00
<p>Net to be encumbered as follows:</p>			
WBS Element 16282.10.40	Design	3020	\$20,000.00
	Const	3301	0.00

B. The matching ratio for the federal participating funds for this project is 82.79%% federal-aid funds (CFDA #20 2050) to 17.21% Local Agency funds, it being understood that such ratio applies only to the \$144,945.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$144,945.00, and additional federal funds are made available for the project, the Local Agency shall pay 17.21% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the local agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$144,945.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. The maximum amount payable to the Local Agency under this contract shall be \$120,000.00 (For CDOT accounting purposes, the federal funds of \$120,000.00 and local matching funds of \$24,945.00 will be encumbered for a total encumbrance of \$144,945.00), unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred.

NOTE: Only the Federal portion of the Design Phase (\$20,000.00) will be available upon execution of this agreement. The remainder of the funds will become available after Federal authorization of the Construction Phase.

It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

- D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from federal and/or state and/or Local Agency sources, as applicable. Should these sources, either federal or Local Agency, fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

EXHIBIT D**Certification for Federal-Aid Contracts**

The contractor certifies, by signing this contract, to the best of its knowledge and belief, that:

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

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

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

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

Required by 23 CFR 635.112

Exhibit E

DISADVANTAGED BUSINESS ENTERPRISE (DBE)**SECTION 1. Policy.**

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

SECTION 2. DBE Obligation.

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

SECTION 3. DBE Program.

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

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

Business Programs Office
Colorado Department of Transportation
4201 East Arkansas Avenue, Room 287
Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 23.41

COLORADO DEPARTMENT OF TRANSPORTATION
CONTRACT FUNDING INCREASE/DECREASE AND APPROVAL LETTER
 Region: Complete section 1 and submit to CDOT Controller's office.

AUTHORITY:
 State Controller Policy letter on June 12, 1996
 CDOT Controller letter on May 23, 1996

(1) This form to be used for the following contracts/situations only (check the appropriate situation):
 indefinite quantity, order more/add more utility/railroad, underestimated total cost
 CDOT construction, sum of CMO's LA construction, underestimated cost
 CDOT construction, underestimated total cost CDOT consultant, underestimated cost

SECTION 1 (Region use)

Date: (2)		Project code (3)	
To: CDOT Controller (FAX #(303) 757-9573 or e-mail CONTROLLER)		Project # (4)	
From: Region # (5)	Office: (5)	Phone # (5)	FAX # (5)

CDOT has executed a contract with: (6)

Address: (6)

FEIN # (6)	Contract routing # (7)	COFRS encumbrance # (indicate PO, SC or PG #) (8)
------------	------------------------	---

Fund (9)	Orgn. (9)	Appro. (9)	Prgrm. (9)	Func. (9)	Object/Sub-obj N/P (9)	GBL (9)	Reporting Catg. (9)	Proj/Sub/Phase (9)
----------	-----------	------------	------------	-----------	------------------------	---------	---------------------	--------------------

Original contract amount \$ (10)	Has a Budget Request been processed to cover the contract amount increase? yes no (14)
----------------------------------	---

Previous Funding Letter(s) total \$ (11) (Funding letter #1 thru #)	Preparer's name (15) PHONE NO:
---	---------------------------------------

This Funding Letter total \$ (12) (#)	Contract Administrator's/Business Manager's Approval (16) PHONE NO:
---	--

Adjusted contract amount \$ (13)	CDOT Designee Approval (17)
	Local Agency approval (18)

SECTION 2 (Controller's Office use) (19)

Total allotment amount \$ (19)	Commission budget \$ (19)
--------------------------------	---------------------------

If construction: _CE pool elig. (19)	CE charges \$ (19)	Indirect chgs \$ (19)	Adjusted contract amount plus total CE & indirect charges calculation \$ (19)
---	--------------------	-----------------------	---

I have reviewed the financial status of the project, organization, grant and have determined that sufficient funds are available to cover this increase, effective as of (19)

State Controller or Delegee (20)	Date (20)
----------------------------------	-----------

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

Exhibit E

**COLORADO DEPARTMENT OF TRANSPORTATION
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

Project No. STU M830-039	STIP No. SNF5788	Project Code 16282	Region 04
Project Location City of Loveland			Date 5/1/07
Project Description Loveland Traffic Operations Center			
Local Agency City of Loveland	Local Agency Project Manager Bill Hange		
CDOT Resident Engineer Pete Graham	CDOT Project Manager Wendy Turner		

INSTRUCTIONS:

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

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

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

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

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2-1	Review to ensure consistency with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5-1	Prepare Design Data - CDOT Form 463	X	X
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct consultant selection/execute agreement	X	#
5-4	Conduct Design Scoping Review meeting	X	
5-5	Conduct public involvement	X	
5-6	Conduct Field Inspection Review	X	X
5-7	Conduct environmental processes (may require FHWA concurrence/involvement)	X	X
5-8	Acquire right-of-way (may require FHWA concurrence/involvement)	X	#
5-9	Obtain utility and railroad agreements	X	
5-10	Conduct Final Office Review	X	X
5-11	Justify force account work by the Local Agency	X	#
5-12	Justify proprietary items	X	#
5-13	Document design exceptions - CDOT Form 464	X	#
5-14	Prepare plans, specifications and construction cost estimates	X	#
5-15	Ensure authorization of funds		X

Exhibit E

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) goals for consultant and construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine applicability of Davis-Bacon Act This project is exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Pete Graham CDOT Resident Engineer Date 5/1/07		X
6-3	Set On-the-Job Training goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7-1	Obtain approval for advertisement period of less than three weeks	X	#
7-2	Advertise for bids	X	
7-3	Distribute "advertisement set" of plans and specifications	X	
7-4	Review worksite and plan details with prospective bidders while project is under advertisement	X	
7-5	Open bids	X	
7-6	Process bids for compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7-7	Concurrence from CDOT to award		X
7-8	Approve rejection of low bidder		X
7-9	Award Contract	X	
7-10	Provide "award" and "record" sets of plans and specifications	X	
CONSTRUCTION MANAGEMENT			
8-1	Issue Notice to Proceed to the Contractor	X	
8-2	Conduct conferences:		
	Preconstruction (Appendix B)	X	
	Presurvey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)	X	
	Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual)	X	
	HBP Pre-Paving (Agenda is in CDOT Construction Manual)	X	
8-3	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8-4	Supervise construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Bill Hange Local Agency Professional Engineer or CDOT Resident Engineer 970-962-2528 Phone number	X	

Exhibit E

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8-5	Approve shop drawings	X	
8-6	Perform traffic control inspections	X	X
8-7	Perform construction surveying	X	
8-8	Monument right-of-way	X	
8-9	Prepare and approve interim and final Contractor pay estimates	X	
	Provide the name and phone number of the person authorized for this task. <u>Bill Hange</u> <u>970-962-2528</u> Local Agency Representative Phone number		
8-10	Prepare and approve interim and final utility/railroad billings	X	
8-11	Prepare Local Agency reimbursement requests	X	
8-12	Prepare and authorize change orders	X	
8-13	Approve all change orders		X
8-14	Monitor project financial status	X	
8-15	Prepare and submit monthly progress reports	X	X
8-16	Resolve Contractor claims/disputes	X	
8-17	Conduct routine, random project reviews		
	Provide the name and phone number of the person responsible for this task. <u>Pete Graham</u> <u>(970-350-2126)</u> CDOT Resident Engineer Phone number		X
MATERIALS			
9-1	Conduct Materials Preconstruction meeting	X	
9-2	CDOT Form 250 - Materials Documentation Record <ul style="list-style-type: none"> • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed 	X X	X
9-3	Perform project acceptance samples and tests	X	
9-4	Perform laboratory verification tests	X	
9-5	Accept manufactured products	X	
	Inspection of structural components: <ul style="list-style-type: none"> • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices 	X X X	
9-6	Approve sources of materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/>		X
	<ul style="list-style-type: none"> • Generate IAT schedule • Schedule and provide notification • Conduct IAT 	X X	
9-8	Approve mix designs <ul style="list-style-type: none"> • Concrete • Hot bituminous pavement 	X X	
9-9	Check final materials documentation	X	
9-10	Complete and distribute final materials documentation	X	

Exhibit G

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10-1	Fulfill project bulletin board and preconstruction packet requirements	X	
10-2	CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	X
10-3	Conduct employee interviews. Complete CDOT Form 280 - Equal Employment Opportunity and Labor Compliance Verification	X	
10-4	Monitor Disadvantaged Business Enterprise participation to ensure compliance with the "commercially useful function" requirements	X	
10-5	Conduct trainee interviews. Complete CDOT Form 200 - OJT Training Questionnaire when project utilizes on-the-job trainees	X	
10-6	Check certified payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10-7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11-1	Conduct final project inspection, and complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11-2	Write final project acceptance letter	X	
11-3	Advertise for final settlement	X	
11-4	Prepare and distribute final As-Constructed plans	X	
11-5	Check final quantities, final plans and the final pay estimate	X	
11-6	Check material documentation and submit final material certification (see Chapter 9)	X	
11-7	Obtain CDOT Form 17 - Contractor DBE Payment Certification from the Contractor and submit to the Resident Engineer	X	
11-8	Process final payment	X	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	X	
11-10	Complete and submit CDOT Form 950 - Project Closure		X
11-11	Retain project records for six years from date of project closure	X	X
11-12	Retain final version of this checklist and distribute copies		X

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

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

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172 and 23 CFR 172(d) state that, "When federal-aid highway funds participate in the contract a local shall use the same procedures as used by the State to administer contracts ...". Therefore, local agencies must comply with this CFR requirement and the following state procedures when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and Colorado Revised Statute (C.R.S.) 24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172.5(b)(1-6)].

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

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

5. The analysis and selection of the consultants should be done in accordance with C.R.S. 24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

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

- a. Qualifications,
- b. Approach to the project,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,
- d. Location,
- e. Current and projected work load,
- f. Volume of previously awarded contracts, and
- g. Involvement of minority consultants.

Under 24-30-1401, cost shall not be considered as a factor in the evaluation of professional consultant services.

6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursement for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six (6) to fifteen (15) percent of the total direct and indirect costs.
7. A qualified local agency employee shall be responsible and in charge of the project to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of project, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.
8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three (3) years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three (3) years after the case has been settled.

The C.R.S. 24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the eight (8) steps just discussed.

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I.	General.....	1
II.	Nondiscrimination.....	1
III.	Nonsegregated Facilities.....	3
IV.	Payment of Predetermined Minimum Wage.....	3
V.	Statements and Payrolls.....	6
VI.	Record of Materials, Supplies, and Labor.....	6
VII.	Subletting or Assigning the Contract.....	7
VIII.	Safety, Accident Prevention.....	7
IX.	False Statements Concerning Highway Projects.....	7
X.	Implementation of Clean Air Act and Federal Water Pollution Control Act.....	8
XI.	Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.....	8
XII.	Certification Regarding Use of Contract Funds for Lobbying.....	9

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

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

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

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

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

ATTACHMENTS

A. Employment Preference for Appalachian Contracts
(included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

Exhibit I

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

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

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

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

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

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

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

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

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

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

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

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of

discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

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

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex,

national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

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

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

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

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

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agree-

Exhibit I

ment or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics.

The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

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

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

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or

Exhibit I

subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

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

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

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

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

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

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

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

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

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

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

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

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or

advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics,

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apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

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

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

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may

subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

Exhibit I**HIGHWAY PROJECTS**

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

Exhibit I**1. Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

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

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

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge

and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

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

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

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

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circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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

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

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

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

**Certification Regarding Debarment, Suspension,
Ineligibility and Voluntary Exclusion--Lower Tier Covered
Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

**XII. CERTIFICATION REGARDING USE OF CONTRACT
FUNDS OR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

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

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

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

FEDERAL REQUIREMENTS

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

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

1. the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);
2. the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30;
3. the Local Agency/Contractor shall comply with section 18.37 concerning any subgrants;
4. to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 subgrant procedures, as applicable;
5. the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S. Nondiscrimination Provisions:

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

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

2. Nondiscrimination. The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

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

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

5. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or;
- b. Cancellation, termination or suspension of the contract, in whole or in part.

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



CITY OF LOVELAND
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 9
MEETING DATE: 7/3/2012
TO: City Council
FROM: Bonnie Steele, Acting Director, Finance Department
PRESENTER: Bonnie Steele

TITLE:

Public hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to transfer fund balance to the new PEG Fee Fund

RECOMMENDED CITY COUNCIL ACTION:

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

OPTIONS:

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

DESCRIPTION:

This is an administrative action. The ordinance transfers fund balance of \$139,470 that has been kept in the General Fund to a new PEG Fee fund (public, educational, and governmental access) established in the 2012 budget process.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The ordinance transfers existing fund balance between funds.

SUMMARY:

With the last Franchise Fee agreement with Comcast, a new fee was approved to provide funding for capital equipment necessary for the production and transmission of City meetings over the dedicated cable channel.

For several years this revenue and the expenses have been accounted for in the General Fund under the Library Department. To improve the transparency in the use of the funding a new fund was created to track the revenues and expenses for this specific purpose. Fund balance from the PEG fee has accumulated and is part of the 2011 General Fund ending balances. This ordinance is necessary to transfer the fund balance to the new fund in the Accounting System to meet recognized accounting methods and for audit purposes to clearly show the movement of the funds.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. An ordinance on first reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to transfer fund balance to the new PEG Fee Fund.

FIRST READING July 3, 2011

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET TO TRANSFER FUND BALANCE TO THE NEW PEG FEE FUND

WHEREAS, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2012, 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 \$139,470 from fund balance on-hand in the General Fund 100 are available for appropriation. Revenues in the total amount of \$139,470 are hereby appropriated for a transfer to a new PEG (“public, educational, and governmental” access) Fee Fund 210 for fund balance accumulated for the purpose of the fund, and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund 100**

Revenues		
Fund Balance		139,470
Total Revenue		139,470
Appropriations		
100-91-999-0000-47210	Transfer to PEG Fee Fund	139,470
Total Appropriations		139,470

**Supplemental Budget
PEG Fee Fund 210**

Revenues

210-00-000-0000-37100 Transfer From General Fund 139,470

Total Revenue 139,470

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

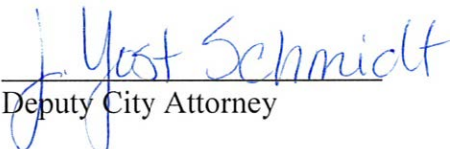
ADOPTED this ____ day of July, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
 DEVELOPMENT SERVICES DEPARTMENT
 Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 10
MEETING DATE: 7/3/2012
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Alison Hade

TITLE:

A resolution of the City of Loveland, Colorado approving the grant funding recommendation of the Loveland Affordable Housing Commission for the reallocation of certain 2011 Community Development Block Grant funds

RECOMMENDED CITY COUNCIL ACTION:

Move to adopt the resolution

OPTIONS:

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

DESCRIPTION:

This is an administrative action to consider a resolution reallocating 2011-2012 Community Development Block Grant (CDBG) funding in the amount of \$54,896.67.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

Funds were allocated by the U.S. Department of Housing and Urban Development and were initially appropriated in the 2011 City Budget. Unspent funding in 2011 was rolled into and appropriated in the 2012 City Budget.

SUMMARY:

In 2011, Alternatives to Violence (ATV) applied for and received \$60,000 in CDBG funding for contractor fees and project management for a safehouse for victims of domestic violence in Loveland. After a 32-bedroom safehouse was built in Fort Collins, ATV decided to conduct a new market analysis to determine if the original plan for a safehouse in Loveland was still logical, or if a much smaller house would meet the local need. The time taken by ATV to explore project options has resulted in an inability for ATV to spend the allocated funds prior to the deadline of September 30, 2012. ATV did spend \$5,103.33 on contractor fees for project management. ATV has indicated that once the safehouse project has been reassessed they plan to apply for CDBG funds in the next cycle.

The proposed resolution reallocates the \$54,896.67 of unspent funds to agencies that can complete a project prior to September 30, 2012.

The City's policy for use of unspent CDBG grant funds is to ask the Affordable Housing Commission to make a recommendation regarding the use of the grant funds. The Affordable Housing Commission recommends that the \$54,896.67 be reallocated as follows:

- \$3,920 to Alternatives to Violence to rehabilitate a portion of a cedar fence on their transitional housing property.
- \$13,023 to Loveland Habitat for Humanity to purchase property to build duplexes.
- \$5,988.67 to the Housing Authority of the City of Loveland (HACOL), Larimer Home Improvement Program Emergency Program, to provide grants of up to \$1,000 to homeowners for a limited number of emergency projects.
- \$6,950 to HACOL to bring the safety rails up-to-code at their Willow Place apartments.
- \$970 to Interfaith Hospitality Network to rehabilitate the sidewalks surrounding the Angel House, which is the day center where homeless families receive case management and support.
- \$24,045 to Neighbor to Neighbor to rehabilitate two kitchens and 11 bathrooms at a low-income senior housing complex in Loveland.

These five subrecipients all received grant funding during the 2011-2012 grant year and will be able to complete the projects listed above prior to the end of the grant year.

REVIEWED BY CITY MANAGER:


LIST OF ATTACHMENTS:

- Resolution

RESOLUTION #R-48-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING THE GRANT FUNDING RECOMMENDATION OF THE LOVELAND AFFORDABLE HOUSING COMMISSION FOR THE REALLOCATION OF CERTAIN 2011 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

WHEREAS, the City Council of the City of Loveland recognizes the need to provide opportunities for the well-being of less fortunate citizens; and

WHEREAS, the City receives federal Community Development Block Grant (“CDBG”) funds through the U.S. Department of Housing and Urban Development to assist in meeting the housing needs for Loveland citizens with low incomes; and

WHEREAS, the City Council has charged the Affordable Housing Commission with the task of reviewing all “bricks and mortar” grant applications made to the City for CDBG funds related to housing and making a recommendation to the City Council regarding such grant funds distribution; and

WHEREAS, on June 21, 2011, the City Council adopted Resolution #R-43-2011 allocating \$60,000 in CDBG funds to Alternatives to Violence (“ATV”) for the domestic violence shelter program (the “Project”); and

WHEREAS, ATV was unable to complete the Project, therefore the \$54,896.67 in unspent funding was returned to the City for reallocation under the City’s CDBG fund distribution process; and

WHEREAS, the \$54,896.67 was not included in the 2012 CDBG fund allocation, which was approved on June 5, 2012 by Resolution #R-45-2012; and

WHEREAS, the Affordable Housing Commission has since reviewed the grant applications made to the City for 2011 CDBG funds, and has made a recommendation to the City Council regarding reallocation of the \$54,896.67 in CDBG funds; and

WHEREAS, the City Council desires to approve the grant funding recommendation of the Affordable Housing Commission.

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

Section 1. That the recommendation of the Affordable Housing Commission for the reallocation of the remaining \$54,896.67 in 2011 Community Development Block Grant funds is hereby approved as follows, subject to Agency or Project Owner execution of a subrecipient contract with the City of Loveland on or before September 15, 2012:

Agency or Project Owner	Total Grant Amount
Alternatives to Violence	\$3,920
Habitat for Humanity	\$13,023
Housing Authority of the City of Loveland	\$12,938.67
Interfaith Hospitality Network	\$970
Neighbor to Neighbor	\$24,045
Total Amount of CDBG funds	\$54,896.67

Section 2. That this Resolution shall be effective as of the date of its adoption.

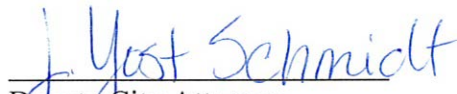
ADOPTED this 3rd day of July, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
 DEVELOPMENT SERVICES DEPARTMENT
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 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 11
MEETING DATE: 7/3/2012
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Bob Paulsen, Current Planning Manager

TITLE:

A resolution adopting findings and conclusions regarding appeal of the Planning Commission's decision approving a type 3 zoning permit for special review #896 for Kum & Go Gas Station #995

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for City Council action: Move to adopt a resolution adopting findings and conclusions regarding appeal of the Planning Commission decision approving a type 3 zoning permit for Special Review #896 for Kum & Go gas station #995.

OPTIONS:

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

DESCRIPTION:

This is a quasi-judicial action to consider a resolution adopting findings and conclusions in support of the June 5, 2012 City Council approval of a type 3 zoning permit for Special Review #896 for Kum & Go Station #995. Approval of the type 3 permit upheld the Planning Commission decision on March 19, 2012 to deny an appeal of a decision by the Current Planning Manager to approve a special review for the Kum & Go gas station/convenience store. The appeal was filed by Kevin Borchers, manager of Champion K&K Enterprise.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

On June 5, 2012, City Council held a public hearing to consider the appeal of the Planning Commission's decision to deny an appeal of a type 3 permit for Kum & Go station # 995. The appeal focused on the height of a proposed sound mitigation wall between the service station and the adjacent Sylmar Park mobile home community. Also at issue was the height and length of an extension of the wall along Boise Avenue. After receiving all information and testimony from the appellant, staff and the public, the City Council voted 9-0 to uphold the Planning Commission's decision and deny the appeal. In making this decision, the Council specified that: (i) the sound mitigation wall would be ten (10) feet high on the south property boundary line extending ninety (90) feet westward from the southeast corner of the site, then dropping down in height to eight (8) feet high for the remainder of the south property boundary; and (ii) the sound wall extension along Boise Avenue would be fifty (50) in length. Pursuant to Section 18.80.050.C of the Municipal Code, City Council must adopt findings and conclusions in support of its decision within 30 days of said action.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

- A. Resolution

RESOLUTION #R-49-2012

A RESOLUTION ADOPTING FINDINGS AND CONCLUSIONS REGARDING APPEAL OF THE PLANNING COMMISSION'S DECISION APPROVING A TYPE 3 ZONING PERMIT FOR SPECIAL REVIEW #896 FOR KUM & GO GAS STATION #995

WHEREAS, Kum and Go, LC (“Applicant”) filed an application for a use by special review (“Application”) pertaining to redevelopment of a 1.2 acre site at the southwest corner of Eisenhower Boulevard and Boise Avenue, legally described as Lots 10 and 11, Block 1 of Brown’s Corner Addition, Loveland, Colorado and known as 1600 Eisenhower Boulevard, Loveland, Colorado (“Site”) as a Kum and Go gas station and convenience store (“Kum and Go Use”); and

WHEREAS, the Site is zoned B-Developing Business and, pursuant to Loveland Municipal Code (“Code”) Section 18.28.020.F, a gas station within 300 feet of a residential use or zone district is allowed only through special review; and

WHEREAS, the south boundary of the Site is adjacent to property zoned R-3 Developing High-density Residential and used as a mobile home park, thereby requiring a special review for the Kum and Go Use; and

WHEREAS, the Application for the Kum and Go Use was processed in an accordance with Code Section 18.40.030 as Special Review #896, and on January 31, 2012, the Final Statement of Findings and Proposed Determination (“Manager’s Final Determination”) was posted, pursuant to which the Current Planning Manager indicated an intent to approve a type 2 zoning permit for the Kum and Go Use, subject to the conditions and technical corrections set forth therein; and

WHEREAS, an appeal of the Manager’s Final Determination to the Planning Commission (“Commission Appeal”) was timely filed by the owner of the adjacent mobile home park and party-in-interest, Mr. Kevin Borchers, (“Appellant”) in accordance with the provisions of Code Section 18.40.055.A and Code Chapter 18.80; and

WHEREAS, upon filing of the Commission Appeal and in accordance with Code Section 18.40.055.A, the Application was suspended pending conclusion of the appeals process and referred to the Planning Commission for its determination whether to deny the Application for use by special review or direct the Current Planning Division to issue a type 3 zoning permit approving the Kum and Go Use by special review; and

WHEREAS, pursuant to Code Sections 18.40.055.A and Code Chapter 18.80 and after due notice had been given, the Planning Commission held a *de novo* public hearing on March 12, 2012, continued to March 19, 2012 (the “Commission Hearing”); and

WHEREAS, at the Commission Hearing, the recommendations of the Current Planning Division, as set forth in Planning Commission Agenda Item No. 1 dated March 12, 2012 and Planning Commission Agenda Item No. 1 dated March 19, 2012 and all attachments thereto (collectively, the “Staff Commission Report”), were received and duly considered by the Commission, as was testimony and evidence from the Appellant, the Applicant, residents of the adjacent mobile home park, and other residents; and

WHEREAS, at the conclusion of the Commission Hearing, the Commission adopted a motion directing the Current Planning Division to issue a type 3 zoning permit for Special Review #896 for the Kum and Go Use on the Site, based on the findings in Section IX and subject to the conditions set forth in Section X of the Staff Commission Report, with Condition #9 modified as set forth in Motion A of the March 19, 2012 Staff Commission Report, a copy of which is attached hereto as Exhibit A and incorporated by this reference (“Commission Condition #9”); and

WHEREAS, the Appellant filed a timely notice of appeal of the Commission’s decision to the City Council (“Council Appeal”) pursuant to Code Sections 18.40.055B. and 18.80.050 ; and

WHEREAS, pursuant to Code Sections 18.40.055.B and Code Chapter 18.80 and after due notice had been given, City Council held a *de novo* public hearing regarding the Council Appeal on June 5, 2012 (“Council Hearing”) at which the recommendations of the Current Planning Division as set forth in the Staff Commission Report, the Planning Staff Report to Council dated June 5, 2012 and all attachments thereto (“Staff Council Report”), and the full record of the Commission Hearing were received and duly considered by the Council, as was testimony and evidence from the Appellant, the Applicant, residents of the adjacent mobile home park, and other residents; and

WHEREAS, City Council considered the Application, the Commission Appeal, the Staff Commission Report, the Council Appeal, the Staff Council Report, the full record of the Commission Hearing, and all testimony and evidence presented at the Council Hearing in light of the standards set forth in Code Section 18.40.030K (compliance with Code and other regulations, compatibility with character of surrounding neighborhood, and possible adverse environmental influence) and 18.40.005 (consistency with purposes of zoning set forth in Code Section 18.04 and compatibility with surrounding uses of property); and

WHEREAS, at the conclusion of the Council Hearing, City Council determined that, based on the findings in Section IX and subject to the conditions set forth in Section X of the Staff Commission Report, a type 3 zoning permit for Special Review #896 for the Kum & Go Use on the Site should be issued subject to further modification of Commission Condition #9.

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

Section 1. That the preceding recitals contained in this Resolution, including the findings set forth Section IX of the Staff Commission Report, are hereby adopted and incorporated by reference as findings of fact of the City Council.

Section 2. That, on the basis of the findings set forth herein, the Current Planning Division is hereby directed to issue a type 3 zoning permit for Special Review #896 for the Kum & Go Use on the Site, subject to the conditions set forth in Section X of the Staff Commission Report, with Commission Condition No. 9 further modified as follows:

- The introductory sentence of Commission Condition No. 9 shall be modified to read: “The proposed Sound Wall shall be ten (10) feet high on the south boundary line extending along the first ninety (90) feet of the driveway and an eight (8) foot wall thereafter westward along the remainder of the south boundary line.”
- Subparagraph d. of Commission Condition No. 9 shall be modified to provide that the Wall Extension shall extend fifty (50) feet southward along Boise Avenue.
- Subparagraph g. of Commission Condition No. 9 shall be modified to read as follows: “Construction of the Wall Extension shall be completed and approved by the City prior to issuance of the Certificate of Occupancy for the Kum and Go project unless Kum and Go deposits with the City funds or a letter of credit acceptable to the City sufficient to ensure future construction of the Wall Extension.”

Section 3. That as of the date set forth below and in accordance with Code Section 18.80.050.D, this Resolution shall constitute the written findings and conclusions and final decision of the City Council with respect to the Council Appeal for purposes of any appeal of the City Council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

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

ADOPTED this 3rd day of July, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

EXHIBIT A
PLANNING COMMISSION MOTION MARCH 19, 2012

Commissioner Fancher made a motion to direct the Current Planning Division to issue a Type 3 zoning permit for Special Review #896 for Kum & Go Station #995 to be located on Lots 10 and 11, Block 1 of the Brown's Corner Addition, Loveland, Colorado, based on the findings in Section IX and subject to the conditions set forth in Section X of the City staff report dated March 12, 2012, with the following modification:

A. Move to direct the Current Planning Division to issue a Type 3 zoning permit for Special Review #896 for Kum & Go Station #995 to be located on Lots 10 and 11, Block 1 of the Brown's Corner Addition, Loveland, Colorado, based on the findings in Section IX and subject to the conditions set forth in Section X of the City staff report dated March 12, 2012, with the following modification:

1) Current Planning Condition #9 shall be revised to read as follows:

9. The proposed the Sound Wall shall be 8 feet in height and constructed on the Kum & Go property, adjacent to the common property line with the mobile home park to the south.
 - a. The exact location of the Sound Wall shall be subject to approval by the Current Planning Manager to ensure that the Sound Wall meets City requirements for structures in a utility easement.
 - b. If temporary or permanent easements are required to locate the Sound Wall adjacent to the common property line with the mobile home park, the owner of the mobile home park and Kum & Go (the "Parties") shall work in good faith to agree upon the terms of such easements.
 - c. At no time shall the City compel the owner of the mobile home park to agree to grant any such easements.
 - d. Kum & Go shall pay the total costs to extend the Sound Wall (the "Wall Extension") in a southerly direction from the southeast corner of the Kum & Go property for a total distance of 30 feet. Total costs shall include the costs to construct the Wall Extension and to obtain any required building permit or variance.
 - e. If the Wall Extension is to exceed 6 feet 3 inches in height, then construction of the Wall Extension shall be subject to approval of a variance by the City.
 - f. Construction of the Sound Wall shall be completed and approved by the City prior to issuance of a ~~footing and foundation~~ or full building permit for the Kum & Go project.
 - g. Construction of the Wall Extension shall be completed and approved by the City prior to issuance of a Certificate of Occupancy for the Kum & Go project.
 - h. If no easements are received from the owner of the adjacent mobile home park within 10 calendar days after the final decision by the Planning Commission, or in the case of an appeal to City Council, within 5 calendar days after the final decision by City Council, then the Sound Wall shall be constructed at the located shown Exhibit A, subject to approval by the Current Planning Manager, and no Wall Extension shall be required.

Upon a second by Commissioner Crescibene the motion was adopted 4-3. Yeas: Commissioners Crescibene, Fancher, Leadbetter and Molloy. Nays: Commissioners Dowding, Meyers and Middleton.



CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: 12
MEETING DATE: 7/3/2012
TO: City Council
FROM: Marcy Abreo, Public Works
PRESENTER: Marcy Abreo

TITLE: Appointment of steering committee members to the North Front Range Transit Vision project

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to appoint Joan Shaffer and Dan Hill as Loveland's members on the steering committee for the North Front Range Transit Vision project for the duration of the one year project.

OPTIONS:

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

DESCRIPTION:

This is an administrative action. The North Front Range Transit Vision project is a regional study focused on developing recommendations for decision-making and funding structures for regional transit services in the north Front Range area. A steering committee is being formed to provide the project management team with policy-level guidance on project issues, options, findings and recommendations and serve as a communication link to the communities they represent. The steering committee is comprised of an elected official and one or more community members from each of the cities sponsoring the project. Joan Shaffer and Dan Hill are recommended for appointment to the steering committee representing the City of Loveland for the duration of the one year project.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

There is no budgetary concern related to the appointment of the steering committee members.

SUMMARY: The North Front Range Transit Vision project is a study sponsored by the Cities of Fort Collins and Loveland, the Town of Berthoud, Larimer County, and the North Front Range Metropolitan Planning Organization (MPO) to develop a recommendation for a regional decision-making and a funding structure for regional transit services.

Following the 2000 US Census, Fort Collins became part of a Transportation Management Area (TMA) with a population of over 200,000 residents; and the Governor appointed the City of Fort Collins as the designated recipient for federal funds within the TMA. The TMA includes LaPorte, a non-incorporated community north of Fort Collins; as well as Loveland and Berthoud to the south. There are three separate transit operations within the TMA boundaries. The operations include the following:

1. City of Fort Collins, branded as Transfort;
2. City of Loveland, branded as COLT (City of Loveland Transit);
3. Town of Berthoud, branded as Berthoud Area Transit Service (BATS)

The recent process to update the Transfort Strategic Operating Plan (TSOP) was a collaborative effort between Fort Collins, Loveland and the Poudre School District. While the 2009 TSOP Update included separate plans to ease the adoption process, a considerable effort went into identifying coordination opportunities and future potential for a regional transit service provider. As a part of the TSOP update, a Financial Advisory Committee (FAC) was organized. The eight-member FAC consisted of residents from Fort Collins and Loveland, and represented a broad range of public and private interests. The FAC was tasked with making a recommendation to the governing councils with regard to funding mechanisms to support the implementation of the TSOP.

While the committee recommended a combination of funding strategies, it also recommended a subsequent study to explore the feasibility of the formation of a regional transit provider to serve as the administration, organization, and consolidation of transit operations for Fort Collins and Loveland. In 2011, the Cities of Fort Collins and Loveland, the Town of Berthoud, Larimer County, and the North Front Range MPO agreed to pursue the feasibility study, and in early 2012 a contract was awarded to Steer Davies Gleave to manage the North Front Range Transit Vision feasibility study.

To address the funding and political challenges associated with the consolidation of transit operations for these communities, the study's Project Management Team is seeking the assistance of community leaders to serve on a Steering Committee. The Steering Committee will be represented by one elected official along with one or more citizens from each community or entity to advise the project team on the issues being discussed. The members of the Steering Committee – which is scheduled to meet five times during the course of the one-year project – will serve as an information linkage to their individual communities and will provide the project team with important policy-level guidance on project issues, options, findings, and recommendations.

Joan Shaffer is the Loveland City Council member who is being recommended for the steering committee based on her active participation within the transportation community and is also Loveland's representative to the Metropolitan Planning Organization (MPO). Dan Hill is currently a member of the Loveland Transportation Advisory Board (TAB) and was a member of the FAC in 2009. Both of the recommended members were selected to represent Loveland based on their interest in the transportation needs of the community and regional cooperation.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

None



CITY OF LOVELAND
CITY CLERKS OFFICE

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AGENDA ITEM: 13
MEETING DATE: 7/3/2012
TO: City Council
FROM: Terry Andrews, City Clerk
PRESENTER: Terry Andrews

TITLE:

An ordinance amending Chapter 1.24 of the Loveland Municipal Code to amend the Larimer County voter precinct designations for the City of Loveland's four wards.

RECOMMENDED CITY COUNCIL ACTION:

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

OPTIONS:

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

DESCRIPTION:

This is an administrative action regarding redistricting the ward boundaries within the City of Loveland to meet certain requirements.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

On June 5, 2012, City Council voted unanimously to direct Staff to bring a first reading ordinance, adjusting ward boundaries, to the July 3, 2012 Regular Council meeting for consideration.

In January 2012, the City received redistricting information from Larimer County, including precinct boundaries and registered voter counts. In the redistricting process the County uses active and inactive voters to determine precinct boundaries. The City is required to use population counts to establish ward boundaries. The population numbers for all four wards must be within a 10% margin.

With the release of the 2010 Census data, current population numbers (Ward I: 18,229; Ward II: 14,622; Ward III: 16,817; Ward IV: 17,191) show the City to be outside that requirement, with a 21.96% margin. This requires the City to adjust ward boundaries.

Approval of the ordinance would shift Precinct# 2155135523 with a population of 1213 residents from Ward I to Ward II. This proposed change would bring the four wards within the 10% margin, and complies with all other criteria. With this recommendation the ward populations are as follows: Ward I: 17,016; Ward II: 15,835; Ward III: 16,817; Ward IV: 17,191.

The ordinance further identifies all the precincts contained in each of the four wards. If the ordinance is approved on first reading, staff will bring forward an accompanying resolution approving the Ward map along with the second reading of the ordinance on July 17, 2012. After the ordinance takes effect the resolution will be sent to Larimer County along with the map of the newly redistricted wards.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

- Ordinance
- Ward Map
- Ú!^•^} caa }

FIRST READING: July 3, 2012

SECOND READING: _____

ORDINANCE No. _____

**AN ORDINANCE AMENDING CHAPTER 1.24 OF THE
LOVELAND MUNICIPAL CODE CHANGING THE
BOUNDARIES OF THE CITY’S FOUR WARDS**

WHEREAS, Loveland Charter Section 6-4(a) provides that the City shall be divided into four wards, the boundaries of which may be changed by resolution adopted by a majority of the entire City Council; and

WHEREAS, Loveland Charter Section 6-4(b) provides that the boundaries of the wards shall be changed as necessary to conform to constitutional apportionment requirements; and

WHEREAS, as a result of the Federal 2010 Census, it is necessary to change the boundaries of the wards to conform to the constitutional apportionment requirements; and

WHEREAS, Loveland Charter Section 6-4(b) also provides that territory added to the City shall become a part of such ward or wards as may be determined by ordinance; and

WHEREAS, on July 17, 2012, the City Council adopted Resolution No. _____ changing the boundaries of the City’s four wards as provided in Loveland Charter Section 6-4(a); and

WHEREAS, as provided in Loveland Charter Section 6-4(b), it is also necessary by this Ordinance to determine within which ward new territory annexed into the City will be included; and

WHEREAS, in determining within which ward new territory annexed into the City will be included, it is necessary to consider the requirement of CRS Section 31-10-502 that each of the City’s voter precincts shall not contain more than one ward; and

WHEREAS, traditionally the City’s voter precincts have corresponded to the voter precincts established by Larimer County that are located in the City; and

WHEREAS, on January 10, 2012, the Board of County Commissioners of Larimer County adopted Resolution No. 01102012R010 establishing the boundaries of the new voter precincts for all of Larimer County based on Federal 2010 Census; and

WHEREAS, in Resolution No. _____ the City established the City’s new voter precincts to correspond with those Larimer County voter precincts located in the City as recently established by the Board of County Commissioners of Larimer County; and

WHEREAS, this Ordinance amends Loveland Code Chapter 1.24 to establish within which ward each voter precinct will be included and thereby determines the ward within which subsequently annexed territory will be included.

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

Section 1. That Section 1.24.020 is hereby repealed in its entirety and reenacted to read as follows:

Section 1.24.020 - First Ward

The first ward shall be comprised of all the territory currently within or hereafter annexed into the City that is now or hereafter located in Larimer County's voter precinct Nos. 2154935408, 2155135501, 2155135502, 2155135507, 2155135508, 2155135509, 2155135510, 2155135511, 2155135512, 2155135513, 2155135514, 2155135520 and 2155135522 as such voter precincts were established by the Board of County Commissioners of Larimer County on January 10, 2012, by the adoption of the Board's Resolution No. 01102012R010.

Section 2. That Section 1.24.030 is hereby repealed in its entirety and reenacted to read as follows:

Section 1.24.030 - Second Ward

The second ward shall be comprised of all the territory currently within or hereafter annexed into the City that is now or hereafter located in Larimer County's voter precinct Nos. 2155135521, 2155135523, 2155135524, 2155135525, 2155135526, 2155135527, 2155135528, 2155135529, 215513536 and 2155135537, as such voter precincts were established by the Board of Commissioners of Larimer County on January 10, 2012, by the adoption of the Board's Resolution No. 01102012R010.

Section 3. That Section 1.24.040 is hereby repealed in its entirety and reenacted to read as follows:

Section 1.24.040 - Third Ward

The third ward shall be comprised of all the territory currently within or hereafter annexed into the City that is now or hereafter located in Larimer County's voter precinct Nos. 2155135532, 2155135533, 2155135534, 2155135535, 2155135539, 2155135540 and 2155135541, as such voter precincts were established by the Board of Commissioners of Larimer County on January 10, 2012, by the adoption of the Board's Resolution No. 01102012R010.

Section 4. That Section 1.24.050 is hereby repealed in its entirety and reenacted to read as follows:

Section 1.24.050 - Fourth Ward

The fourth ward shall be comprised of all the territory currently within or hereafter annexed into the City that is now or hereafter located in Larimer County's voter precinct Nos. 2155135503, 2155135504, 2155135505, 2155135506, 2155135515, 2155135516, 2155135517, 2155135518, 2155135519, 2155135530 and 2155135531, as such voter precincts were established by the Board of Commissioners of Larimer County on January 10, 2012, by the adoption of the Board's Resolution No. 01102012R010.


Section 5. That pursuant to City Charter Section 4-10(b), this Ordinance shall become effective immediately upon its adoption by the City Council.

Signed this _____ day of July, 2012.

Cecil A. Gutierrez, Mayor

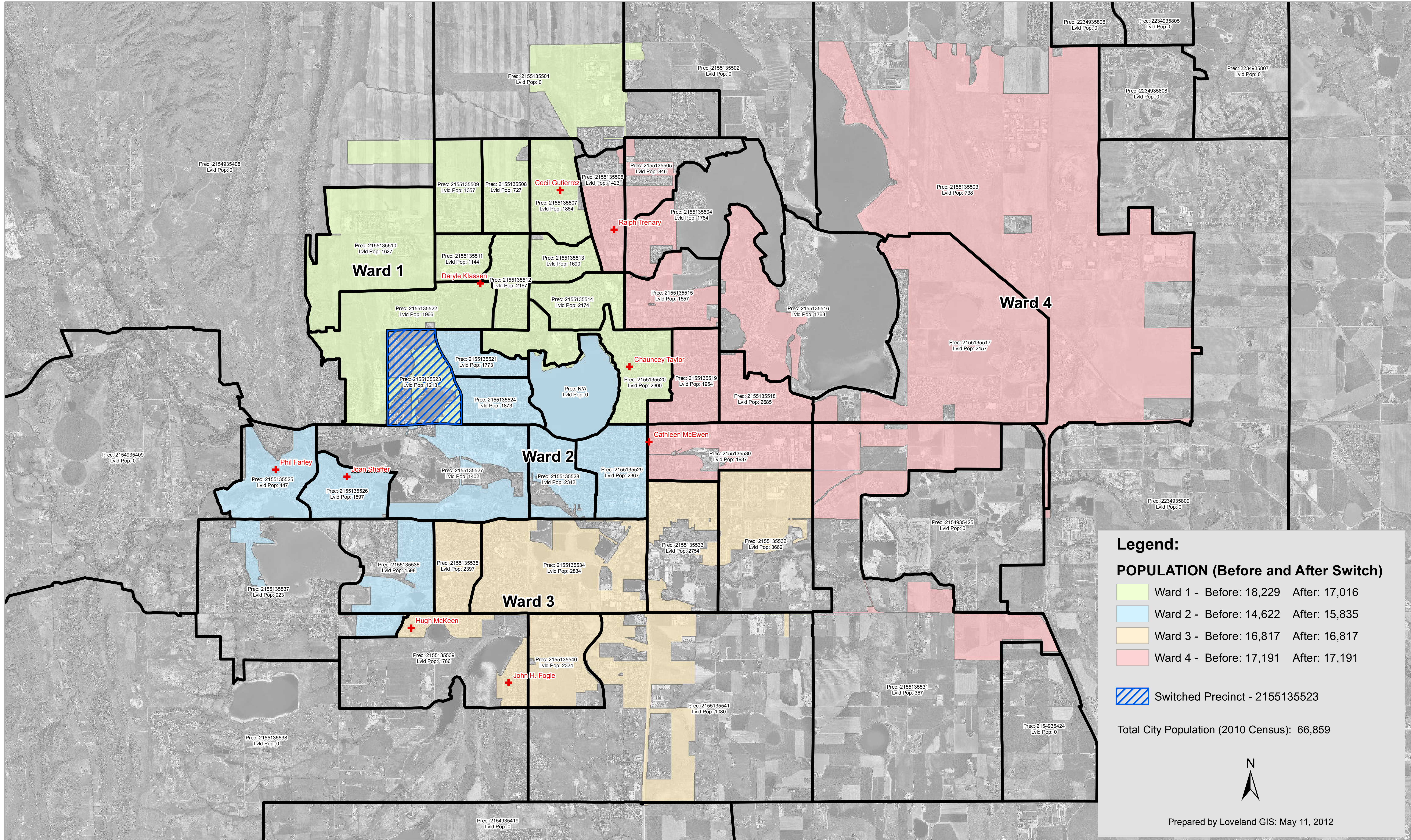
ATTEST:

City Clerk

APPROVED AS TO FORM:


City Attorney

Adjustment to Ward Populations Based on Switching Precinct 2155135523 from Ward 1 to Ward 2



Redistricting 2012

City Council Meeting June 5, 2012

Terry Andrews, City Clerk presenter

Criteria used for development of ward boundaries

- o Population equity within 10% margin
- o No political gerrymandering;
- o Coordination with general election precincts;
- o Compactness; and
- o Contiguity

Demographics

Ward	Current Population	Proposed Population
I	18,229	17,016
II	14,622	15,835
III	16,817	16,817
IV	17,191	17,191

Margin percentage between all four wards

21.96%

8.21%

Staff recommended adjustment

- Shift precinct #2155135523 from Ward I to Ward II.
- Population 1213 residents



CITY OF LOVELAND
CITY MANAGER'S OFFICE

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AGENDA ITEM: 14
MEETING DATE: 7/3/2012
TO: Mayor and City Council
FROM: Bill Cahill, City Manager
 John Duval, City Attorney
PRESENTER: William D. Cahill, City Manager; John Duval, City Attorney;
 Randy Mirowski, Fire Chief, Loveland Fire Rescue Authority (LFRA)

TITLE: An emergency ordinance temporarily banning certain outdoor fires within the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the emergency ordinance

OPTIONS:

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

DESCRIPTION:

This is a legislative action to consider an emergency ordinance to temporarily ban certain types of outdoor fires within the corporate limits of the City of Loveland. This action would be similar in many respects to the ban on "open burning" imposed by Governor Hickenlooper in his June 14, 2012, Executive Order and would be in alignment with many of the provisions that are currently in Larimer County's ban on "open fires" adopted by special resolution on June 19, 2012.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

On June 14, 2012, Colorado Governor John Hickenlooper issued Executive Order D 2012-015 imposing a statewide ban on "open burning" in Colorado. The order was issued to address the

high fire danger that currently exists throughout much of Colorado and has resulted in numerous serious fires in the state.

Then, on June 19, 2012, the Larimer County Commissioners adopted Resolution No. 06192012R004 which, among other things, enacted within the unincorporated areas of Larimer County a temporary ban on "open fires" and "contained open fires" as defined in said resolution, effective through September 30, 2012. The county's resolution specifically defines the prohibited "open fires" and "contained open fires."

The City's current Fire Code regulates the use of "bonfires," "open burning," "recreational fires," and "portable outdoor fireplaces," as these terms are defined within the Fire Code. Yet, some of these listed devices are not necessarily prohibited from use in the City of Loveland. It is the view of many fire service authorities, including the LFRA Fire Chief that certain outdoor fires, and the use of certain appliances, represent an unacceptable risk to the public's health and safety during these times of extreme high fire danger and should require greater restrictions or a prohibition of their use during such times. Considering the hot, dry and windy weather conditions that have existed in the City of Loveland and Larimer County for the past several weeks, and forecasts for more of the same for the near future, an emergency ordinance establishing a temporary ban on certain outdoor fires within the City of Loveland is prudent and appropriate.

Examples of banned outdoor fires under the proposed ordinance, as well as under the Executive Order and the county resolution, will include portable fire pits and permanent solid-fuel-burning fire pits. However, the proposed ordinance is not as restrictive as the current county resolution since the ordinance would allow the use of charcoal and wood-fueled cooking grills at private residences and the use of stationary and permanent masonry or metal gas-fueled fireplaces or fire pits. In addition, smoking of tobacco products, use of highway flares, railroad fuses, boat and distress signals, smoke candles and other emergency signal devices have been exempted from the ban (see Attachment 1).

The temporary ban includes an expiration date that coincides with a reduction in the fire danger and the Governor rescinding his Executive Order. This action could take place earlier if the Council determines through its own action that an earlier rescinding would be in order.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. An ordinance temporarily banning certain outdoor fires within the City of Loveland

FIRST READING: July 03, 2012

ORDINANCE NO. _____

**AN EMERGENCY ORDINANCE TEMPORARILY BANNING CERTAIN
OUTDOOR FIRES WITHIN THE CITY OF LOVELAND**

WHEREAS, on June 14, 2012, Governor John W. Hickenlooper issued Executive Order D 2012-015 pursuant to C.R.S. § 23-31-308 imposing a statewide ban on "open burning" in Colorado (the "Executive Order"); and

WHEREAS, Governor Hickenlooper states in his Executive Order that he issued it to address the high fire danger that currently exists throughout much of Colorado, citing in particular the ongoing High Park Fire here in Larimer County; and

WHEREAS, on June 19, 2012, the Larimer County Commissioners adopted Resolution No. 06192012R004 (the "County Resolution") which, among other things, enacted for unincorporated Larimer County a temporary ban on "open fires" and "contained open fires," as these terms are defined in the Resolution, effective through September 30, 2012; and

WHEREAS, "open fires" are defined in the County Resolution to include, among other things, "any open burning," such as camp and cooking fires, welding, and operating an acetylene or other torch with open flame, but not to include fires in camp stoves or grills fueled by bottled gas or pressurized liquid that are designed for cooking or heating or fires in commercially operated wood and/or charcoal fueled grills designed for cooking; and

WHEREAS, "contained open fires" are defined in the County Resolution to include, among other things, fires in permanently constructed stationary masonry or metal fireplaces located outdoors, but not to include fireplaces or wood stoves located inside permanent structures; and

WHEREAS, the City's Fire Code, as adopted in City Code Chapter 15.28, ("Fire Code") currently regulates in Fire Code Chapter 3 "bonfires," "open burning," "recreational fires" and "portable outdoor fireplaces," as these terms are defined in the Fire Code, but some of these outdoor fires are not necessarily prohibited in the City; and

WHEREAS, certain outdoor fires currently represent an unacceptable risk to the public's health, safety and welfare considering the hot, dry and windy weather conditions that have existed in the City and Larimer County for the past few weeks and that are forecast to continue to exist for the foreseeable future; and

WHEREAS, the City is authorized under its home rule powers and C.R.S. §§ 31-15-401(q) and 31-15-601 to prohibit and ban outdoor fires; and

WHEREAS, the Council has determined that it is necessary for the public's health, safety and welfare that this Emergency Ordinance be adopted to temporarily ban certain types of outdoor fires as hereafter provided, with this ban to expire when Governor Hickenlooper rescinds

the Executive Order or earlier if the Council hereafter determines by ordinance that the fire danger in the City has subsided.

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

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

Section 2. That allowing certain outdoor fires within the City during the current and forecasted weather conditions creates a very high risk of fire danger within the City and areas surrounding the City, as clearly evidenced by the High Park Fire and, therefore, an emergency exists requiring the immediate passage of this Ordinance for the preservation of the health, safety and welfare of the citizens of Loveland.

Section 3. That notwithstanding any provision to the contrary in Chapter 3 of the Fire Code or any other provision of the Fire Code and the City Code, until the Executive Order is rescinded or such earlier date as may hereafter be established by ordinance of the City Council, it shall be unlawful and a violation of this Ordinance for any person to start or maintain any outdoor fire within the City that creates an unreasonable risk to the public's health, safety and welfare under the weather and extreme fire danger conditions now existing in Larimer County, which shall include, without limitation, any of the following:

- (A) Bonfire, open burning, or recreational fire, as all are defined in Fire Code § 302.1;
- (B) Fire in a portable outdoor fireplace, as defined in Fire Code § 302.1, also commonly known as a portable fire pit;
- (C) Fire in a stationary and permanent masonry or metal solid-fuel-burning fireplace or fire pit; or
- (D) Welding or operating an acetylene or other torch with open flame.

However, the following outdoor fires shall not be considered a violation of this Ordinance unless any of these outdoor fires is being conducted in such a manner so as to create an unreasonable risk to the public's health, safety or welfare under the weather and extreme fire danger conditions now existing in Larimer County:

- (a) Fire in a gas- or liquid-fueled grill or camp stove;
- (b) Fire in a charcoal- or wood-fueled grill designed for cooking being operated at a private residence or being commercially operated;
- (c) Fire in a stationary and permanent masonry or metal gas-fueled fireplace or fire pit;

- (d) Smoking of a tobacco product provided any unsmoked portion of the product is completely extinguished and safely disposed of in a trash receptacle; or
- (e) Highway flares, railroad fuses, boat distress signals, smoke candles, and other emergency signal devices.

Section 4. Violations of Section 3. of this Ordinance shall be enforced, cited, prosecuted and punished as misdemeanor offenses in accordance with City Code Section 15.28.030B. This Ordinance may be enforced by both the City's fire and police officials.

Section 5. Nothing herein shall be deemed to prohibit the City from conducting its annual Fourth of July professional fireworks display at the City's North Lake Park as currently authorized under applicable law.

Section 6. That if any section, paragraph, sentence, clause or phrase of this Ordinance is held by the courts to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of and shall be severable from the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each part or parts thereof irrespective of the fact that any one part or parts may hereafter be declared unconstitutional or invalid.

Section 7. That all other City ordinances and City and Fire Code provisions, or portions thereof, which are inconsistent or in conflict with this Ordinance, or any portion hereof, are hereby superseded by this Ordinance and their legal effect shall be held in abeyance until the Executive Order is rescinded or earlier as so determined by the City Council by ordinance.

Section 8. That pursuant to City Charter Section 4-10(b), this Ordinance shall become effective immediately upon its adoption by the City Council.


ADOPTED this 26th day of June, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney



CITY OF LOVELAND
FINANCE DEPARTMENT

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AGENDA ITEM: 15
MEETING DATE: 7/3/2012
TO: City Council
FROM: Bonnie Steele, Finance
PRESENTER: Bonnie Steele

TITLE:
May 2012 Financial Report

RECOMMENDED CITY COUNCIL ACTION:
This is an information only item. No action is required.

DESCRIPTION:
The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the five months ending May 31, 2012.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

SUMMARY:
The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the month ending May 31, 2012. Citywide Revenue (excluding internal transfers) of \$86,290,475 is 103.5% of year to date (YTD) budget or \$2,914,383 over the budget. Sales Tax collections are 102.9% of the YTD budget or \$393,756 over budget. Building Material Use Tax is 105.9% of YTD budget, or \$25,603 over budget. Sales and Use Tax collections combined were 104.1% of YTD budget or \$615,818 over budget. When the combined sales and use tax for the current year are compared to 2011 for the same period last year, they are higher by 6.3% or \$913,763.

Citywide total expenditures of \$76,360,949 (excluding internal transfers) are 84.9% of the YTD budget or \$13,532,929 under the budget, in large part due to the accrual of salaries back to 2011; lower than expected health, unemployment, and workers compensation claims; lower than planned charges for purchased power; and the timing of capital projects.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

Snapshot report for May 2012



SnapShot

Monthly Financial Report
May 2012

A Snapshot In Time

Financial Sustainability Strategies Can Be Found At:

CityofLoveland.org

- ⇒ Departments
- ⇒ Finance
- ⇒ Administration
- ⇒ Financial Reports
- ⇒ Financial Sustainability Strategies

- Citywide Revenue, excluding transfers between funds, \$86.3million (3.5% above budget projections, primarily due to increased sales and use tax and greater than expected property tax and capital revenues in the Capital Projects Fund and Water & Power Enterprises)
- Sales & Use Tax Collection, \$15.5 million (4.1% above budget projections)
- Citywide Expenditures, excluding transfers between funds, \$76.4 million (15.1% below budget projections)
- Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$9.9 million
- General Fund Revenue, excluding transfers between funds, \$29.2 million (5.4% above budget projections)
- General Fund Expenditures, excluding transfers between funds, \$24.2 million, (8.3% below budget projections)
- General Fund Revenues exceed Expenditures by \$5.3 million
- Cash & Reserves Year-To-Date Balance, \$202.4 million, \$145.3 million or 71.8% of these funds are restricted or reserved primarily for future capital projects

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Activity Measures	13
Cash & Reserves	14
Capital Projects	15

The Sales Tax Basics

May 2012	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2012	\$ 13,653,400	\$ 785,490	\$ 433,720	\$ 14,872,610
Actual 2012	\$ 14,047,156	\$ 981,950	\$ 459,323	\$ 15,488,429
% of Budget	102.9%	125.0%	105.9%	104.1%
Actual 2011	\$ 13,327,104	\$ 860,866	\$ 386,695	\$ 14,574,665
Change from prior year	5.4%	14.1%	18.8%	6.3%

Financial Sustainability

The City remains in a strong financial position because of a tradition of conservative fiscal management. To uphold this tradition, the City ensures that operations are paid for by current-year revenues, fund balances are positive and reserves are sufficient to overcome financial challenges, and debt is considered extraordinary and avoided in favor of a pay-as-we-go system. This sound fiscal policy allows the City to achieve Council goals and priorities and to meet challenges as they arise.

In 2011, the City embarked upon a community-wide financial sustainability effort to ensure that shortfalls projected in its General Fund 10-year financial plan were addressed using a balanced plan consisting of 81% expenditure cuts and 19% revenue increases. The Financial Sustainability Strategy, adopted by the City Council on June 7, 2011, includes both immediate actions reflected in the 2012 budget and ongoing processes designed to ensure that the City retains a healthy financial outlook.

While 2012 sales & use tax revenue is higher than in 2007 through March, when inflation over the time frame is taken into account, 2012 collections are still significantly below the 2007 level, emphasizing the importance of continuing the strategy implementation.

Citywide Revenues & Expenditures

May 2012

Combined Statement of Revenues and Expenditures				
May 2012				
REVENUE	Current Month	YTD Actual	YTD Revised Budget	% of Budget
General Governmental				
1	General Fund	\$ 6,746,880	\$ 29,234,263	\$ 27,724,463 105.4%
2	Special Revenue	161,520	410,735	371,270 110.6%
3	Other Entities	4,160,613	12,036,029	11,903,236 101.1%
4	Internal Service	1,232,081	6,690,890	6,760,490 99.0%
5	<i>Subtotal General Govt Operations</i>	<i>\$ 12,301,094</i>	<i>\$ 48,371,917</i>	<i>\$ 46,759,459 103.4%</i>
6	Capital Projects	536,701	4,600,647	4,225,350 108.9%
Enterprise Fund				
7	Water & Power	5,595,845	27,724,444	26,737,370 103.7%
8	Stormwater	346,890	1,766,418	1,844,815 95.8%
9	Golf	483,259	1,414,954	1,309,900 108.0%
10	Solid Waste	507,051	2,412,096	2,499,198 96.5%
11	<i>Subtotal Enterprise</i>	<i>\$ 6,933,044</i>	<i>\$ 33,317,912</i>	<i>\$ 32,391,283 102.9%</i>
12	Total Revenue	\$ 19,770,839	\$ 86,290,475	\$ 83,376,092 103.5%
	<i>Prior Year External Revenue</i>		79,950,559	
	<i>Increase From Prior Year</i>		7.9%	
13	Internal Transfers	246,234	3,155,021	6,347,930 49.7%
14	Grand Total Revenues	\$ 20,017,073	\$ 89,445,496	\$ 89,724,022 99.7%
EXPENDITURES				
General Governmental				
15	General Fund	\$ 6,660,704	\$ 23,923,758	\$ 26,037,164 91.9%
16	Special Revenue	48,300	195,078	372,112 52.4%
17	Other Entities	3,770,438	10,894,598	10,838,813 100.5%
18	Internal Services	975,440	5,414,607	7,109,562 76.2%
19	<i>Subtotal General Gov't Operations</i>	<i>\$ 11,454,883</i>	<i>\$ 40,428,041</i>	<i>\$ 44,357,651 91.1%</i>
20	Capital	2,174,841	11,464,344	18,604,923 61.6%
Enterprise Fund				
21	Water & Power	4,597,861	21,236,319	23,149,840 91.7%
22	Stormwater	180,334	708,383	948,435 74.7%
23	Golf	362,819	959,062	978,710 98.0%
24	Solid Waste	422,237	1,564,800	1,854,319 84.4%
25	<i>Subtotal Enterprise</i>	<i>\$ 5,563,252</i>	<i>\$ 24,468,564</i>	<i>\$ 26,931,304 90.9%</i>
26	Total Expenditures	\$ 19,192,976	\$ 76,360,949	\$ 89,893,878 84.9%
	<i>Prior Year External Expenditures</i>		75,443,154	
	<i>Increase (-Decrease) From Prior Year</i>		1.2%	
27	Internal Transfers	246,234	3,155,021	6,347,930 49.7%
28	Grand Total Expenditures	\$ 19,439,211	\$ 79,515,970	\$ 96,241,808 82.6%

** Based on seasonality of receipts and expenditures since 1995.

Special Revenue Funds: Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures.

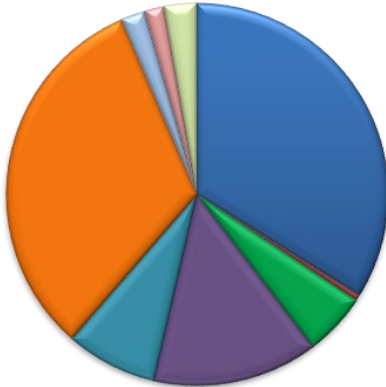
Other Entities Fund: Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority, Loveland Fire and Rescue Authority.

General Government Capital Projects Fund: Capital Expansion Fee Funds, Park Improvement, Conservation Trust, Open Space, Art In Public Places.

Internal Service Funds: Risk/Insurance, Fleet, Employee Benefits.

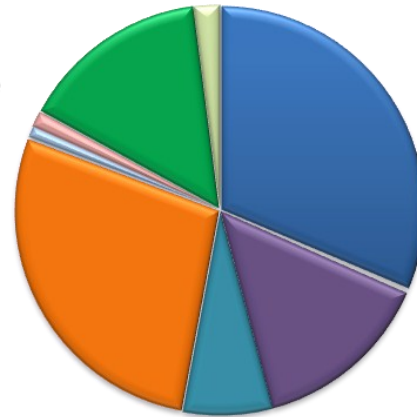
YTD Operating Revenues of \$86.2 Million

- General Fund
- Special Revenue
- Capital Projects
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Solid Waste

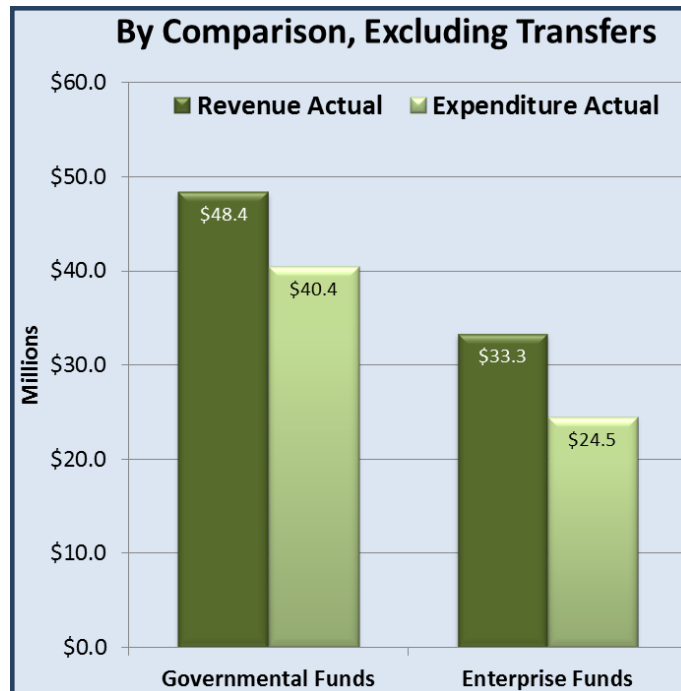


YTD Operating Expenditures of \$76.3 Million

- General Fund
- Special Revenue
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Capital Projects
- Solid Waste



- ⇒ Revenues exceed expenditures YTD by \$9,929,526 (line 14 less line 28)
- ⇒ General Fund revenue is above budget due to higher than projected sales, auto use, and building permit revenue (line 1)
- ⇒ The Special Revenue fund revenue is above budget due to higher than expected Lodging Tax receipts
- ⇒ Capital Projects revenue is above projections due to higher than expected close-out activity on residential units earlier this year (line 6)
- ⇒ Golf revenues are higher than planned due to punch pass and cart revenue (line 9)
- ⇒ Internal transfers (line 13 & 27) are under budget due to the timing of related expenditures
- ⇒ Generally, most fund expenditures are below budget, in part, due to the accrual of personnel service costs to 2011 not reflected in the budget
- ⇒ The General Fund (line 15) is under budget due to timing of payments to Fort Collins for the Flex route and to human services grantees
- ⇒ Other entities funds are over budget due to earlier than expected outlays from the Loveland Urban Renewal Authority (LURA) fund (line 17)
- ⇒ Internal services (line 18) are under budget due to lower than anticipated health claims and payments for workers compensation and unemployment events
- ⇒ Capital expenditures (line 20) are under budget due to the timing of capital projects throughout the City (expenditures are still within annual budget amounts)
- ⇒ Water & Power is under budget due to lower than expected costs for professional and other services and purchased power (line 21)
- ⇒ Stormwater (line 22) is under budget due to lower than expected repair and maintenance costs
- ⇒ Golf (line 23) is below budget due to lower than planned temporary employee costs
- ⇒ Solid Waste (line 24) is below budget, in part, due to lower than expected disposal charges

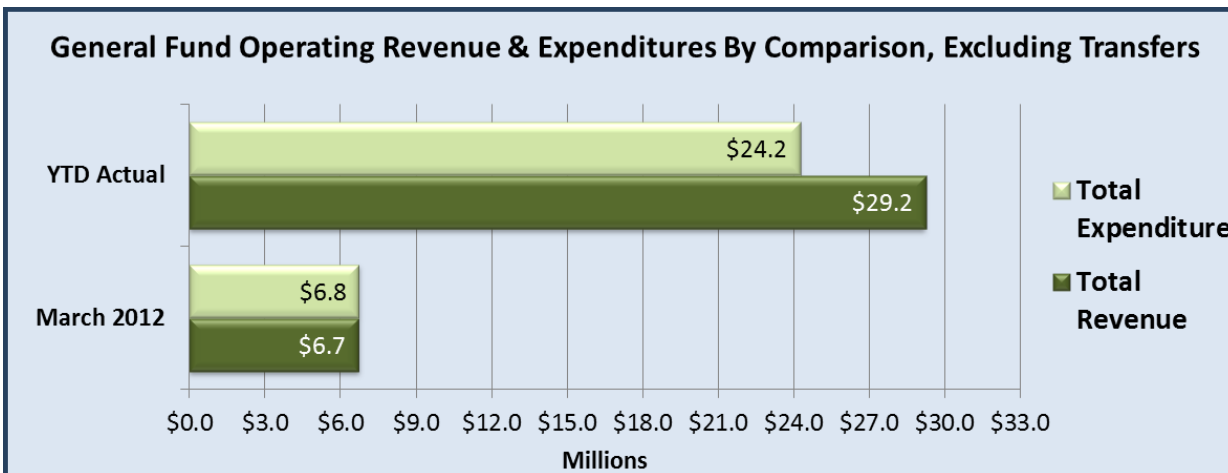


General Fund Revenues & Expenditures

May 2012

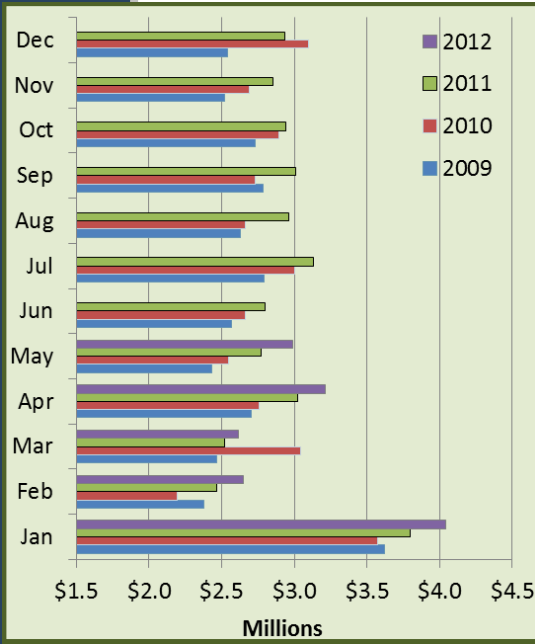
General Fund Revenue & Expenditures May 2012				
REVENUES	May 2012	YTD Actual	YTD Revised Budget	% of Budget
1 Taxes				
2 Property tax	\$ 1,542,272	\$ 4,333,729	\$ 4,273,580	101.4%
3 Sales tax	2,614,500	14,047,156	13,653,400	102.9%
4 Building use tax	140,470	459,323	433,720	105.9%
5 Auto use tax	211,062	981,949	785,490	125.0%
6 Other taxes	335,719	1,643,766	1,147,350	143.3%
7 Intergovernmental	702,480	2,102,564	2,467,697	85.2%
8 License & permits				
9 Building permits	136,059	614,394	330,550	185.9%
10 Other permits	7,434	160,311	116,265	137.9%
11 Charges for services	405,921	1,719,250	1,630,596	105.4%
12 Fines & forfeitures	83,284	464,223	418,865	110.8%
13 Interest income	54,487	212,536	168,800	125.9%
14 Miscellaneous	513,192	2,495,063	2,298,150	108.6%
15 Subtotal	\$ 6,746,880	\$ 29,234,263	\$ 27,724,463	105.4%
16 Interfund transfers	230,449	874,768	1,701,850	51.4%
17 Total Revenue	\$ 6,977,329	\$ 30,109,032	\$ 29,426,313	102.3%
EXPENDITURES				
Operating Expenditures				
18 Legislative	\$ 10,108	\$ 41,769	\$ 53,345	78.3%
19 Executive & Legal	298,433	911,953	1,036,384	88.0%
20 Economic Development	225,149	705,263	571,650	123.4%
21 Cultural Services	122,268	565,508	661,630	85.5%
22 Development Services	225,205	863,209	1,191,928	72.4%
23 Finance	403,145	1,362,261	1,688,565	80.7%
24 Fire & Rescue	533,129	540,426	514,510	105.0%
25 Human Resources	140,817	367,729	381,171	96.5%
26 Information Technology	263,957	1,513,488	1,759,980	86.0%
27 Library	235,446	990,831	1,017,345	97.4%
28 Parks & Recreation	862,458	2,753,435	2,941,667	93.6%
29 Police	1,523,166	6,214,262	6,795,548	91.4%
30 Public Works	1,275,264	4,497,776	4,892,796	91.9%
31 Non-Departmental	639,238	2,907,115	2,911,755	99.8%
32 Subtotal Operating	\$ 6,757,784	\$ 24,235,026	\$ 26,418,274	91.7%
33 Internal Transfers	3,342	590,125	1,636,000	36.1%
34 Total Expenditures	\$ 6,761,126	\$ 24,825,151	\$ 28,054,274	88.5%

- ⇒ Sales Tax revenue is above budgeted levels by 2.9%
- ⇒ Building use tax and permit revenue (lines 5, 9) exceed budget due to higher than expected building activity
- ⇒ Other taxes are over budget due to higher than planned sales tax audit revenue, franchise fees and occupational taxes, and proceeds from leased fiber optic lines
- ⇒ Intergovernmental revenue (line 7) is below budget due to the timing of federal transit payments
- ⇒ Other permit revenue (line 10) is above budget due to receipts for street cuts, special events and contractor licenses
- ⇒ Charges for service (line 11) are above budget due to greater than planned recreation revenue
- ⇒ Fines & Forfeitures (line 12) are over budget due to higher than projected traffic citation and court fine revenue
- ⇒ Interest Income revenues (line 13) are higher than expected due to differences between budgeted and actual 2012 beginning fund balance and higher than expected returns
- ⇒ Miscellaneous revenue is higher than expected due to donations to the library and higher than planned rental and sales tax application revenue
- ⇒ Internal transfers (lines 16 & 33) are under budget due to the timing of related expenditures
- ⇒ Generally, almost all departments are below budget, at least in part, due to the accrual of salaries to 2011 not reflected in the budget and the timing of actual expenditures versus budgeted plans
- ⇒ Council expenditures (line 18) are under budget due to lower than planned travel and meeting and food costs
- ⇒ Executive expenditures (line 19) are lower than projected due to lower printing costs with the transition to electronic Council packet delivery
- ⇒ Economic Development (line 20) is over budget due to the timing of expenditures for the former Agilent property, earlier than projected incentive payments, and services for Artspace
- ⇒ Cultural Services (line 21) is under budget due to the timing of expenditures from a Theater Guild donation for equipment
- ⇒ Development Services expenditures (line 22) are under budget due to the timing of human services grants
- ⇒ Finance is under budget due to lower than planned bank charges and lower than planned audit charges (line 23)
- ⇒ Information Technology (line 26) is under budget due to the timing of computer and service maintenance expenses
- ⇒ Public Works (line 30) is under budget due to the timing of payments to Fort Collins for FLEX service and equipment purchases
- ⇒ Revenues exceed expenditures by \$5,283,881 (line 17 less line 34)



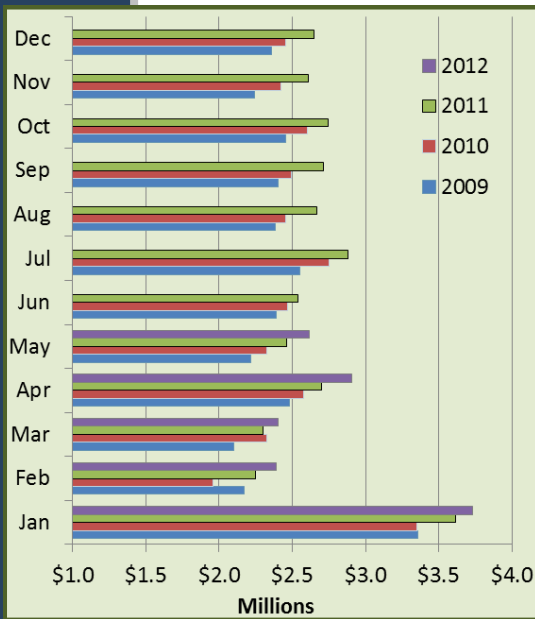
Tax Totals & Comparisons

Sales & Use Tax



	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 3,622,251	\$ 3,573,972	\$ 3,799,760	\$ 4,039,678	\$ 3,863,500	4.6%
Feb	2,374,608	2,191,609	2,465,447	2,649,229	2,353,490	12.6%
Mar	2,468,095	3,041,068	2,517,162	2,618,053	2,834,880	-7.6%
Apr	2,701,737	2,759,556	3,022,770	3,215,437	3,043,630	5.6%
May	2,428,860	2,550,227	2,769,526	2,966,032	2,777,110	6.8%
Jun	2,569,125	2,665,632	2,800,184		2,904,600	
Jul	2,794,222	3,004,324	3,129,254		3,254,770	
Aug	2,628,842	2,662,932	2,961,686		2,930,740	
Sep	2,782,768	2,732,087	3,008,637		2,992,510	
Oct	2,733,964	2,897,370	2,944,433		3,116,480	
Nov	2,522,092	2,690,549	2,853,507		2,881,350	
Dec	2,537,802	3,096,111	2,933,523		2,914,960	
<hr/>						
	\$32,164,365	\$33,865,435	\$35,205,889	\$15,488,429	\$35,868,020	
YTD	\$13,595,551	\$14,116,432	\$14,574,665	\$15,488,429	\$14,872,610	4.1%

Retail Sales Tax

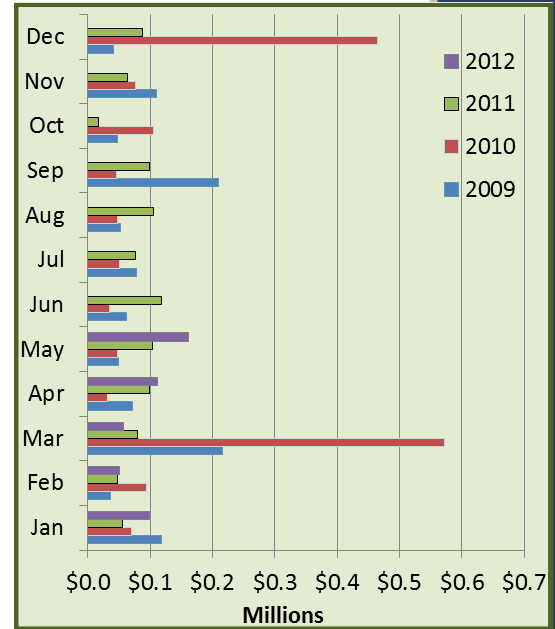


	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 3,354,704	\$ 3,352,821	\$ 3,613,881	\$ 3,733,309	\$ 3,648,890	2.3%
Feb	2,170,562	1,959,729	2,249,749	2,390,409	2,132,780	12.1%
Mar	2,100,216	2,328,701	2,299,237	2,403,380	2,534,340	-5.2%
Apr	2,482,752	2,579,918	2,702,024	2,905,558	2,807,740	3.5%
May	2,218,482	2,324,395	2,462,213	2,614,500	2,529,650	3.4%
Jun	2,390,535	2,468,207	2,536,541		2,686,160	
Jul	2,552,195	2,752,870	2,882,075		2,995,960	
Aug	2,383,119	2,458,382	2,667,674		2,675,470	
Sep	2,401,596	2,495,338	2,710,738		2,715,690	
Oct	2,457,158	2,602,599	2,746,866		2,832,420	
Nov	2,245,659	2,422,352	2,611,127		2,636,260	
Dec	2,358,273	2,455,821	2,647,014		2,672,660	
<hr/>						
	\$29,115,253	\$30,201,133	\$32,129,139	\$14,047,156	\$32,868,020	
YTD	\$12,326,717	\$12,545,564	\$13,327,104	\$14,047,156	\$13,653,400	2.9%

SnapShot

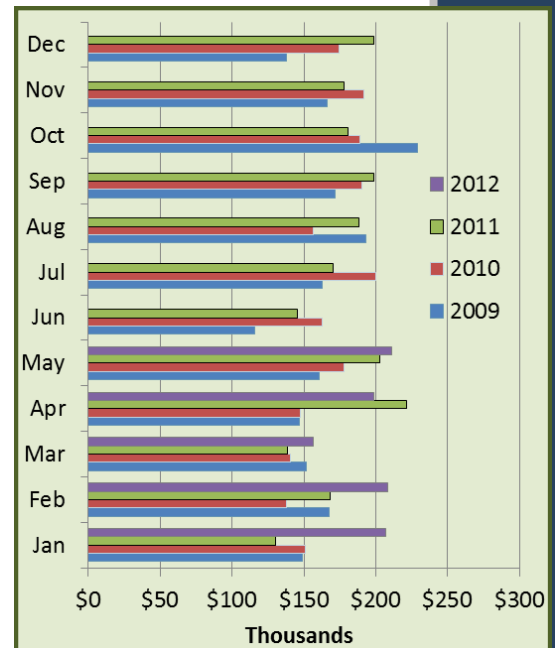
Building Materials Use Tax

	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 118,719	\$ 70,117	\$ 55,542	\$ 99,108	\$ 67,230	47.4%
Feb	36,254	93,928	47,621	50,703	64,310	-21.2%
Mar	216,500	571,599	79,590	57,845	144,060	-59.8%
Apr	72,251	32,260	99,569	111,197	82,360	35.0%
May	49,434	48,145	104,373	140,470	75,760	85.4%
Jun	62,723	34,349	118,318		66,460	
Jul	79,061	51,657	76,488		76,580	
Aug	52,578	47,716	105,871		70,510	
Sep	209,338	46,646	99,544		93,610	
Oct	47,437	105,818	17,021		80,030	
Nov	110,207	76,444	64,211		78,900	
Dec	41,844	465,626	88,033		100,190	
	\$1,096,346	\$1,644,305	\$956,181	\$459,323	\$1,000,000	
YTD	\$ 493,158	\$ 816,049	\$386,695	\$459,323	\$ 433,720	5.9%



Motor Vehicle Use Tax

	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 148,828	\$ 151,034	\$ 130,337	\$ 207,261	\$ 147,380	40.6%
Feb	167,793	137,951	168,077	208,117	156,400	33.1%
Mar	151,378	140,768	138,335	156,828	156,480	0.2%
Apr	146,734	147,378	221,177	198,682	153,530	29.4%
May	160,943	177,687	202,940	211,062	171,700	22.9%
Jun	115,867	163,076	145,325		151,980	
Jul	162,966	199,797	170,691		182,230	
Aug	193,144	156,834	188,141		184,760	
Sep	171,833	190,102	198,355		183,210	
Oct	229,369	188,953	180,546		204,030	
Nov	166,225	191,753	178,169		166,190	
Dec	137,685	174,664	198,476		142,110	
	\$1,952,766	\$2,019,997	\$2,120,569	\$ 981,950	\$2,000,000	
YTD	\$ 775,677	\$ 754,819	\$ 860,866	\$ 981,950	\$ 785,490	25.0%



2007 vs 2012 Tax Comparisons

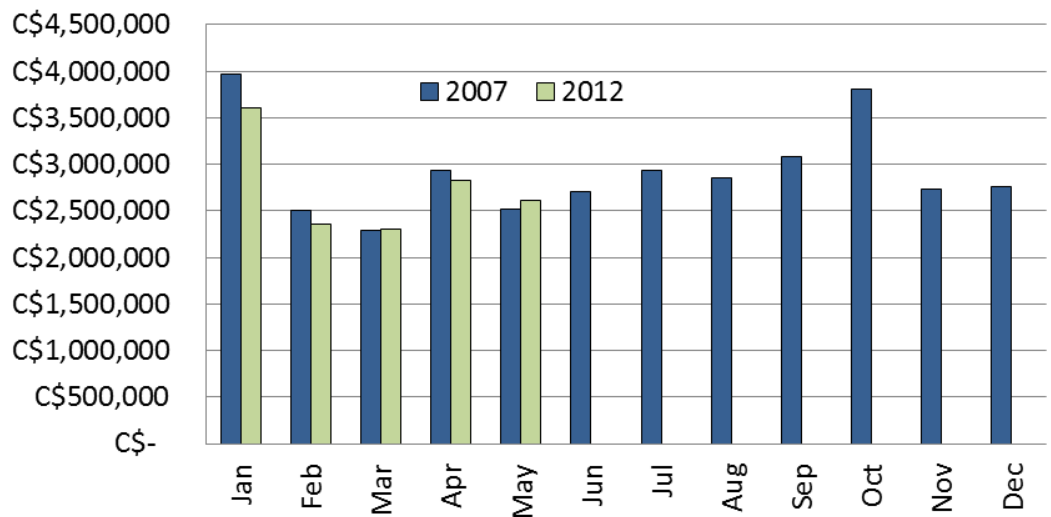
	2007	2012
Jan	\$3,972,513	\$4,039,678
Feb	2,520,486	2,649,229
Mar	2,319,579	2,618,053
Apr	3,003,780	3,215,437
May	2,581,830	2,966,032
Jun	2,781,786	
Jul	3,022,815	
Aug	2,931,667	
Sep	3,176,883	
Oct	3,936,330	
Nov	2,835,420	
Dec	2,869,916	
	\$35,953,006	\$12,522,397

Sales & Use Tax 2007 v. 2012



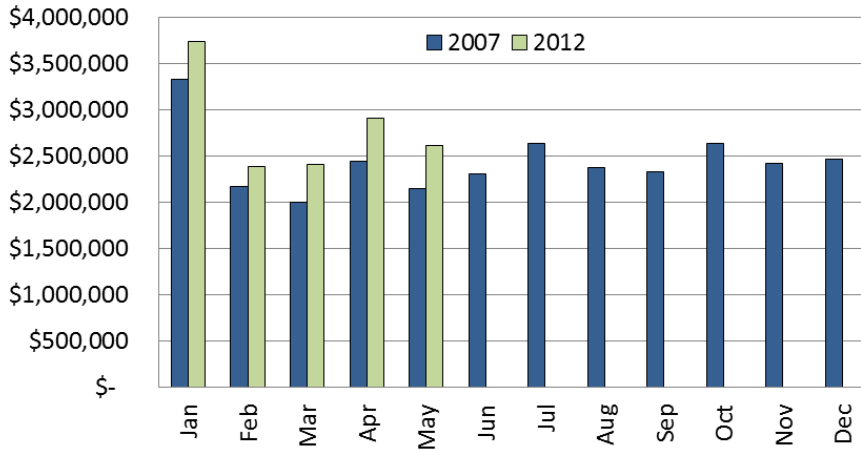
	2007	2012
Jan	\$3,972,513	\$3,607,507
Feb	2,507,072	2,355,439
Mar	2,286,415	2,310,176
Apr	2,941,724	2,828,763
May	2,513,134	2,612,416
Jun	2,702,532	
Jul	2,937,441	
Aug	2,854,102	
Sep	3,084,330	
Oct	3,813,494	
Nov	2,730,719	
Dec	2,765,797	
	\$35,109,275	\$8,273,121

Sales & Use Tax 2007 v. 2012 in Constant January 2007 Dollars



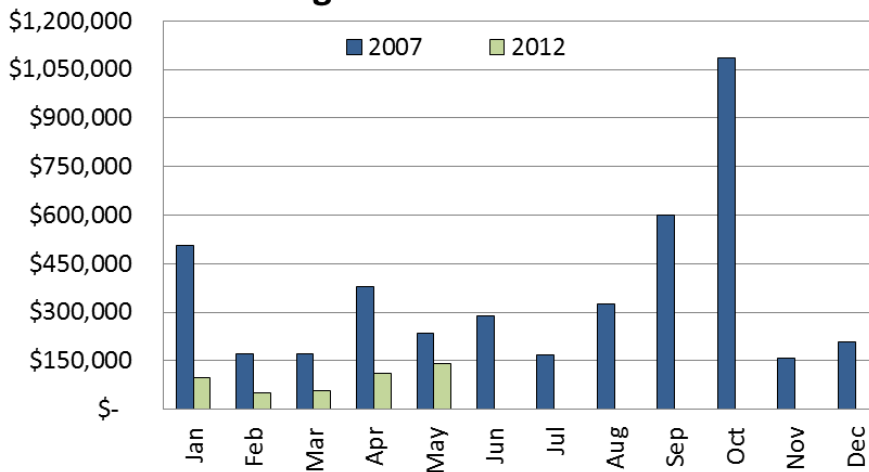
SnapShot

Retail Sales Tax 2007 v. 2012



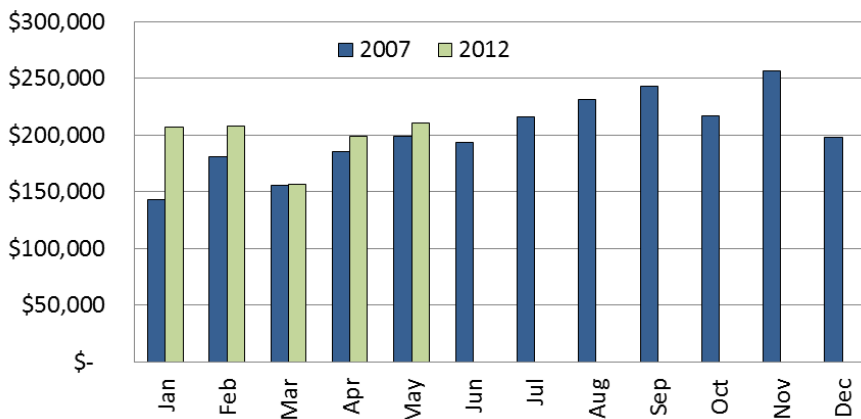
	2007	2012
Jan	\$3,324,067	\$3,733,309
Feb	2,167,873	2,390,409
Mar	1,994,635	2,403,380
Apr	2,437,958	2,905,558
May	2,146,685	2,614,500
Jun	2,300,533	
Jul	2,640,223	
Aug	2,376,534	
Sep	2,332,844	
Oct	2,632,667	
Nov	2,419,051	
Dec	2,464,559	
Total	\$29,237,629	\$11,32,656

Building Material Use Tax 2007 v. 2012



	2007	2012
Jan	\$505,441	\$99,108
Feb	171,835	50,703
Mar	169,579	57,845
Apr	380,285	111,197
May	236,140	140,470
Jun	287,300	
Jul	166,446	
Aug	324,125	
Sep	600,704	
Oct	1,086,325	
Nov	159,382	
Dec	207,723	
Total	\$4,295,285	\$318,853

Motor Vehicle Use Tax 2007 v. 2012



	2007	2012
Jan	\$143,005	\$207,261
Feb	180,778	208,117
Mar	155,365	156,828
Apr	185,537	198,682
May	199,005	211,062
Jun	193,953	
Jul	216,146	
Aug	231,008	
Sep	243,336	
Oct	217,338	
Nov	256,987	
Dec	197,634	
Total	\$2,420,092	\$770,888

Sales Tax Collections

May 2012

Description	YTD 2012	YTD 2011	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	\$ 3,208,124	\$ 3,074,479	\$ 133,645	4.3%	22.8%	22.8%
Restaurants & Bars	1,726,764	1,520,222	206,542	13.6%	12.3%	35.1%
Grocery Stores & Specialty Foods	1,458,514	1,411,042	47,471	3.4%	10.4%	45.5%
Clothing & Clothing Accessories Stores	1,018,352	960,250	58,102	6.1%	7.2%	52.8%
Motor Vehicle Dealers, Auto Parts & Leasing	848,633	777,161	71,473	9.2%	6.0%	58.8%
Building Material & Lawn & Garden Supplies	848,423	773,162	75,260	9.7%	6.0%	64.8%
Utilities	841,146	835,990	5,155	0.6%	6.0%	70.8%
Sporting Goods, Hobby, Book & Music Stores	707,452	660,284	47,168	7.1%	5.0%	75.9%
Broadcasting & Telecommunications	560,442	571,772	(11,331)	-2.0%	4.0%	79.9%
Used Merchandise Stores	444,166	371,516	72,649	19.6%	3.2%	83.0%
Beer, Wine & Liquor Stores	312,954	279,820	33,134	11.8%	2.2%	85.2%
Hotels, Motels & Other Accommodations	265,997	239,005	26,992	11.3%	1.9%	87.1%
Health & Personal Care Stores	249,287	240,732	8,554	3.6%	1.8%	88.9%
Electronics & Appliance Stores	236,414	321,576	(85,162)	-26.5%	1.7%	90.6%
Consumer Goods & Commercial Equipment	233,292	205,564	27,728	13.5%	1.7%	92.3%
Electronic Shopping & Mail-Order Houses	212,463	202,649	9,815	4.8%	1.5%	93.8%
Furniture & Home Furnishing Stores	184,662	169,594	15,068	8.9%	1.3%	95.1%
Office Supplies, Stationery & Gift Stores	139,851	157,511	(17,660)	-11.2%	1.0%	96.1%
Gasoline Stations with Convenience Stores	98,150	91,482	6,667	7.3%	0.7%	96.8%
All Other Categories	452,072	463,293	(11,220)	-2.4%	3.2%	100.0%
Total	\$14,047,156	\$13,327,104	\$ 720,052	5.4%	100.0%	

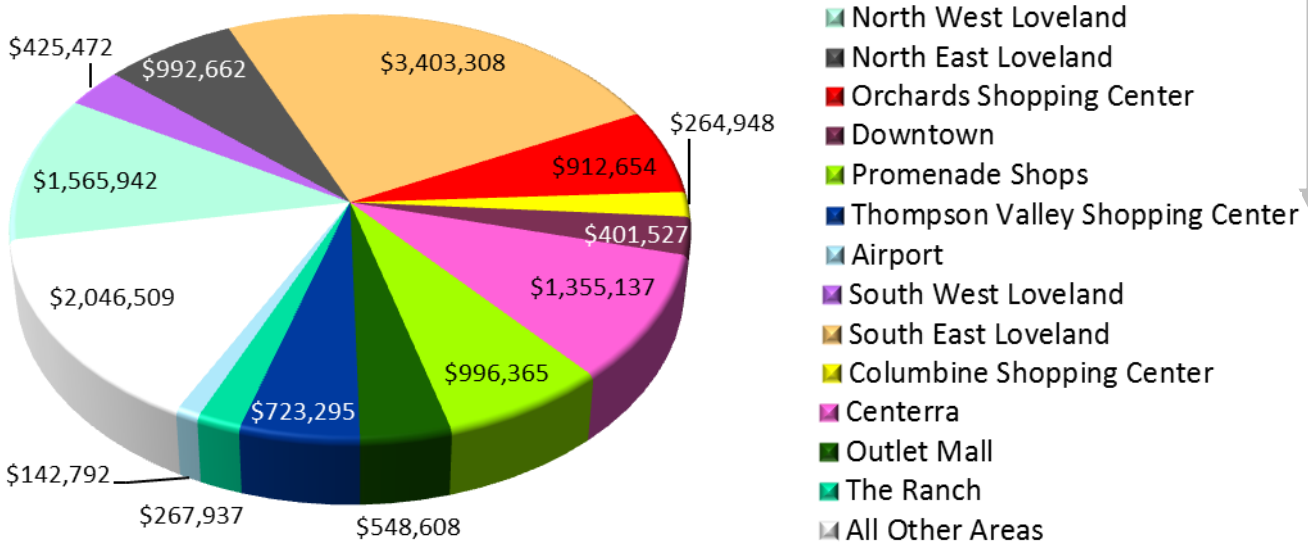
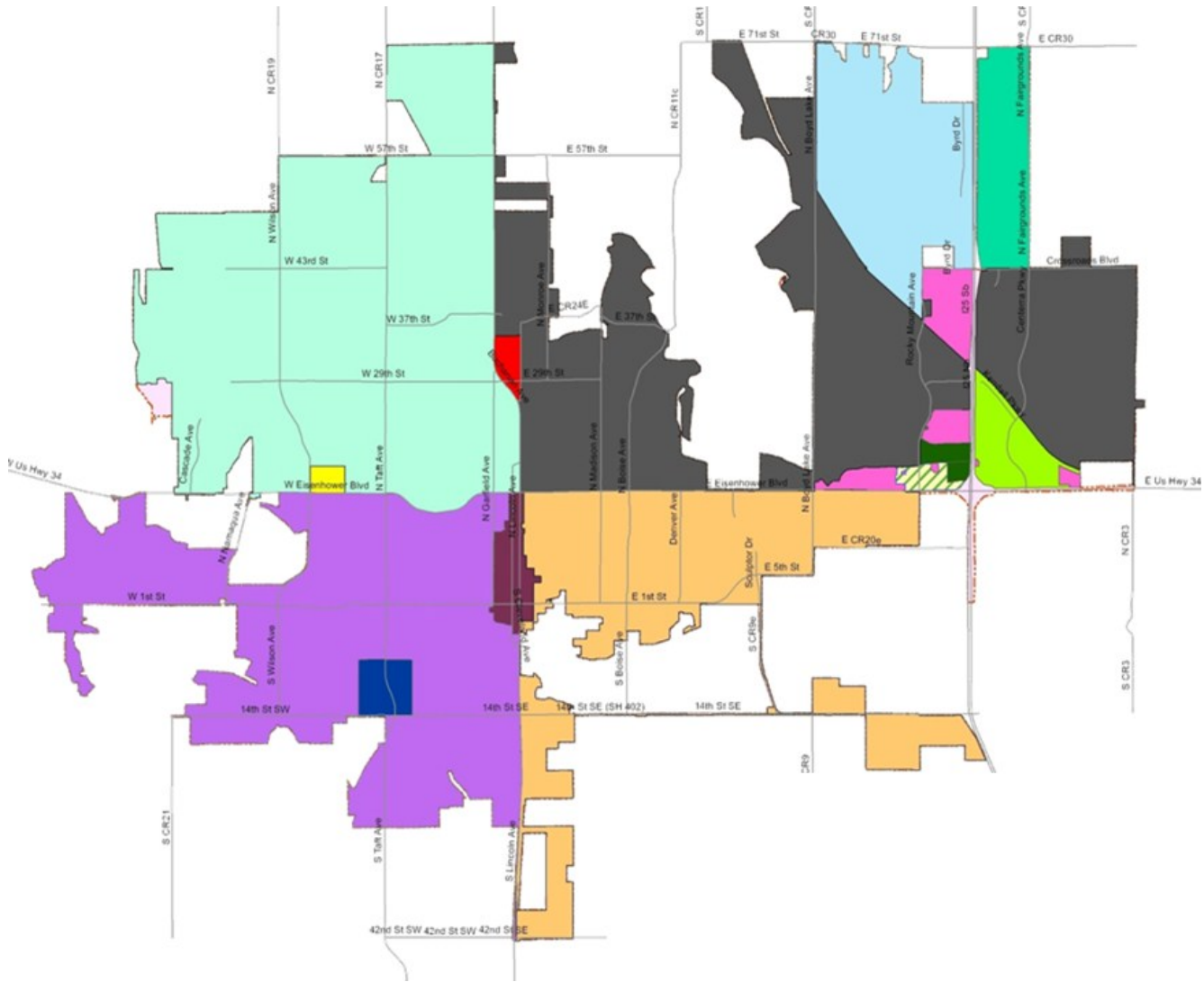
⇒ By business category, Used Merchandise Stores continue to report the highest percentage at 19.6% over last year. Restaurants & Bars continue to show strong growth with a 13.6% increase and continue to lead all categories for total dollar increases from the same period last year. Furniture and Home Furnishing Stores are a solid third with a 13.5% improvement for 2012. The "Beer, Wine & Liquor Stores" category, posted an 11.8% increase through April.

Audit Revenue received in 2012 is \$379,650 and \$209,414 has been collected in Lodging Tax.

⇒ 2012 sales tax revenue is 5.4% above the 2011 level. The North East Loveland area continues to show strong improvement over last year with a 21.1% increase over this time last year. North East Loveland's performance through April is due to strong performances by the new and existing restaurants in the area.

Geographical Area	YTD 2012	YTD 2011	Change
North West Loveland	\$1,565,942	1,525,126	2.7%
South West Loveland	425,472	421,673	0.9%
North East Loveland	992,662	819,877	21.1%
South East Loveland	3,403,308	3,143,139	8.3%
Orchards Shopping Center	912,654	875,017	4.3%
Columbine Shopping Center	264,948	237,748	11.4%
Downtown	401,527	427,781	-6.1%
Centerra	1,355,137	1,245,711	8.8%
Promenade Shops	996,365	1,042,257	-4.4%
Outlet Mall	548,608	511,859	7.2%
Thompson Valley Shopping Center	723,295	678,964	6.5%
The Ranch	267,937	271,174	-1.2%
Airport	142,792	135,733	5.2%
All Other Areas	2,046,509	1,991,044	2.8%
Total	\$14,047,156	\$13,327,104	5.4%

Currently, three areas continue to trail their 2011 pace. Several store closings during the latter part of 2011 continue to have a negative impact on Downtown sales reporting. In 2012, several new businesses have opened their doors in the downtown area, which have begun to improve the downtown performance. Due to the past filing errors that were discovered and corrected, actual sales for the Promenade Shops show a negative trend of 4.4%. Adjusting for the reporting issues, the Promenade Shops show a positive trend of approximately 4.1% so far in 2012. We will continue to track the adjusted sales trend throughout the year for the Promenade Shops.

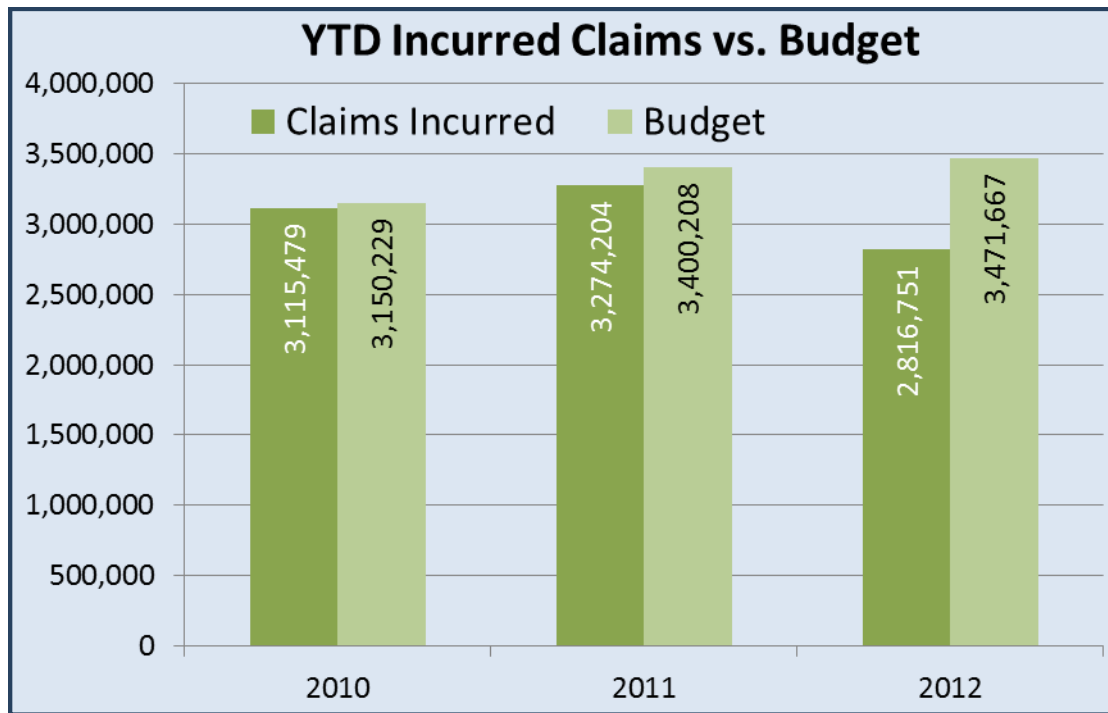


Health Care Claims

May 2012

Cash Basis of Claims Paid					\$ Over / (Under) Budget	% Over / (Under) Budget
		OAP	HRA	Total	Budget	
2012	May	415,391	82,150	497,541	694,333	(196,792) -28.3%
	YTD	2,383,844	432,907	2,816,751	3,471,667	(654,916) -18.9%
2011	May	447,073	85,754	532,827	680,042	(147,215) -21.6%
	YTD	2,797,506	476,698	3,274,204	3,400,208	(126,004) -3.7%
Change	May	(31,682)	(3,604)	(35,286)		
	% Apr	-7.1%	-4.2%	-6.6%		
	YTD	(413,662)	(43,791)	(457,453)		
	% YTD	-14.8%	-9.2%	-14.0%		

This chart represents claims paid by Cigna in the current month, but due to the timing of when Accounting receives the information, the claims do not get recorded as an expenditure until the following month. ⇒ OAP—Open Access Plan ⇒ HRA—Health Reimbursement Arrangement



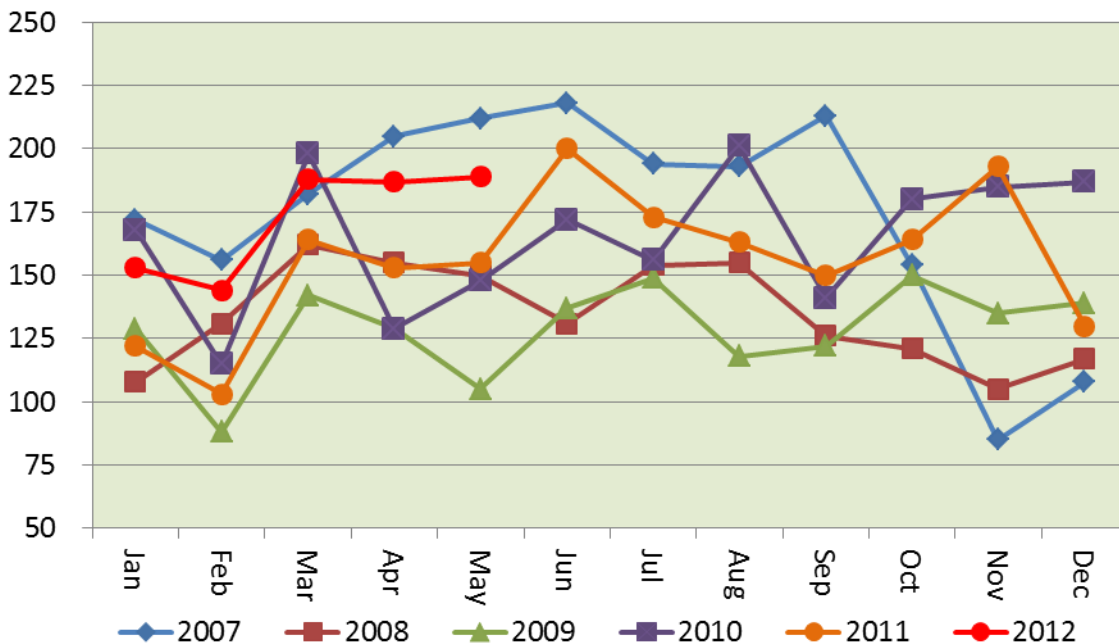
YTD Claims Over \$25k				
Comparison (2009-2012)				
	2009	2010	2011	2012
May				
# of claims	17	16	20	23
Cost of claims	\$1,079,040	\$1,916,153	\$1,100,737	\$994,848
2012 # of stoploss claims:	0			

Activity Measures

May 2012

Measures	May '10	May '11	May '12	2010 YTD	2011 YTD	2012 YTD
# of Building Permits	148	155	189	610	542	672
Building Permit Valuations	\$ 3,592,092	\$ 11,733,254	\$ 9,933,743	\$ 68,516,803	\$ 25,304,267	\$ 39,585,367
# of Certified Occupancies	20	14	24	50	76	97
Net # of Sales Tax Licenses	38	38	-54	27	21	-88
New Residential Electric Meter Sets	33	11	21	39	159	48
# of Utility Bills Sent	35,007	35,514	36,135	139,678	141,762	143,822
Rounds of Golf	15,033	13,606	16,119	13,941	19,348	20,705
Health Claim Costs/Emp.	\$ 644	\$ 853	\$ 787	\$ 4,412	\$ 4,374	\$ 3,665
# of Vacant Positions	11	14	38	30	37	130
# of Frozen Vacant Positions	11	13	9	53	55	36
# of Eliminated Positions	38	45	47	153	172	185
KWH Demand (kH)	101,019	83,497	100,125	354,664	373,070	361,262
KWH Purchased (kwh)	53,333,809	55,282,456	57,060,522	220,017,138	228,035,012	231,765,497
Gallons of Water Sold	197,000,798	250,555,559	380,845,134	573,688,986	579,082,439	629,316,099
# of Workers' Comp Claims	8	10	10	57	35	37
\$ of Workers' Comp Claims Paid	\$ 44,053	\$ 8,970	\$ 33,984	\$ 16,382	\$ 16,311	\$ 228,992
# of Open Claims Current Year	7	12	16	27	39	34
# of Total Open Claims	11	14	18	59	56	65
\$ of Total Open Claims	\$ 210,881	\$ 64,096	\$ 370,332	\$ 706,131	\$ 379,688	\$ 1,081,206
\$ of Lodging Tax Collected	\$ 32,589	\$ 33,265	\$ 44,906	\$ 88,174	\$ 112,048	\$ 164,507

Building Permit Comparison History



Monthly Financial Report

Cash & Reserves

May 2012

Total Cash & Reserves = \$202.4 million, of which \$145.3 million is restricted or reserved, or 71.8%, leaving \$57.1 million unrestricted.

Statement of Cash: May 2012			
	Beginning	YTD Activity	Ending
Restricted			
1 Capital Expansion Fees	\$ 33,634,541	\$ 689,517	\$ 34,324,058
2 Other Special Revenue Funds	22,151,685	648,256	22,799,941
3 Capital Projects	2,971,970	(775,903)	2,196,066
4 Water System Impact Fees	7,351,374	615,429	7,966,803
5 Windy Gap	4,289,590	(49,588)	4,240,002
6 Raw Water	18,073,160	(2,095,595)	15,977,565
7 Wastewater System Impact Fees	4,509,816	223,970	4,733,786
8 Stormwater System Impact Fees	1,344,721	81,544	1,426,265
9 Power Plant Investment Fees	6,866,635	808,277	7,674,912
10 Cemetery	2,531,442	51,424	2,582,866
11 Other Entities	4,088,292	2,136,037	6,224,329
12 Total Restricted	\$ 107,813,225	\$ 2,333,368	\$ 110,146,593
Committed/Assigned Balance Amounts			
13 General Fund			
14 Operating/Emergency	1,908,240	-	1,908,240
15 Council Capital Reserve	4,674,060	-	4,674,060
16 Council Contingency Reserve	100,000	-	100,000
17 Liability	200,000	-	200,000
18 Fire Reserve for SAFER Grant 3rd Year	138,300	-	138,300
19 Fire Reserve for SCBA Replacement	434,690	(330,890)	103,800
20 Library Building Reserve	16,750	-	16,750
21 Library Reserve	125,031	1,227	126,258
22 Equipment Replacement	70,000	-	70,000
23 TABOR Excess	3,955,444	(147,780)	3,807,664
24 Water	664,824	229,276	435,548
25 Wastewater	813,697	(98,581)	715,116
26 Stormwater	327,015	58,530	385,545
27 Power	3,044,578	262,907	3,307,485
28 Golf	248,245	1,732	249,977
29 Insurance Reserves	5,008,647	(108,210)	4,900,437
30 Employee Benefits	6,260,863	588,564	6,849,427
31 Fleet Replacement	6,701,071	430,825	7,131,896
32 Total Committed/Assigned	\$ 34,691,455	\$ 429,049	\$ 35,120,504
33 Total Restricted/Committed/Assigned	\$ 142,504,681	\$ 2,762,417	\$ 145,267,097
Unassigned Balance Amounts			
34 Unassigned Balance Amounts			
35 General	17,142,212	3,309,670	20,451,883
36 Airport	897,343	(252,695)	644,649
37 Internal Service - Vehicle Maintenance	142,091	31,630	173,721
38 Golf	1,526,727	(52,333)	1,474,394
39 Water	3,767,336	(1,299,229)	2,468,107
40 Wastewater	7,323,273	(887,227)	6,436,046
41 Power	17,252,608	1,489,804	18,742,412
42 Stormwater	1,853,083	331,672	2,184,755
43 Solid Waste	4,704,941	(104,338)	4,600,603
44 Total Unassigned	\$ 54,609,615	\$ 2,566,955	\$ 57,176,570
Total Cash	\$ 197,114,296	\$ 5,329,372	\$ 202,443,668

Statement of Cash Line Detail

(Line 15) Council Capital Reserve Identified Activities

- ⇒1,100,000 Downtown infrastructure improvements
- ⇒187,000 Leslie the Cleaner Demolition and Remediation
- ⇒237,500 ArtSpace Pre-Construction
- ⇒11,910 IHN Fee Waiver
- ⇒97,000 Intra-Fund Loan Repayment

(Line 20) The market value of the Proctor & Gamble Stock as of December 31, 2011 is \$213,472. This value represents the original value of the stock when it was first donated.

(Line 24) Projects include I-25 Variable Msg Signage, Centerra area ITS, Taft & 14th St. SW, 37th St. from Monroe to Madison 14th St. SW Slope Stability, Garfield & US 34

Capital Projects \$500,000+

Project Title	2012 Budget	2012 Expenditures	Remaining 2012 Budget	% of 2012 Budget (Exp/Bud)
Water Capital				
Morning Dr Alt Waterline 30"	\$ 1,874,700	\$ 89,582	\$ 1,785,118	4.78%
Filter Plant 2 Improvements	667,990	430,080	237,910	64.38%
29th St Waterline Replacement	518,370	4,483	513,887	0.86%
Raw Water Capital				
Windy Gap Firming Project	1,205,060	81,682	1,123,378	6.78%
Purchase of Colorado-Big Thompson Project (CBT) Water	2,606,600	2,117,802	488,798	81.25%
Wastewater Utility Capital				
Carlisle Phase IV from Taft to Railroad	738,320	520,783	217,537	70.54%
Waste Activated Sludge Thickening	548,920	82,941	465,979	15.11%
South Horseshoe Lift Station	1,216,210	26,873	1,189,337	2.21%
Fairgrounds/Namaqua Interceptor	733,600	643,279	90,321	87.69%
Power Capital				
East Sub to Crossroads Sub on Railroad	1,894,640	28,413	1,866,227	1.50%
Horseshoe Sub along Hwy 287 to 29th St.	1,338,910	274	1,338,636	0.02%
Stormwater Capital				
Washington Ave Outfall Phase 4	1,564,545	38,071	1,526,474	2.43%
MeHaffey Park Regional Detention Pond	580,074	6,285	573,789	1.08%
Streets Transportation Program				
2012 Street Rehabilitation	3,644,900	159,399	3,485,501	4.37%
US 287 - Garfield Traffic Signal	668,420	7,141	661,279	1.07%
All Other				
Fire Station 6 Remodel and Expansion	929,970	67,652	862,318	7.27%
Rialto Theater Center	1,114,000	925,735	188,265	83.10%
Library Expansion	857,520	653,937	203,583	76.26%
Police Dispatch Console Replacement	916,000	28,947	887,053	3.16%
Facilities Maintenance Capital Projects	600,000	140,023	459,977	23.34%
Mehaffey Park Development	8,550,000	69,319	8,480,681	0.81%
Open Lands Acquisition	2,799,000	40,345	2,758,655	1.44%
Leslie the Cleaner Demolition and Remediation	\$ 500,000	\$ 2,636	\$ 497,364	0.53%

**City Of Loveland
500 East 3rd Street
Loveland, CO 80537**

For more information regarding this report contact:

Bonnie Steele, Acting Finance Director

970.962.2313 or bonnie.steele@cityofloveland.org





CITY OF LOVELAND
CITY MANAGER'S OFFICE

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AGENDA ITEM: 16
MEETING DATE: 7/3/2012
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE: Investment Report for May 2012

RECOMMENDED CITY COUNCIL ACTION: This is an information only item. No Council action is required.

DESCRIPTION: The budget estimate for investment earnings for 2012 is \$2,729,560. Through May 2012, the amount posted to the investment account is \$1,358,544 including realized gains. Actual year-to-date earnings are *higher* than the year-to-date projection by \$253,214. Based on the May monthly statement, the estimated annualized yield on the U.S. agencies and corporates inched up to 1.53%, still under the annual target rate of 1.7% for 2012. Reinvestment rates have trended to near record low levels and remain lower than the budget projection.

SUMMARY: At the end of May, the City's portfolio had an estimated market value of \$202.5 million, about \$700,000 million more than a month ago. Of this amount, USBank held (including accrued interest) \$185.2 million in trust accounts; other funds are held in local government investment pools, in operating accounts at WellsFargo Bank, and a few miscellaneous accounts. Interest rates have trended significantly lower over recent months and are projected to remain low for years. Investments are in US Treasury Notes, highly-rated US Agency Bonds, highly-rated corporate bonds, money market accounts, and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each percent of earnings on the portfolio equates to \$2 million annually.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS: Investment Focus May 2012



Loveland Municipal Building

Investment Focus

Monthly Investment Report

May 2012

What's in here?

- Focal Points** 1
- Gain / Loss**
- Rate Trends** 2
- Cash Statement** 3
- Portfolio size** 4
- Investment types**
- Transactions /** 5
- Maturity**
- Future Scan** 6

Focal Points

- * **New 2012 targets for the City's portfolio: 1) the interest rate target is 1.7%; 2) the earnings goal = \$2,729,560.**
- * **City investments are in high quality, low risk securities, in compliance with state law and the adopted investment policy.**
- * **Revenue posted to accounts = \$1,135,330 - 22.3% over target. This includes realized gains on security sales of \$ 106,384.**
- * **Each 1% of the total portfolio amounts to about \$2.02 million.**
- * **The month end market value shows the unrealized loss decreased, down to just **\$241,308** at the end of May.**

New Signs of Global Slowdown

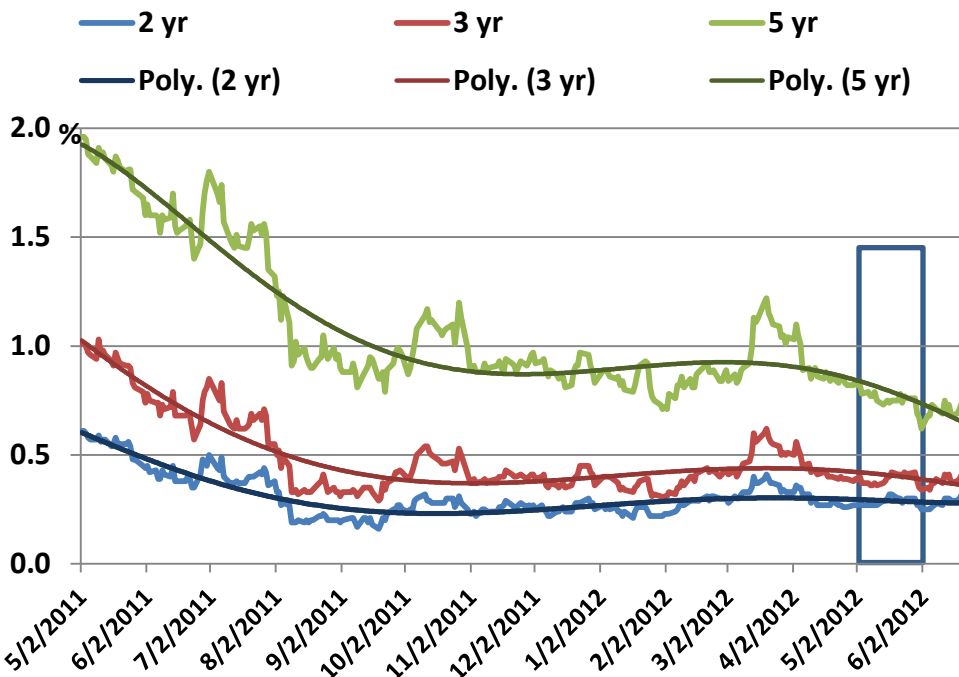
"Weak reports in U.S., Europe, and China suggest economies are slipping in sync. When the global economy is performing well, synchronized growth reinforces itself and spreads prosperity wide and far. But slowdowns can become interconnected and self-reinforcing, and the global economy has been plagued by them since the financial crisis of 2008."(See page 2.)

(Source: John Jilsenrath and Joshua Mitchell in the **Wall Street Journal**, May 25, 2012.

Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 8,600,631	\$ 8,600,631	--
Investment Pools	8,599,012	8,599,012	--
Money Markets	<u>23,810,398</u>	<u>23,810,398</u>	--
Subtotal	\$ 41,010,041	\$ 41,010,041	--
Notes and Bonds	<u>161,696,517</u>	<u>161,455,209</u>	\$ (241,308)
Total Portfolio	\$ 202,706,558	\$ 202,465,251	\$ (241,308)
Data Sources	(Morgan Stanley)	(US Bank)	

Due to rounding, column and row totals may not add exactly.

Treasury rate trends / Global economy slowing



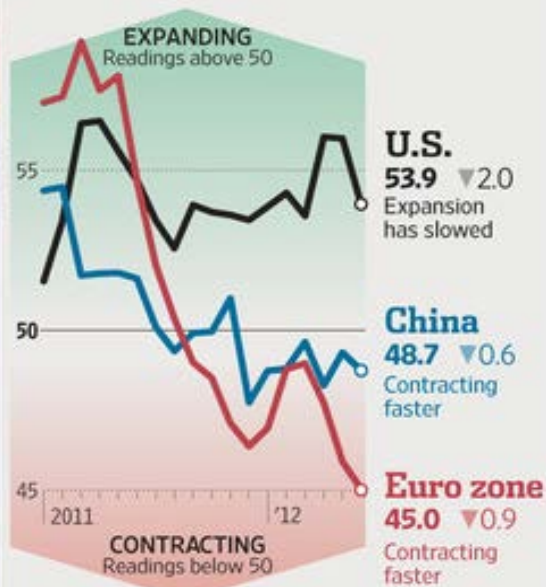
Interest rates on US treasuries moved lower in May, close, once again, to near record lows.

Based on the 2-year treasury, the May month-end rate was flat. The 3-year was 3 basis points lower and the 5-year finished 15 basis points lower.

This shift in treasury rates slightly increased the market value of most of the portfolio. However, it also means lower rates for new investments.

Sputtering

Early May readings of manufacturing indexes show activity contracting in China and the euro zone, and slowing in the U.S.



Source: Markit Economics The Wall Street Journal

“On Thursday (May 24), the U.S. reported that businesses were slowing their orders of computers, aircraft, machinery and other long-lasting goods. Measures of business sentiment in Europe slipped, and reports from purchasing managers at manufacturers around the globe turned down. Among them, China, the world’s second-largest economy, registered its seventh straight drop in an important manufacturing index.

With the latest reports, a new economic threat is emerging: That activity is slowing in sync around the globe and not just in a few markets with their own isolated problems. Europe, struggling with the risk of a Greek pullout from the euro area and broader fiscal problems, is the epicenter of global economic concerns right now. But reports of economic trouble are turning up in China, South Africa, Brazil, and elsewhere.”

Source: **Wall Street Journal**, May 25, 2012.

Cash Position Summary

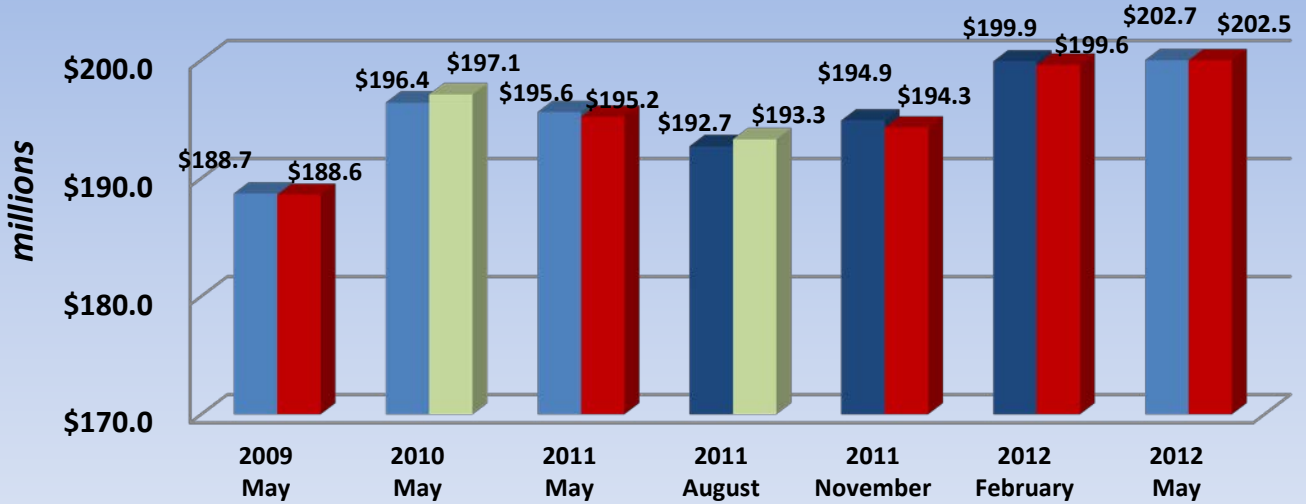
Cash & Reserves (unaudited)

	2012 Beginning	YTD Activity	May Ending
Restricted Reserves	Due to rounding, column and row totals may not add exactly.		
1 Capital Expansion Fees	\$ 33,634,541	\$ 689,517	\$ 34,324,058
2 Water System Impact Fees	7,351,374	615,429	7,966,803
3 Raw Water Revenue – Windy Gap	22,362,750	(2,145,183)	20,217,567
4 Wastewater System Imp. Fees	4,509,816	223,970	4,733,786
5 Storm Drain System Imp. Fees	1,344,721	81,544	1,426,265
6 Power Plant Investment Fees	6,866,635	808,277	7,674,912
7 Cemetery Perpetual Care	2,971,970	(775,903)	2,196,066
8 Other Restricted	28,771,419	2,835,717	31,607,136
9 Total Restricted	\$ 107,813,225	\$ 2,333,368	\$ 110,146,593
Reserve Balance Amounts			
10 General Fund	\$ 11,622,515	\$ (477,443)	\$ 11,145,072
11 Enterprise Funds	5,098,358	(4,687)	5,093,671
12 Internal Service Funds	17,970,582	911,179	18,881,761
13 Total Reserves	\$ 34,691,455	\$ 429,049	\$ 35,120,504
14 Total Restricted and Reserved	\$ 142,504,680	\$ 2,762,417	\$ 145,267,097
Unrestricted			
15 General Fund	\$ 17,142,212	\$ 3,309,670	\$ 20,451,883
16 Airport	897,343	(252,695)	644,649
17 Internal Service – Vehicle Maint	142,091	31,630	173,721
18 Enterprise Funds	36,427,968	(521,651)	35,906,318
19 Total Unrestricted	\$ 54,609,615	\$ 2,566,955	\$ 57,176,570
20 TOTAL CASH	\$ 197,114,296	\$ 5,329,372	\$ 202,443,668

Monthly Investment Report

Portfolio Size / Types of Investments

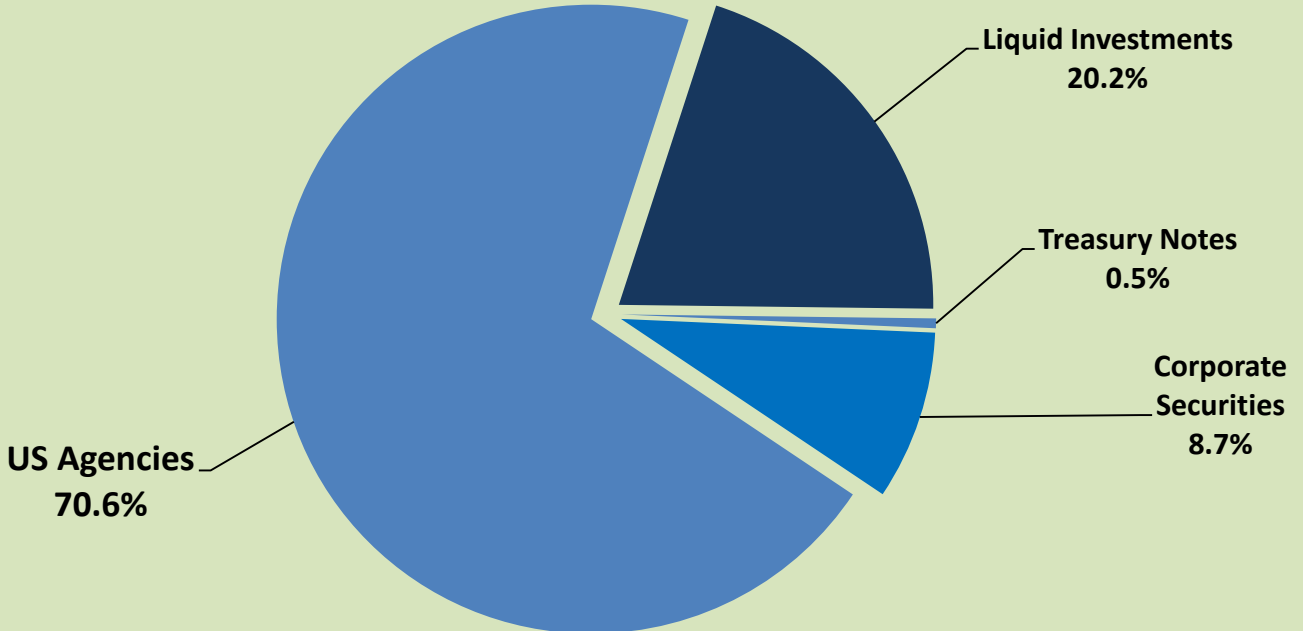
Portfolio Size since May 2009



Blue bars show Purchase value, red and green bars show market value, red = loss and green = gain

Portfolio by Type of Investment

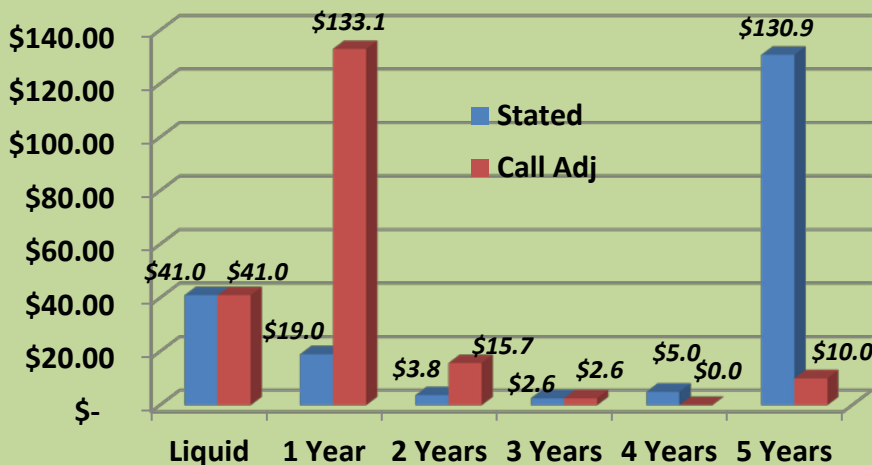
May 2012 – Value of \$202.5 million



Transactions / Portfolio by Maturity

	Maturity Date	Face Value	Purchase \$	Stated Rate
Purchases				
Federal Farm Credit Bank	05/30/2017	\$ 5,000,000	\$ 5,000,000.00	1.150%
Federal Farm Credit Bank	05/02/2017	5,000,000	5,000,000.00	1.250%
Federal Home Loan Bank	05/22/2017	<u>5,000,000</u>	<u>4,997,500.00</u>	1.240%
		\$ 15,000,000	\$ 14,997,500.00	
Matured				
None this month				
Called			Call Value \$	
Federal Agr. Mortgage Corp.	10/02/2015	\$ 5,000,000	\$ 5,000,000.00	1.800%
Federal Farm Credit Bank	04/18/2017	10,000,000	10,000,000.00	1.700%
Federal Home Loan Bank	02/18/2017	5,000,000	5,000,000.00	1.250%
Federal Home Loan Bank	04/11/2017	<u>5,000,000</u>	<u>5,000,000.00</u>	1.625%
		\$ 25,000,000	\$ 25,000,000.00	
Sales			Gain \$	
Federal Nat'l. Mortgage Assn.	12/30/2016	\$5,000,000	\$ 46,250.00	1.400%

Portfolio by Estimated Maturity Term
(in millions - Total = \$202.5 at the end of May 2012)



The target rate for 2012 is 1.7%. Rates are now again at near record lows. Through May, the portfolio earnings are above the earnings target level for 2012.

To support earnings or to reposition the portfolio, bonds may be sold. Gains on sales total \$106,384 to date.

The blue bars show the stated term. Red bars show the calls. More of the five year bonds will be called early.



Future Scan: Fed sentiment more pessimistic

- ❖ **Morgan Stanley Smith Barney:** “News out of Europe is the main driver of financials spreads, especially the larger money center banks and to some degree the life insurers.”
 - Given the drop in the UST 10-year to a new record low, we recommend reducing some exposure to longer-duration interest sensitive products.
 - Back to back soft jobs data supports our “Big Payback” theory, and sets the stage for continued sluggish growth in the summer months.
 - Elevated Euro Zone concerns combined with a weaker labor market setting puts pressure on the Fed to take additional action.
 - Flight-to-quality flows have created a setting for the near-term trading range for the UST 10-year to be 1.20% to 1.75%/2.00%. . . Volatility ... remains elevated.
 (Source: *Basis Points Fixed Income Strategy*, Kevin Flanagan and John Mackay, June 5, 2012.)
- ❖ The **Federal Open Market Committee** (“FOMC” or “Fed” or “Committee”) met on June 19-20. “The Fed’s downshift in sentiment was probably more significant than the markets were expecting. . . the Summary of Economic Projections released by the FOMC reflect a sharp downgrade in outlook. GDP projections were cut from 2.4-2.9 to 1.9-2.4 for 2012, a 0.50% reduction in growth estimates. The Fed reaffirmed its plan to keep short-term interest rates near zero until late 2014 to support economic growth. The unemployment rate in Q4 2012 is now expected to be between 8.0-8.2 and 7.5-8.0 in Q4 2013. Inflation is seen as dropping further. The projection for Core PCE is now seen as being between 1.7-2.0 by Q4 2012 and 1.6-2.0 by Q4 2013. What does all of this mean? According to the Fed’s new projections, they are expecting 1) GDP growth to remain below 3.0% for another year-and-a-half, 2) very little progress in bringing down the unemployment rate, and 3) inflation most likely trending below their prescribed target. According to their projections, they are missing both sides of their dual mandate.” (Source: Craig Dismuke in THE MARKET TODAY, June 21, 2012.)
- ❖ The May 2012 Colorado Employment Situation was released on June 15, 2012. Using non-seasonally adjusted employment data, **Colorado’s unemployment rate** for May was estimated to be 8.2% compared to the national unemployment rate of 7.9%. Larimer County was down to 6.4%. Boulder County was reported at 6.2% and Weld County at 8.8%. Data for cities showed large shifts due to a major benchmarking effort. Loveland’s unemployment rate is estimated to be 7.6%, up from 7.3% in April and down from 8.4% one year ago. Fort Collins was 6.2%, Boulder 5.6%, and Greeley 9.0%.
- ❖ **Recession Outlook:** Many economists have revised the outlook for a recession in the next six months. The Recession Alert project increased the probability to 0.31 from 0.17 in its June 14 release. (Source: seekingalpha website, Dwaine van Vuuren, June 14, 2012)

[For more information regarding this report, please contact:](#)

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Updated for Colorado Labor data for May

- ❑ Loveland's workforce **expanded** in May, up 644 jobs from April 2012.
- ❑ Compared to one year ago in May, there are 518 more jobs.

May Unemployment Rates

Data not adjusted for seasonality

