

LOVELAND CITY COUNCIL MEETING
LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS
GENERAL IMPROVEMENT DISTRICT BOARD OF DIRECTORS
TUESDAY, NOVEMBER 6, 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 NOVEMBER 16, 2012 AS LOVELAND SALVATION ARMY RED KETTLE KICKOFF DAY

PROCLAMATION DECLARING NOVEMBER 2012 AS AMERICAN MUSIC MONTH

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 following meetings: October 8, October 9, October 10 and October 16, 2012.

2. PUBLIC WORKS

MUNICIPAL CODE AMENDMENT – CONSTRUCTION IN FLOODPLAINS

Consideration on second reading of an ordinance amending the Loveland Municipal Code at Sections 15.14 and Chapter 18.45 regarding construction in floodplains

This is a legislative action to adopt an ordinance amending Sections 15.14.020, 15.14.040, 15.14.050, 15.14.060, 15.14.070, 15.14.074, 15.14.080, 18.45.030, 18.45.060, and adding 18.45.065 of the Loveland Municipal Code concerning the City of Loveland Floodplain Building Code and Floodplain Regulations. These amendments are required by the Federal Emergency Management Agency and the Colorado Water Conservation Board in order to remain compliant under the National Flood Insurance Program. City Council unanimously approved the first reading of the ordinance on October 16, 2012.

3. DEVELOPMENT SERVICES

MUNICIPAL CODE AMENDMENT – HISTORIC PRESERVATION COMMISSION MEMBERSHIP

Consideration on second reading of an ordinance amending Section 2.60.130 of the Loveland Municipal Code pertaining to the Historic Preservation Commission

This item is a legislative action to consider approval on second reading of an ordinance amending Section 2.60.130 of the Loveland Municipal Code. The Historic Preservation Commission unanimously recommends that the City Council amend the code to designate one member of the Commission to be a representative of the Loveland Historical Society. City Council unanimously approved the first reading of the ordinance on October 16, 2012.

4. CITY MANAGER

APPOINTMENT TO HISTORIC PRESERVATION COMMISSION

Consideration of a motion to appoint Mike Perry to serve as the Loveland Historical Society's member of the Historic Preservation Commission

This is an administrative action recommending appointment of a member to the Historic Preservation Commission.

5. HUMAN RESOURCES

COMPENSATION OF THE CITY ATTORNEY AND CITY MANAGER

a) Consideration of Resolution #R-71-2012 of the Loveland City Council regarding the compensation of the City Attorney

b) Consideration of Resolution #R-72-2012 of the Loveland City Council regarding the compensation of the City Manager

This is an administrative action regarding compensation of the City Attorney and the City Manager. At the direction of City Council, the 2013 annual base salary for the City Attorney and City Manager shall receive a three and a half percent (3.5%) merit increase beginning on the initial pay period in 2013.

6. PUBLIC WORKS

IGA – TRAFFIC SIGNAL INTERCONNECT SYSTEM

Consideration of Resolution #R-73-2012 approving an Intergovernmental Agreement between the City of Loveland, Colorado and the State of Colorado, acting by and through the Colorado Department of Transportation, for design and construction of a Traffic Signal Interconnect System expansion along regionally-significant corridors

This is an administrative action. 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. The funding for this grant, which brings a significant amount of unexpected federal funding to the City, along with the City General portion, was approved by Ordinance at the July 17, 2012 meeting.

7. **PUBLIC WORKS**

IGA – PASS-THRU GRANT ASSISTANCE FOR BERTHOUD RURAL TRANSIT

Consideration of Resolution #R-74-2012 approving an Intergovernmental Agreement between the City of Loveland and the Town of Berthoud, Colorado for 2012 Rural Larimer County Transit Services

This is an administrative action to approve an intergovernmental agreement with the Town of Berthoud for the operation of Larimer County rural transit service in 2012. City of Loveland Transit (COLT) is the designated recipient of the Section 5311 funds and as such, is providing pass-thru grant assistance to Berthoud. Loveland is not operating any service for the Town of Berthoud.

8. **PUBLIC WORKS**

AGRICULTURAL FARMING LEASE

Consideration of Resolution #R-75-2012 approving an agricultural farming lease with Dennis Orback for real property owned by the City of Loveland near the intersection of State Highway 402 and Interstate 25

This is an administrative action to adopt a resolution approving a lease with Dennis Orback to farm the 97 acres of City-owned property at the southwest corner of Highway 402 and I-25.

9. **AIRPORT**

PUBLIC HEARING

SUPPLEMENTAL APPROPRIATION & AUTHORIZATION FOR GRANT AGREEMENT

a) **Consideration of Resolution #R-76-2012 authorizing the City Manager to execute a grant agreement with the State of Colorado Division of Aeronautics (CDAG #13-FNL-S01) for equipment, improvements and funding pertaining to the Fort Collins-Loveland Municipal Airport**

b) **Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 Ft. Collins-Loveland Municipal Airport budget for the purchase of snow removal equipment**

This is an administrative action. The ordinance appropriates a State grant and the local match for the purchase of snow removal equipment for the Airport. The resolution authorizes the City Manager to execute the grant agreement.

10. **FINANCE**

PUBLIC HEARING

SUPPLEMENTAL APPROPRIATION FINALIZE 2012 CITY BUDGET

Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget

This is an administrative action. The ordinance is necessary to resolve several year-end issues and finalize the 2012 budget. Several of the issues are new and the remainder we have been following throughout the year and have waited until now to provide the best forecast for the cost to the end of the year.

11. **FINANCE**
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION 2012 SPECIAL IMPROVEMENT DISTRICT #1
Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to Loveland Special Improvement District #1 2012 budget and authorizing district bond prepayment
 This is an administrative action. The ordinance appropriates reserves from prepaid assessments to call bonds, reducing the principal amount on the bonds to be repaid.

ADJOURN AS CITY COUNCIL AND CONVENE AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)

12. **FINANCE**
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION LOVELAND URBAN RENEWAL AUTHORITY
Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 budget for the Loveland Urban Renewal Authority
 This is an administrative action. The ordinance appropriates tax increment financing (TIF) revenues above what was anticipated in the budget for projects previously approved and under contractual relationships. Additional revenues will be used to improve a new parking lot, continue the Facade Grant program, and pay down contractual reimbursements to developers.

ADJOURN AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY AND CONVENE AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 (GID)

13. **FINANCE**
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION GENERAL IMPROVEMENT DISTRICT #1
Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 Loveland General Improvement District #1 budget for downtown parking improvements
 This is an administrative action. The ordinance appropriates funding for improvements necessary to construct a new parking lot in the downtown area.

ADJOURN AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 AND RECONVENE AS CITY COUNCIL

14. **HUMAN RESOURCES**
PUBLIC HEARING
2013 PAY PLAN AMENDMENT – POLICE DEPARTMENT STEP PLAN
Consideration on first reading of an ordinance amending Ordinance 5709 to remove from the 2013 Pay Plan and adopt a revised Police Department Step Plan for nine (9) designated Police Department positions
 This is an administrative action. Approval of this ordinance amends the 2013 Pay Plan, adopted by Council on second reading on October 16, 2012, to include the addition of the revised Police Department Step Plan for nine (9) designated Police Department positions. These nine (9) positions are currently in a modified step plan, placed within the City-wide Pay Plan established ranges. As a result of a compensation survey, conducted with the assistance of a third party, Mountain States Employers' Council (MSEC), it is necessary to adjust the Step Plan to ensure the City fosters appropriate

workplace performance/practices and attracts and retains employees.

**15. WATER & POWER
PUBLIC HEARING**

MUNICIPAL CODE AMENDMENT – WATER RIGHTS FOR SERVICE OUTSIDE CITY LIMITS

Consideration on first reading of an Ordinance amending the Loveland Municipal Code at Section 19.04.023 regarding water rights for service outside the City limits
This is a legislative action to amend the Loveland Municipal Code at Section 19.04.023. The proposed ordinance is intended to clarify when water rights are required for city water service to property not annexed into the City of Loveland.

**16. CITY MANAGER
PUBLIC HEARING**

AMEND CITY OF LOVELAND INVESTMENT POLICY

Consideration on first reading of an ordinance amending the City of Loveland Investment Policy

This is a legislative action to adopt an ordinance on first reading that will provide for more discretion in the management of the City's investment portfolio. The proposed ordinance implements a change to the City's Investment Policy Section VIII regarding prohibited investments. The specific provisions currently in place provide that investments that fall in a credit rating below the required level for acquisition are to be sold as soon as practical. The proposed change allows the City to conduct analysis of the downgraded investment to determine the risk of default prior to maturity and sets up a procedure to allow downgraded securities to be held to maturity or to a more profitable time. The purpose is to reduce realized losses to the City's portfolio. The impetus for the policy change is a series of downgrades by rating agencies of securities issued by highly rated banks and financial institutions. All corporate securities held by the City are high quality investment grade.

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

17. DEVELOPMENT SERVICES

AMEND MIRASOL COMMUNITY GENERAL DEVELOPMENT PLAN

Consideration on second reading of an ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for property located in the “Mirasol First Subdivision” to the City of Loveland, Larimer County, Colorado

This is a quasi-judicial action to consider an ordinance on second reading that would amend the density, maximum number of units and off-street parking ratios established in the Mirasol Community General Development Plan. The Mirasol PUD consists of 24 acres located south of 4th Street SE, east of S. Madison Avenue and west of S. St. Louis Avenue. The applicant is the Housing Authority of the City of Loveland. City Council unanimously approved the first reading of the ordinance on October 16, 2012.

18. WATER & POWER

IGA - HIGH PARK FIRE RECLAMATION WORK

Consideration of Resolution #R-77-2012 approving an Intergovernmental Agreement between the City of Loveland, Colorado and the City of Greeley, Colorado for High Park fire reclamation work on Buckhorn Creek

This is an administrative action to adopt a resolution approving an intergovernmental agreement with Greeley to share in the cost of reclamation work along Buckhorn Creek, which is tributary to the Big Thompson River, necessitated by damage resulting from the High Park Fire this summer. This work benefits Loveland’s residents by protecting river flows and reservoirs within the city from potentially high levels of ash filled “black water” pollution as a result of runoff and erosion in the burn area. The work does not serve to protect the city’s sources of drinking water from the Big Thompson River, which fortunately were not affected by the High Park Fire.

19. FINANCE

September 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 year to date, ending September 30, 2012.

20. CITY MANAGER

Investment Report for September 2012

This is an information only item. The budget estimate for investment earnings for 2012 is \$2,729,560. Through September 2012, the amount posted to the investment account is \$2,087,650 including realized gains. Actual year-to-date earnings are higher than the year-to-date projection by \$36,838. Based on the August monthly statement, the estimated annualized yield on the U.S. agencies and corporates was to 1.27%, well under the annual target rate of 1.7% for 2012. Reinvestment rates are still near record low levels, much lower than the budget projection.

ADJOURN



CITY COUNCIL

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

PROCLAMATION

- WHEREAS** The City of Loveland recognizes the importance of assisting Loveland families and individuals living in or near poverty in 2013; and
- WHEREAS** More than 50% of our homeless neighbors in Loveland are families in need of emergency services throughout the year; and
- WHEREAS** Funding to help our Loveland families living in poverty has actually decreased for 2013; and
- WHEREAS** We're grateful to the generous people of Loveland who take pride that the Loveland Salvation Army Red Kettle Campaign is an all volunteer effort that insures that 90% of all donations are directly allocated to our Loveland human service agencies in their efforts to reach out to those in greatest need; and
- WHEREAS** Our primary goal is to continue assisting local programs like the House of Neighborly Service, Neighbor to Neighbor Rental Assistance, Loveland Police Chaplains, Back to School backpacks, Christ's Church of the Rockies Front Porch Meal Ministry Boys and Girls Club, Disabled Resource Service, Alternatives to Violence, The Community Kitchen and Salvation Army Special Needs Request Fund.

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim Friday, the 16th of November, 2012 as

LOVELAND SALVATION ARMY RED KETTLE KICKOFF DAY

in Loveland, Colorado, and in so doing, urge all citizens to join us by volunteering to ring bells for two hours between Thanksgiving and Christmas Eve in a citywide effort to help us reach our goal of \$100,000 to aid and assist needy families and individuals in 2013.

Signed this 6th day of November, 2012

Cecil A Gutierrez
 Mayor



CITY COUNCIL

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

PROCLAMATION

WHEREAS, Music, the universal language of peace, is one of the great arts and an outstanding feature of our culture; and

WHEREAS, The National Federation of Music Clubs, having as a foremost objective, the promotion of American music, will stage its annual "Parade of American Music" throughout the month of November; and

WHEREAS, The Colorado Federation of Music Clubs and Loveland join in encouraging and stimulating interest in American music and the enjoyment and appreciation thereof; and

WHEREAS, The "Parade of American Music" is designed to give our own worthy United States composers recognition, encouragement and support, and to impress upon the public of the United States that it has creative as well as performing musical artists and a musical culture equal to that of other countries.

NOW, THEREFORE, we, the City Council of Loveland, in recognition of the American Composer and in order to encourage native creative musical art, do hereby proclaim November, 2012 as

AMERICAN MUSIC MONTH

and urge all our citizens to join in the observance and share the joy of music.

Signed this 6th day of November, 2012

Cecil A. Gutierrez, Mayor

CALL TO ORDER Mayor Gutierrez called the Special meeting of the Loveland City Council to order on the above date at 6:16 PM.

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

1. CITY MANAGER

Executive session for Staff Evaluations for City Manager Bill Cahill, Judge Starks and City Attorney John Duval

At 6:17 p.m., Councilor Shaffer moved that the City Council go into executive session, as authorized under CRS Sections 24-6-402(4)(f), (4)(b) and (4)(g) and City Charter Sections 4-4(c)(3), (c)(5) and (c)(6) for the purpose of considering personnel matters, those matters being the City Council’s annual evaluations of the City Manager, the Municipal Judge and the City Attorney, and in connection with this purpose , to discuss documents not subject to public inspection under the Colorado Open Records Act, such as work-product documents. Councilor Taylor seconded the motion and a roll call vote was held with all councilors present voting in favor thereof. Council reconvened from Executive Session at 10:39 p.m.

ADJOURNMENT Having no further business to come before Council, the October 8, 2012 Special Meeting was adjourned at 10:40 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

City Council Study Session
October 9, 2012
Page 1 of 1

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, Trenary, Klassen, Shaffer, Taylor and McKean. Chief Luke Hecker was also present as Acting City Manager.

1. Airport
Fort Collins-Loveland Municipal Airport Update
Airport Manager Jason Licon introduced this item to Council. Also present was Public Works Director Keith Reester. This was an informational presentation outlining the recent decision made by Allegiant Airlines to discontinue serving the airport, and how the airport will work to obtain another carrier. It also included information regarding airport safety and statistical data regarding airport activity levels. Council discussion supported holding a joint meeting between the two entities and other stakeholders to promote the airport to attract another carrier and inform the public of the critical role the airport holds in economic development of the region. Council thanked staff for the presentation.

Having no further business to come before Council, the October 9, 2012 Study Session was adjourned at 8:40 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

City Council Special Meeting
October 10, 2012
Page 1 of 1

CALL TO ORDER Mayor Gutierrez called the Special meeting of the Loveland City Council to order on the above date at 6:19 PM.

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

1. CITY MANAGER

Executive session for Staff Evaluations for City Manager Bill Cahill, Judge Starks and City Attorney John Duval

At 6:22 p.m., Councilor Shaffer moved that the City Council go into executive session, as authorized under CRS Sections 24-6-402(4)(f), (4)(b) and (4)(g) and City Charter Sections 4-4(c)(3), (c)(5) and (c)(6) for the purpose of considering personnel matters, those matters being the City Council’s annual evaluations of the City Manager and the City Attorney, and in connection with this purpose , to discuss documents not subject to public inspection under the Colorado Open Records Act, such as work-product documents. Councilor Taylor seconded the motion and a roll call vote was held with all councilors present voting in favor thereof. Council reconvened from Executive Session at 9:37 p.m.

ADJOURNMENT Having no further business to come before Council, the October 10, 2012 Special Meeting was adjourned at 9:38 p.m.

Respectfully Submitted,

Teresa G. Andrews, 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, Farley, Klassen, Trenary, Fogle, McKean, Shaffer and Taylor.

PRESENTATION Ed Aitken, Associated Veterans of Loveland, spoke to Council about the Veteran’s Day events. This year’s them is Welcome Home. Tony DuMosch and Steven Rylant were also present.

PROCLAMATION Councilor Trenary read the proclamation which was accepted by Planning Manager Robert Paulsen.

PROCLAMATION

WHEREAS, Community Planning is a vital ingredient in maintaining and enhancing the high quality of life available to Loveland citizens; and

WHEREAS, Community Planning contributes to the preservation of important natural features and to the development of a functional and aesthetically- pleasing built environment; and

WHEREAS, Community Planning provides opportunities for all citizens to become involved in the decision making process that determines the future urban form of our community; and

WHEREAS, the month of October is designated as National Community Planning Month by the American Planning Association and is being celebrated across the nation as an opportunity to highlight the contributions that sound planning makes to our communities; and

WHEREAS, This celebration gives us the opportunity to recognize the participation and dedication of city staff, the planning commission and citizens across the community that have contributed their time and expertise to the improvement of the City of Loveland.

NOW THEREFORE, we, the Loveland City Council, do hereby proclaim October of 2012 as
COMMUNITY PLANNING MONTH

In the City of Loveland.
Signed this 16th day of October, 2012
Cecil A. Gutierrez, Mayor

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 remove any of the items or public hearings listed on the Consent Agenda. Councilor Shaffer moved to approve the Consent Agenda. The motion was seconded by Councilor Farley 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 September 25, 2012 study session and the October 2, 2012 regular meeting were approved.

2. PUBLIC WORKS

Municipal Code Amendment – Storm Drainage Criteria & Standards

Ordinance #5707

Legislative Action: “AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT SECTIONS 13.18.100, 16.24.014, AND 16.24.015 CONCERNING THE CITY OF LOVELAND STORM DRAINAGE CRITERIA AND THE CITY OF LOVELAND STORM DRAINAGE STANDARDS” was approved and ordered published on second reading.

3. FINANCE

2013 City of Loveland Budget

a) Resolution #R-64-2012

Administrative Action: Resolution #R-64-2012 adopting the 2013 Schedule of Rates, Charges and Fees for services provided by the Stormwater Enterprise of the City of Loveland, Colorado and superseding all prior resolutions establishing such rates, charges, and fees was approved.

RESOLUTION #R-64-2012

A RESOLUTION ADOPTING THE 2013 SCHEDULE OF RATES, CHARGES, AND FEES FOR SERVICES PROVIDED BY THE STORM WATER ENTERPRISE OF THE CITY OF LOVELAND, COLORADO AND SUPERSEDING ALL PRIOR RESOLUTIONS ESTABLISHING SUCH RATES, CHARGES, AND FEES

WHEREAS, the Loveland Municipal Charter and Code provide that all utility rates, charges, and fees of the City shall be set by resolution upon two readings of the City Council; and

WHEREAS, the City Council last set the rates, charges, and fees for the services provided by the Storm Water Enterprise in Resolution #R-63-2011; and

WHEREAS, the City Council periodically adjusts the rates, charges, and fees for services provided by the Storm Water Enterprise to more accurately reflect the cost of providing such services to its customers; and

WHEREAS, City staff has presented to the City Council a revised “Schedule of Rates, Charges, and Fees,” a copy of which is attached hereto as Exhibit A and incorporated herein by reference (“Schedule of Rates, Charges, and Fees”).

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

Section 1. That the Schedule of Rates, Charges, and Fees, attached hereto as Exhibit A, is hereby adopted for services provided by the Storm Water Enterprise of the City of Loveland, Colorado and beginning with billings mailed on or after January 1, 2013.

Section 2. That this Resolution shall supersede in all respects all previous resolutions of the City Council which set the rates, charges, and fees now being set, including those set in Resolution #R-63-2011, for all affected billings mailed on or after January 1, 2013.

Section 3. That notwithstanding the foregoing, the rates, charges, and fees as set in Resolution #R-63-2011 shall continue in full force and effect from the date of this Resolution until they are superseded on and after January 1, 2013 as provided herein.

Section 4. That this Resolution shall be effective as of the date of its adoption on second reading as provided in the Loveland Municipal Code.

ADOPTED this 16th day of October, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

b) Resolution #R-65-2012 Administrative Action: Resolution #R-65-2012, adopting the 2013 Schedule of Rates, Charges and Fees for services provided by the Water & Power Department of the City of Loveland and superseding all prior resolutions establishing such rates, charges and fees was approved.

RESOLUTION #R-65-2012

A RESOLUTION ADOPTING THE 2013 SCHEDULE OF RATES, CHARGES, AND FEES FOR SERVICES PROVIDED BY THE WATER AND POWER DEPARTMENT OF THE CITY OF LOVELAND AND SUPERSEDING ALL PRIOR RESOLUTIONS ESTABLISHING SUCH RATES, CHARGES, AND FEES

WHEREAS, the Loveland Municipal Charter and Code provide that all utility rates, charges, and fees of the City shall be set by resolution upon two readings of the City Council; and

WHEREAS, the City Council last set such rates, charges, and fees for the City's Water and Power Department in Resolution #R-64-2011, as amended by Resolution #R-9-2012; and

WHEREAS, the City Council periodically adjusts the fees for such utility services to more accurately reflect the cost of providing the services to its customers; and

WHEREAS, City staff has presented to the City Council a revised "Schedule of Rates, Charges, and Fees," a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference ("Schedule of Rates, Charges, and Fees").

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

Section 1. That the Schedule of Rates, Charges, and Fees, attached hereto as Exhibit A, is hereby adopted for services provided by the Water and Power Department of the City of Loveland and beginning with billings mailed on or after January 1, 2013.

Section 2. That this Resolution shall supersede in all respects all previous resolutions of the City Council which set the rates, charges, and fees now being set, including those set in Resolution #R-64-2011, as amended by Resolution #R-9-2012, for all affected billings mailed on or after January 1, 2013.

Section 3. That notwithstanding the foregoing, the rates, charges, and fees as set in Resolution #R-64-2011, as amended by Resolution #R-9-2012, shall continue in full force and effect from the date of this Resolution until they are superseded on and after January 1, 2013 as provided herein.

Section 4. That this Resolution shall be effective as of the date of its adoption on second reading as provided in the Loveland Municipal Code.

ADOPTED this 16th day of October, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

c) Ordinance #5708 Legislative Action: "AN ORDINANCE ADOPTING THE 2012 MILL LEVY FOR THE GENERAL FUND OF THE CITY OF LOVELAND, COLORADO" was approved and ordered published on second reading.

d) Ordinance #5709 Administrative Action: "AN ORDINANCE ADOPTING A 2013 PAY PLAN FOR CITY EMPLOYEES, AND SUPERSEDING ALL PRIOR ORDINANCES ADOPTING SUCH A PAY PLAN" was approved and ordered published on second reading.

e) Ordinance #5710 Administrative Action: "AN ORDINANCE ADOPTING THE 2013 BUDGET FOR THE CITY OF LOVELAND, COLORADO" was approved and ordered published on second reading.

f) Ordinance #5711 Administrative Action: "AN ORDINANCE MAKING AN APPROPRIATION FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2013 AND ENDING DECEMBER 31, 2013

FOR THE CITY OF LOVELAND, COLORADO” was approved and ordered published on second reading.

4. FINANCE

2013 Budget for the Loveland Special Improvement District #1

Ordinance #5712

Administrative Action: “AN ORDINANCE ADOPTING THE 2013 BUDGET FOR THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1” was approved and ordered published on second reading.

At 6:50 p.m. the City Council adjourned and convened as the Board of Commissioners for the Loveland Urban Renewal Authority (LURA)

5. FINANCE

2013 Budget for the Loveland Urban Renewal Authority

Ordinance #5713

Administrative Action: “AN ORDINANCE ADOPTING THE 2013 BUDGET FOR THE LOVELAND URBAN RENEWAL” was approved and ordered published on second reading.

At 6:50 p.m. the Board of Commissioners for the Loveland Urban Renewal Authority adjourned and convened as the Board of Directors for the Loveland General Improvement District #1 (GID)

6. FINANCE

2013 Budget for the General Improvement District #1

a) Ordinance #5714

Administrative Action: “AN ORDINANCE ADOPTING THE 2013 BUDGET FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1” was approved and ordered published on second reading.

b) Ordinance #5715

Legislative Action: “AN ORDINANCE SETTING THE 2012 MILL LEVY FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1” was approved and ordered published on second reading.

At 6:50 p.m. the Board of Directors for the Loveland General Improvement District #1 adjourned and reconvened as City Council.

7. FINANCE

2013 Airport Budget

Ordinance #5716

Administrative Action: “AN ORDINANCE ADOPTING THE 2013 BUDGET FOR THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT” was approved and ordered published on second reading.

8. WATER & POWER

Windy Gap Firing Project

Resolution #R-68-2012

Administrative Action: Resolution #R-68-2012 approving and authorizing the execution of a Sixth Amendment to the Fourth Interim Agreement with the Municipal Subdistrict, Northern Colorado Water Conservancy District Windy Gap Firing Project Water Activity Enterprise, for participation in the Windy Gap Firing Project was approved.

RESOLUTION #R-68-2012

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A SIXTH AMENDMENT TO THE FOURTH INTERIM AGREEMENT WITH THE MUNICIPAL SUBDISTRICT, NORTHERN COLORADO

WATER CONSERVANCY DISTRICT WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE,
 FOR PARTICIPATION IN THE WINDY GAP FIRING PROJECT

WHEREAS, since the 1970s, the City of Loveland has been a participant in the Windy Gap Project ("Project"), which is managed by the Municipal Subdistrict of the Northern Colorado Water Conservancy District ("Subdistrict"); and

WHEREAS, the City owns 40 units, which represent raw water, in the Windy Gap Project; and

WHEREAS, the Windy Gap Project water rights are junior, and won't supply water during drought without storage; and

WHEREAS, the Subdistrict and participants have been seeking ways to improve the reliability and yield of Windy Gap Project units (the "Windy Gap Firing Project"); and

WHEREAS, the City has been involved in the Windy Gap Firing Project, which has identified a possible reservoir site at Chimney Hollow; and

WHEREAS, the City has reserved 7,000 acre-feet of storage in the Windy Gap Firing Project; and

WHEREAS, the Subdistrict requested a further commitment from all participants, including the City, to make possible the completion of environmental and other permitting, environmental studies, further engineering studies, preliminary design work, and land acquisition for the Project ("the Fourth Phase") by way of a Fourth Interim Agreement Between the Municipal Subdistrict, Northern Colorado Water Conservancy District Windy Gap Firing Project Water Activity Enterprise, and City of Loveland, Colorado for Participation in the Windy Gap Firing Project ("Agreement"), which was signed on February 16, 2006; and

WHEREAS, the Agreement was amended on December 11, 2007 ("First Amendment") to provide additional funding to complete the Fourth Phase; on August 18, 2008 ("Second Amendment") to increase the City's storage capacity in the Project; on June 10, 2009 ("Third Amendment") to provide additional funding to complete the Fourth Phase; on July 15, 2010 to provide additional funding to complete the Fourth Phase ("Fourth Amendment"); and on February 2, 2012 to provide additional funding to complete the Fourth Phase ("Fifth Amendment"); and

WHEREAS, the Subdistrict needs additional funds to complete the Fourth Phase and is requesting that all participants, including the City, execute another amendment to the Agreement committing additional monies proportionate to their commitment to the Project; and

WHEREAS, the Loveland Utilities Commission recommends that the City enter into an amendment to complete the Fourth Phase of the Project; and

WHEREAS, the City Council finds that participation in the Project will benefit the Utility's ratepayers and is in the best interests of Loveland's citizens; and

WHEREAS, the City Council desires to enter into an amendment to complete the Fourth Phase of the Project.

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

Section 1. That the "Sixth Amendment to Fourth Interim Agreement Between the Municipal Subdistrict, Northern Colorado Water Conservancy District Windy Gap Firing Project Water Activity Enterprise, and the City of Loveland for Participation in the Windy Gap Firing Project" ("Sixth Amendment"), attached hereto as Exhibit A and incorporated herein by reference, is approved, and the Mayor and City Clerk are authorized to execute and enter into the Sixth Amendment on behalf of the City of Loveland.

Section 2. That the Mayor is authorized, following consultation with the City Manager and the City Attorney, to approve changes to the form of the Sixth Amendment, in form or in substance, as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

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

ADOPTED this 16th day of October, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

9. PUBLIC WORKS

Municipal Code Amendment – Floodplain Regulations

1st Rdg Ord & P.H.

Legislative Action: A public hearing was held and “AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 15.14 AND CHAPTER 18.45 REGARDING CONSTRUCTION IN FLOODPLAINS” was approved and ordered published on first reading.

10. PUBLIC WORKS

Revisions to Storm Drainage Standards

Resolution #R-69-2012

Legislative Action: Resolution #R-69-2012 ratifying and reaffirming the City of Loveland Storm Drainage Standards and approving amendments thereto dated August 15, 2012 was approved.

RESOLUTION #R-69-2012

A RESOLUTION RATIFYING AND REAFFIRMING THE CITY OF LOVELAND STORM DRAINAGE STANDARDS AND APPROVING AMENDMENTS THERETO DATED AUGUST 15, 2012

WHEREAS, on January 18, 2005 by Resolution #R-10-2005, the Loveland City Council adopted standards related to the construction of storm drainage improvements and stormwater quality components entitled the “City of Loveland Storm Drainage Standards” (“Storm Drainage Standards”); and

WHEREAS, the City Council approved amendments to the Storm Drainage Standards on July 11, 2006 by Resolution #R-58-2006 (revision date November 29, 2005); on October 16, 2007 by Resolution #R-111-2007 (revision date August 17, 2007); and on July 21, 2009 by Resolution #R-67-2009 (revision date May 1, 2009); and

WHEREAS, on August 15, 2012, the City’s Stormwater Utility staff drafted additional amendments to the Storm Drainage Standards; and

WHEREAS, on August 22, 2012, the Construction Advisory Board unanimously approved and recommended that the City Council adopt the proposed amendments dated August 15, 2012 to the Storm Drainage Standards; and

WHEREAS, the City Council finds and determines that it is necessary for the health, safety, and welfare of the public that the City regulate the construction of storm drainage improvements within the City and desires to ratify and reaffirm the Storm Drainage Standards, as revised November 29, 2005, August 17, 2007, and May 1, 2009, and approve the amendments thereto dated August 15, 2012, in accordance with Section 16.24.014 of the Loveland Municipal Code.

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

Section 1. That the City of Loveland Storm Drainage Standards, as revised November 29, 2005, August 17, 2007, and May 1, 2009, a copy of which is on file with the City Clerk and is incorporated herein by this reference, are hereby ratified and reaffirmed as the development standards of the City for the purpose of establishing standards for construction of new storm drainage improvements and stormwater quality components within all developments within the City.

Section 2. That the amendments to the City of Loveland Storm Drainage Standards dated August 15, 2012, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, are hereby adopted.

Section 2. That the City of Loveland Storm Drainage Standards, as revised November 29, 2005, August 17, 2007, and May 1, 2009, and August 15, 2012, shall supersede and replace all previously-adopted versions of the Storm Drainage Standards with respect to construction of all storm drainage improvements and stormwater quality components for all new land use and building permit applications received on or after the effective date of this Resolution.

Section 3. That a copy of the City of Loveland Storm Drainage Standards, as revised November 29, 2005, August 17, 2007, and May 1, 2009, and August 15, 2012, shall be placed on file with the City Clerk.

Section 4. That this Resolution shall take effect as of the date on which Ordinance No. 5707 goes into effect.

ADOPTED this 16th day of October, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk’s Office

11. Development Services

Municipal Code Amendment – Historic Preservation Commission Membership

1st Rdg Ord. & P.H.

Legislative Action: A public hearing was held and “AN ORDINANCE AMENDING SECTION 2.60.130 OF THE LOVELAND MUNICIPAL CODE PERTAINING TO THE HISTORIC PRESERVATION COMMISSION” was approved and ordered published on first reading.

12. Development Services

Sublease Agreement with House of Neighborly Service

Resolution #R-70-2012

Administrative Action: Resolution #R-70-2012 approving a sublease agreement with the House of Neighborly Service for real property leased by the City of Loveland and located at 137 S. Lincoln Avenue in Loveland, Colorado was approved.

RESOLUTION #R-70-2012

A RESOLUTION APPROVING A SUBLEASE AGREEMENT WITH THE HOUSE OF NEIGHBORLY SERVICE FOR REAL PROPERTY LEASED BY THE CITY OF LOVELAND AND LOCATED AT 137 S. LINCOLN AVENUE IN LOVELAND, COLORADO

WHEREAS, on November 1, 2008, the City of Loveland, as tenant, and Galen Stoltzfus, as landlord, entered into a one-year lease agreement (“Lease Agreement”) for certain real property located at 137 S. Lincoln Avenue in Loveland, Colorado (“Property”) with the understanding that the City would sublease the Property to the House of Neighborly Service for social work offices, client services, and operation of a day shelter; and

WHEREAS, pursuant to Article II, Paragraph 2.1 of the Lease Agreement, the City and Mr. Stoltzfus have renewed the Lease Agreement for four consecutive one-year terms, the last of which expires on October 31, 2013; and

WHEREAS, during each renewal term of the Lease Agreement, the City and the House of Neighborly Service have entered into an annual sublease agreement, the last of which expires on October 31, 2012; and

WHEREAS, the City and the House of Neighborly Service desire to enter into a sublease agreement effective November 1, 2012 through October 31, 2013 so that the House of Neighborly Service may use the Property for social work offices, client services, and operation of a day shelter.

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

Section 1. That the “Sublease Agreement,” 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 Sublease Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Sublease Agreement on behalf of the City.

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

ADOPTED this 16th day of October, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk’s Office

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens’ Reports None

b) Business from Council

City Council Regular Meeting
 October 16, 2012
 Page 8 of 10

- Klassen Councilor Klassen toured Scion Industries on October 5, 2012. The company has recently won a government contract worth up to \$3 million. He also mentioned a book signing event last Friday night at Anthology Bookstore for David Jessup's new book Mariano's Crossing. Councilor Klassen also urged Council members to speak into the microphone.
- Trenary Councilor Trenary mentioned the next session of the Larimer County Workforce Employer's Round Table meetings will be hosted at the Loveland Police Institute on Friday mornings. Fall recruitment has begun for open positions on several Loveland Boards and Commissions. Congratulations to all involved with the Loveland Art Studio Tour this past weekend.
- Taylor Councilor Taylor announced the Friends of the Library book sale this coming weekend at the Larimer County Fairgrounds in the Thomas McKee building. On Sunday, October 21st, Scottish author Alexander McCall Smith is speaking at the Roberta Price auditorium from 7:00 to 9:00 pm.
- Shaffer Councilor Shaffer mentioned she participated in the open studio tours last weekend along with Friday Night on the Town. This Thursday is Group Publishing's Community Service awards. She is participating in the Net Zero conference. This Thursday from 3:00 to 5:00 pm is the Lights on after School program at the Loveland Boys and Girls Club. An open house regarding updating the City's Transportation Plan will be held at the Police Institute from 4:00 to 6:00 pm on Wednesday, October 17, 2012.
- Fogle Councilor Fogle enjoyed breakfast at the Milner Schwartz House at the Fairgrounds Park with the Loveland Historical Society. The Loveland Historical Society will begin to look at ways to preserve the old Great Western railroad depot at Monroe and 12th Street.
- Farley Councilor Farley mentioned two celebrations that will be held in honor of the reaccreditation of the Loveland Museum: a family friendly celebration will occur Saturday, October 20, 2012 and a private celebration will be held on October 19, 2012.
- Gutierrez Mayor Gutierrez attended an event, last Friday night, for Foothills Gateway who was celebrating 40 years of operation and serving 19,000 people in Loveland and Fort Collins. The Mayor welcomed a group of people from New Zealand as part of Northern Colorado Friendship Force. On October 25, 2012 a joint, elected official's dinner meeting will be held at the Founders Room in the Lincoln Center, Fort Collins, at 6:00 p.m. The activities of the Highway 287 Coalition will be an agenda item at that meeting.
- New Business Councilor Shaffer moved to direct HR Director Julia Holland to work with the City Attorney's Office to bring a resolution to Council regarding proposed pay increases of 3.5% for the City Manager and City Attorney. Councilor Taylor seconded the motion. A roll call vote was taken with all Councilors voting in favor thereof.
- McKean Councilor McKean mentioned the Bill Reed Lego robotics exhibition is October 27, 2012.
- c) City Manager Report The following three Council members will be working with the City Manager on the agenda for the next City Council Advance: Mayor Gutierrez, Councilor Phil Farley and Councilor Chauncey Taylor.
- 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

13. DEVELOPMENT SERVICES

Amend Mirasol Community General Development Plan

1st Rdg Ord & P.H.

Councilor Fogle recused himself from hearing this item because his wife is an employee of Mirasol.

Quasi-judicial Action: City Planner Kerri Burchett introduced this item to Council. Sam Beters with the Housing Authority of the City of Loveland was also present. This is a quasi-judicial action to consider an ordinance on first reading that would amend the density, maximum number of units and off-street parking ratios established in the Mirasol Community General Development Plan. The Mirasol PUD consists of 24 acres located south of 4th Street SE, east of S. Madison Avenue and west of S. St. Louis Avenue. The applicant is the Housing Authority of the City of Loveland. The Mayor opened the public hearing at 7:30 p.m. and hearing no comments closed the hearing at 7:30 p.m. Councilor Shaffer move to approve and ordered published on first reading “AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR PROPERTY LOCATED IN THE “MIRASOL FIRST SUBDIVISION” TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO”. Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting to approve.

14. FINANCE

**Fund Balance Presentation
Information Only**

Finance Director Brent Worthington introduced this item to Council. This is a presentation of fund balance for end of year 2012 and 2013 under the new Governmental Accounting Standards Board Statement 54 guidelines. The intention of GASB 54 is to improve the transparency of what is included in the fund balance and improve decision making on the use of fund balance in resource allocation discussions.

15. ECONOMIC DEVELOPMENT

**Year One in Review
Information Only**

Economic Development Director Betsey Hale introduced this item to Council. The City established the Economic Development Department in August of 2011. This presentation will recap the accomplishments of the Department in year one.

Shaffer

The Transportation Commission of Colorado dinner meeting is Wednesday October 17, 2012 at 6:30 p.m. at the Loveland Embassy Suites.

ADJOURNMENT

Having no further business to come before Council, the October 16, 2012 Regular Meeting was adjourned at 9:43 p.m.

City Council Regular Meeting
October 16, 2012
Page 10 of 10

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor



CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT

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

AGENDA ITEM: 2
MEETING DATE: 11/6/2012
TO: City Council
FROM: Kevin Gingery, Public Works Department
PRESENTER: Kevin Gingery

TITLE:

Second reading of an ordinance amending the Loveland Municipal Code at Chapter 15.14 and Chapter 18.45 regarding construction in floodplains

RECOMMENDED CITY COUNCIL ACTION:

Adopt the action as recommended

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 Sections 15.14.020, 15.14.040, 15.14.050, 15.14.060, 15.14.070, 15.14.074, 15.14.080, 18.45.030, 18.45.060, and adding 18.45.065 of the Loveland Municipal Code concerning the City of Loveland Floodplain Building Code and Floodplain Regulations. These amendments are required by the Federal Emergency Management Agency and the Colorado Water Conservation Board in order to remain compliant under the National Flood Insurance Program.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

The Federal Emergency Management Agency (FEMA) has published a new Flood Insurance Study (FIS) for Larimer County which incorporates revisions to the Little Thompson River in Berthoud Colorado. In order for the City, and the property owners within the City, to continue

our participation in the National Flood Insurance Program (NFIP), we must modify our floodplain ordinance to incorporate the new Larimer County FIS documents, replacing the older documents now adopted as part of our floodplain ordinance. We must provide documentation to FEMA that we have modified our ordinance before the FIS documents become effective on February 6, 2013 in order to avoid suspension from the NFIP.

In 2010 the Colorado Water Conservation Board (CWCB) underwent a rulemaking process to update state floodplain rules and implement statewide higher floodplain management standards. The new rules went into effect on January 14, 2011. Because the Colorado floodplains are managed at a local level, these new floodplain rules must be incorporated into updates in local floodplain ordinances. CWCB has given communities three years to become compliant with the new floodplain rules. The NFIP regulations include a passage stating that for a community to be in good standing within the NFIP, all state regulations must be followed. We must provide documentation to CWCB that we have modified our ordinances before January 14, 2014 in order to avoid suspension from the NFIP.

City Council unanimously approved the ordinance on first reading on October 16, 2012.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance

FIRST READING October 16, 2012

SECOND READING November 6, 2012

ORDINANCE #5717

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 15.14 AND CHAPTER 18.45 REGARDING CONSTRUCTION IN FLOODPLAINS

WHEREAS, the City of Loveland is required to obtain Federal Emergency Management Agency (“FEMA”) approval of the City’s floodplain ordinances in order to continue to participate in the National Flood Insurance Program (“NFIP”); and

WHEREAS, certain amendments to the City’s floodplain ordinances are required by the FEMA and the Colorado Water Conservation Board in order to remain compliant under the NFIP; and

WHEREAS, the City Council desires to amend the City’s floodplain ordinances to include the required language and remain compliant under the NFIP.

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

Section 1. That Section 15.14.020 of the Loveland Municipal Code is hereby amended to read as follows:

15.14.020 Definitions.

As used in this chapter and in Chapter 18.45 of this code, the following words and phrases shall have the meaning ascribed to them in this section:

“Appeal” means a request for a review of the public works department’s interpretation of any provision of this chapter.

“Areas of special flood hazard” means that land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area of special flood hazard includes those areas designated as the floodway and flood fringe.

“Base flood” means the one hundred-year return frequency flood, or the flood having a one percent chance of being equaled or exceeding in a given year.

“Channel” means a natural or artificial watercourse or drainageway of perceptible extent with definite bed and banks to confine and conduct continuously or periodically flowing water.

“Critical facility” means a structure or related infrastructure, but not the land on which it is situated, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during, or after a flood. Critical facilities are classified under the following categories:

(a) Essential services – facilities including public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and air transportation lifelines;

(b) Hazardous materials – facilities including those that produce or store highly volatile, flammable, explosive, toxic, or water-reactive materials;

(c) At-risk populations – facilities including medical care, congregate care, and schools; and

(d) Vital to restoring normal services – facilities including government operations.

“Critical feature” means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to, building or other structures, mining, dredging, filling grading, paving, excavation or drilling operations.

“Drainageway” means an open linear depression, whether constructed or natural, that functions for the collection and drainage of surface water.

“Existing mobile home park or mobile home subdivision” means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lots on which the mobile home is to be affixed (including, at a minimum, site grading or the pouring of concrete pads, and the construction of streets) was completed before October 5, 1978.

“Expansion of an existing mobile home park or mobile home subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be placed (including the installation of utilities, either final site grading or pouring of concrete or the construction of streets).

“Fill” means a deposit of materials of any kind placed by artificial means.

“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.

“Flood fringe” means that portion of the floodplain inundated by the one hundred-year return frequency flood not within the floodway.

“Flood insurance rate map (FIRM)” means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

“Flood insurance study” means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary - floodway map, and the water surface elevation of the base flood.

“Flood profile” means a graph or longitudinal profile showing the relationship of the water surface elevation of a flood event to location along a stream or river.

“Floodplain” means the land adjacent to a body of water which has been or may hereafter be covered by floodwater.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than six inches.

“Historic structure” means any structure that is listed individually in the National Register of Historic Places or listed individually on the State Inventory of Historic Places.

“Levee” means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

“Levee system” means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

“Lowest floor” means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. “Manufactured home” also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty consecutive days. Whenever the term “mobile home” is used in this chapter or in Chapter 18.45 of this code, such term shall be construed to mean “manufactured home.”

“Mean sea level” means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum of 1929 or other datum, to which base flood elevations shown on a community’s flood insurance rate map are referenced.

“New construction” means structures for which the “start of construction” commenced on or after October 5, 1978.

“New manufactured home park or subdivision” means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or for sale, for which the construction of facilities servicing the lot, including at a minimum the installation of utilities and the construction of streets, was completed on or after October 5, 1978. Whenever the term “new mobile home park or subdivision” is used in this chapter or in Chapter 18.45 of this code, such term shall be construed to mean “new manufactured home park or subdivision.”

“Obstruction” means any dam, wall, wharf, embankment, levee, dike, pile abutment, projection, excavation, channel, rectification, bridge conduit, culvert, building, fence, rock, gravel, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood hazard area which may impede, retard, or change the direction of water flow, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to the damage of life and property elsewhere.

“Program deficiency” means a defect in a community’s floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the National Flood Insurance Program Standards in Section 60.3, 60.4, 60.5 or 60.6.

“Regulatory flood datum” means the reference elevation above mean sea level which represents the peak elevation of the one hundred-year return frequency flood.

“Regulatory flood protection elevation” means the elevation one and one-half feet above the regulatory flood datum.

“Remedy a violation” means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement

provisions of this chapter, or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

“Start of construction” means and includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

“Structure” means a walled and roofed building or manufactured home that is principally above ground.

“Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either: (i) before the improvement or repair is started; or (ii) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include: (i) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which is necessary solely to assure safe living conditions; or (ii) any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

“Variance” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

“Violation” means the failure of a structure or other development to comply with the provisions of this chapter. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in National Flood Insurance Program Standards Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) is presumed to be in violation until such time as that documentation is provided.

“Water surface elevation” means the height, in relation to the National Geodetic Vertical Datum of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Section 2. That Section 15.14.040 of the Loveland Municipal Code is hereby amended to read as follows:

15.14.040 Regulations--Floodway district (FW).

- A. Use of fill. Fill shall not be permitted in the floodway district (FW) except when such fill, acting alone or in combination with existing or future floodplain uses, shall be shown to not increase flood heights during the base flood discharge and such fill shall be protected against erosion where erosive velocities may occur by the use of riprap, bulkheading, or vegetative cover.

- B. Structures. Where structures are allowed by the provisions of Title 18, the following restrictions shall apply:
1. Structures shall not be designed for human habitation. Structures shall be constructed so that the longitudinal axis of the structure is parallel to the direction of the flood flow.
 2. Whenever possible, placement of structures shall be upon the same flood flow lines as those of adjoining structures.
 3. Structures shall be firmly anchored.
 4. All utility services in connection with structures shall, whenever possible, be placed above the regulatory flood protection elevation or, where not practicable, shall be adequately floodproofed in a manner approved by the public works department stormwater division.
- C. Uses. No use shall increase flood heights during the base flood discharge.
- D. All fill and structures allowed within the FW district shall be maintained so that the flood-carrying capacity of the watercourse is not diminished.

Section 3. That Section 15.14.050 of the Loveland Municipal Code is hereby amended to read as follows:

15.14.050 Regulations--Flood fringe district (FF).

- A. Fill. The use of fill in the flood fringe district (FF) shall be the minimum necessary to comply with the provisions of this regulation. When required by the provisions of Title 18, fill in the FF district shall be to a point no lower than the regulatory flood protection elevation for the area in question. Such fill shall further extend at such elevation at least fifteen feet beyond the extremities of any structure erected on such fill. No fill shall be used in such a manner as to restrict the flow capacity of any tributary or other drainageway to the main stream.
- B. Structures.
1. Any structure may be placed in the FF district only if the lowest floor level is at or above the regulatory flood protection elevation. Any new structure or addition to an existing structure on a property removed from the FF district by the issuance of a FEMA Letter of Map Revision Based on Fill (“LOMR-F”) still must be constructed such that its lowest floor level is at or above the regulatory flood protection elevation. Nonresidential structures may be permitted without being placed on fill, provided the floodproofing requirements of Section 15.14.080 are met.
 2. All utility services, furnaces, water heaters, and electrical wiring in connection with structures shall, wherever possible, be placed above the regulatory flood protection elevation or, where elevation is not practicable, shall be adequately floodproofed in a manner approved by the city building official.
 3. If any structure or portions of any nonresidential structure are not constructed upon fill, the portion not on fill shall be floodproofed in a manner consistent with requirements for placing a structure in the FF district to an elevation equal to the regulatory flood protection elevation.
 4. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit

- of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
 - b. The bottom of all openings shall be no higher than one foot above the finished internal and external grade; and
 - c. Openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic entry and exit of floodwaters.
5. Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Section 4. That Section 15.14.060 of the Loveland Municipal Code is hereby amended to read as follows:

15.14.060 Regulations--Areas of special flood hazard.

In all areas of special flood hazards, the following provisions are required:

- A. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, above the regulatory flood protection elevation, or, together with attendant utility and sanitary facilities, shall:
 1. Be floodproofed so that below the regulatory flood protection elevation the structure is watertight with walls substantially impermeable to the passage of water;
 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyance; and
 3. Be certified by a registered professional engineer or architect that the standards of this section are satisfied. Such certification shall be provided to the building official.
- B. All manufactured homes and those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the regulatory flood protection elevation and shall be securely anchored to an adequately anchored foundation system by providing over-the-top ties and frame ties to ground anchors. Specific requirements shall include (i) over-the-top ties at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations (one additional tie per side at intermediate locations for manufactured homes less than fifty feet long); and (ii) frame ties at each corner of the home with five additional ties per side at intermediate points (four additional ties per side at intermediate points for manufactured homes less than fifty feet long). All additions to manufactured homes shall be similarly anchored. All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred pounds.
- C. Located within areas of special flood hazard are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
 1. All encroachments, including fill, new construction, substantial improvements, and other development are prohibited unless certification by a registered professional engineer or architect is provided demonstrating that such encroachments will not

- result in any increase in flood levels during the occurrence of the base flood discharge; and
2. All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions.
- D. All new and substantially improved critical facilities and new additions to critical facilities located within the areas of special flood hazard shall be regulated to a higher standard than structures not determined to be critical facilities. For the purposes of this chapter, protections shall include one of the following: (i) the structure shall be located outside of the areas of special flood hazard; or (ii) the structure's lowest floor level shall be elevated or floodproofed to at least two feet above the regulatory flood datum. New critical facilities shall, when practical as determined by the public works department stormwater division, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a one hundred-year flood event.

Section 5. That Section 15.14.070 of the Loveland Municipal Code is hereby amended to read as follows:

15.14.070 Administration.

- A. Application Requirements. Applications for building permits in the FF district and FW district shall be accompanied by surveys, plot plans, drawings, plans, and other materials as necessary showing compliance of the proposed construction with the provisions of this chapter and the floodplain supplementary zoning resolution. Such submittals may include the following as necessary and shall be prepared by a registered professional engineer and land surveyor as appropriate:
1. Plans drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, drainage facilities, floodproofing measures, and the relationship of the above to the location of the channel, floodway, and the regulatory flood protection elevation, and the following:
 - a. Elevation in relation to mean sea level of the lowest floor, including basement, of all structures;
 - b. Elevation in relation to mean sea level to which any structure has been floodproofed;
 - c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria of this chapter; and
 - d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
 2. A typical valley cross-section showing the stream channel, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and highwater information;
 3. Plans (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location, and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; and photographs showing existing land uses and vegetation upstream and downstream, soil types, and other pertinent information;
 4. A profile showing the slope of the bottom of the channel or flow line of the stream;

5. Specifications for building construction and materials, floodproofing, filling, dredging, grading, channel improvements, storage of materials, water supply, and sanitary facilities;
 6. An additional fee in the amount of one-fourth of the normal permit fee;
 7. All required state and federal permits shall be obtained; and
 8. As-built lowest floor elevations, lowest habitable floor elevations, or floodproofing elevation shall be provided to the public works department stormwater division prior to the occupancy of a structure in an area of special flood hazard.
- B. Administrator. The administrator of this chapter shall be the public works department stormwater division senior civil engineer for the city, who shall have the following duties:
1. To review all development permits to determine that the permit requirements of this chapter have been satisfied;
 2. To review all development permits to determine that all necessary permits have been obtained from federal, state, or local governmental agencies from which prior approval is required;
 3. To review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, the administrator shall assure that the encroachment provisions of this chapter are met;
 4. To obtain and maintain records of elevations and floodproofing levels for all new or substantially improved structures, and whether or not such structures contain basements, and of all other matters, including appeals and variances, pertaining to the administration of this chapter;
 5. To notify adjacent communities and the appropriate state offices prior to the alteration or relocation of a riverine watercourse. Copies of all such notifications shall be submitted to the Federal Emergency Management Agency;
 6. To make interpretations as to the exact locations of the boundaries of the areas of special flood hazard;
 7. To use all available floodplain information and data services to aid in the administration of this chapter; and
 8. To maintain the records of all appeal actions, including technical information, and to report any variances to the Federal Emergency Management Agency.
- C. Appeals. Appeals to the public works department may be taken by any person aggrieved by his inability to obtain a building permit in the FW district or FF district or by any officer, department, board, or bureau of the city. Upon review, the public works department shall have jurisdiction only over the following matters: (i) to review the exact zoning district boundary of the FW and FF districts as it relates to any specific piece of property; and (ii) to determine that the suitability and advisability of alternate methods shall not reduce the capacity of the structure involved to withstand flood damage, and which alternate methods shall not restrict the flow capacity of the main channel or any drainage relative thereto. In appropriate cases, the public works department may issue a variance from the provisions of this chapter only after making a specific finding that the variance will not endanger the health, safety, or welfare of the applicant or any upstream or downstream owner or occupier or land. In granting any variance to the provisions of this chapter, the public works department shall consider the

recommendations and findings of the public works department stormwater division senior civil engineer and other comments from the city administration.

Section 6. That Section 15.14.074 of the Loveland Municipal Code is hereby amended to read as follows:

15.14.074 Variances.

- A. Variances to the provisions of this chapter shall be granted only under the following circumstances:
 1. A showing of good and sufficient cause;
 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, creation of nuisances, fraud on or victimization of the public, or conflict with other existing laws and regulations.
- B. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- C. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation. As the lot size increases beyond one-half acre, the technical justifications required for issuing the variance increases.
- D. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in this chapter.
- E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- F. No variances shall be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- G. In passing upon an application for a variance, the public works department shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and shall give due consideration to the following:
 1. The danger to life and property due to flooding or erosion damage;
 2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 3. The importance of the services provided by the proposed facility to the community;
 4. The necessity to the facility of a waterfront location, where applicable;
 5. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 6. The compatibility of the proposed use with the existing and anticipated development;
 7. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

- H. The public works department may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

Section 7. That Section 15.14.080 of the Loveland Municipal Code is hereby amended to read as follows:

15.14.080 Floodproofing.

Floodproofing measures taken for nonresidential structures pursuant to this chapter shall be designed consistent with the regulatory flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The building department shall require that the applicant submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for a particular area. The following floodproofing measures shall, as applicable, be required or taken in connection with specific construction. Such measures shall be undertaken in a manner consistent with requirements detailed by floodproofing regulations as published by the U.S. Army Corps of Engineers:

- A. Anchorage to resist flotation and lateral movement;
- B. Installation of watertight doors, bulkheads, and shutters, or reinforcement of walls to resist water pressures;
- C. Use of paints, membranes, or mortars to reduce seepage of water through walls;
- D. Addition of mass or weight to structures to resist flotation;
- E. Installation of pumps to lower water level in structures;
- F. Construction of water supply and waste treatment systems so as to prevent the entrance of floodwaters;
- G. Installation of pumping facilities or comparable practices for subsurface drainage systems for buildings to relieve external foundation wall and basement flood pressures;
- H. Construction to resist rupture or collapse caused by water pressure or floating debris;
- I. Installation of valves or controls on sanitary and storm drains which will permit the drain to be closed to prevent backup of sewage and storm waters into the building or structures;
- J. Location of all electrical equipment, lines, circuits, and installed electrical appliances in a manner which will assure they are not subject to flooding;
- K. Construction of water, sewer, and natural gas lines to resist rupture or collapse caused by water pressure; and
- L. Location of any structural storage facilities for chemical explosives, buoyant materials, flammable liquids, or other toxic materials which could be hazardous to public health, safety, and welfare in a manner which will assure that the facilities are situated at elevations above the heights associated with the regulatory flood protection elevation or that the facilities are adequately floodproofed to prevent flotation of storage containers which could result in the escape of toxic materials into floodwaters.

Section 8. That Section 18.45.030 of the Loveland Municipal Code is hereby amended to read as follows:

18.45.030 Establishment of districts.

- A. There are created and established in the city the following special zoning districts: floodway district (FW) and flood fringe district (FF).
- B. The boundaries of the districts are as shown by the flood insurance rate map (FIRM) accompanying the Flood Insurance Study for Larimer County, Colorado and Incorporated areas, dated February 6, 2013, published by the Federal Emergency Management Agency, which map constitutes an addition to the zoning district map of the City of Loveland, Colorado, adopted by Section 18.04.040. The designation of such special district boundaries as shown on the map shall be in addition to the designations shown on the zoning district map, which designations are called “underlying zoning districts” elsewhere in this chapter.
- C. Modifications to the established boundaries for the FW and FF districts may be made by the city council in accordance with the amendment procedures established by this title and shall be based upon city-approved engineering studies, which present modifications or refinements to the original engineering and surveying determinations.

Section 9. That Section 18.45.060 of the Loveland Municipal Code is hereby amended to read as follows:

18.45.060 Flood fringe district.

- A. Uses Permitted Without Special Review. All uses permitted by right in the underlying zoning district but excluding outside storage.
- B. Conditions for Permitted Uses.
 - 1. All structures shall be placed on fill so that the lowest floor (including basement) of such structures is at or above the regulatory flood protection elevation. Any new structure or addition to an existing structure on a property removed from the flood fringe district by the issuance of a FEMA Letter of Map Revision Based on Fill (“LOMR-F”) must still be constructed such that its lowest floor level is at or above the regulatory flood protection elevation. Nonresidential structures may be permitted without being placed on fill, provided the floodproofing requirements of Section 15.14.080 are met;
 - 2. No use shall be commenced or structure built which may limit or restrict the flow capacity of the channel of a tributary or drainage way, or retard drainage of flood waters from the area in which a structure is built;
 - 3. Fill or deposition of materials shall be permitted only to the extent required for placement of structures and their accessory uses;
 - 4. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems; and
 - 5. All new and replacement sanitary sewer systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters, and on-site waste disposal systems shall be located so as to avoid impairment to them or contamination from them during flooding.
- C. Uses Permitted by Special Review. All uses permitted by special review in the underlying zoning district shall be permitted in the flood fringe district, provided the conditions of subsection D of this section are met.
- D. Conditions for Uses Permitted by Special Review. The following special conditions shall apply for uses permitted by special review in the FF district:

1. The requirements and procedures of Chapter 18.40 shall be followed for all applications;
2. Fill or deposition of materials shall not be permitted if such is found to reduce the storage or flow capacity of a waterway;
3. The lowest floor (including basement) of all new structures or substantial improvements to existing structures shall be placed at or above the regulatory flood protection elevation. Any new structure or addition to an existing structure on a property removed from the flood fringe district by the issuance of a FEMA LOMR-F must still be constructed such that its lowest floor level is at or above the regulatory flood protection elevation. Nonresidential structures may be permitted without being placed on fill, provided the floodproofing requirements of Section 15.14.080 are met;
4. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;
5. All new and replacement sanitary sewer systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and on-site waste disposal systems shall be located so as to avoid impairment to them or contamination from them during flooding; and
6. The storage or processing of materials that are in time of flooding buoyant, flammable, poisonous, explosive, or could be injurious to human, plant, or animal life shall be prohibited.

Section 10. That Chapter 18.45 of the Loveland Municipal Code is hereby amended by addition of a new Section 18.45.065 to read as follows:

18.45.065 Areas of special flood hazard.

All new and substantially improved critical facilities and new additions to critical facilities located within the areas of special flood hazard shall be regulated to a higher standard than structures not determined to be critical facilities. For the purposes of this chapter, protections shall include one of the following: (i) the structure shall be located outside of the special flood hazard area; or (ii) the structure's lowest floor level shall be elevated or floodproofed to at least two feet above the regulatory flood datum. New critical facilities shall, when practical as determined by the public works department stormwater division senior civil engineer, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a one hundred-year flood event.

Section 11. 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 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Assistant City Attorney



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

AGENDA ITEM: 3
MEETING DATE: 11/6/12
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Community & Strategic Planning

TITLE:

An ordinance amending Section 2.60.130 of the Loveland Municipal Code pertaining to the Historic Preservation Commission

RECOMMENDED CITY COUNCIL ACTION:

Adopt 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 item is a legislative action to consider approval, on second reading, of an ordinance amending Section 2.60.130 of the Loveland Municipal Code. The Historic Preservation Commission unanimously recommends that the City Council amend the code to designate one member of the Commission to be a representative of the Loveland Historical Society. City Council adopted the ordinance on first reading on October 16, 2012 as an item on the Consent Agenda.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or Negligible

SUMMARY:

On September 17 2012, the Historic Preservation Commission unanimously approved recommendation to the City Council that the proposed amendments to Section 2.60.130 be adopted to provide a designated position for a board member of the Loveland Historical Society on the Loveland Historic Preservation Commission (see attached minutes). The position would be

one of the seven existing position. One position is currently vacant and the person filling that position would have to be interviewed for the position and appointed by City Council.

The Historic Preservation Commission (HPC) recognizes that many of their projects and goals overlap with those of the Loveland Historical Society. The Commissioners believe that having a permanent Loveland Historical Society representative on the HPC will support and assist in achieving their shared projects and goals. Further, the Loveland Historical Society member will bring an established local expertise to the commission. The Loveland Historical Society is recognized as a competent, credible and successful local organization dedicated to working with the city and county governments in preserving the historic fabric and community character of Loveland by encouraging sensitive development and retention of historic buildings.

A precedent for this amendment is set in the member qualifications of the Senior Advisory Board (Code: 2.60.240) (to) include one member from each of the following organizations: Chilson Senior Advisory Committee, Housing Authority of the City of Loveland, Colorado, McKee Senior Services, the Poudre Valley Hospital Aspen Club and the McKee Medical Center Seasons Club.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

- Ordinance
- Draft minutes from 9.17.12 HPC meeting confirming recommendation

FIRST READING October 16, 2012
SECOND READING November 6, 2012

ORDINANCE #5718

AN ORDINANCE AMENDING SECTION 2.60.130 OF THE LOVELAND MUNICIPAL CODE PERTAINING TO THE HISTORIC PRESERVATION COMMISSION

WHEREAS, Section 2.60.130 of the Loveland Municipal Code currently sets forth the membership of the City's Historic Preservation Commission; and

WHEREAS, the Historic Preservation Commission unanimously recommends that the City Council amend Loveland Municipal Code Section 2.60.130 to provide for a designated slot for a representative of the Loveland Historical Society.

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

Section 1. That Section Subsection A. of Section 2.60.130 of the Loveland Municipal Code is hereby amended to read as follows:

2.60.130 Historic preservation commission.

A. There is established a historic preservation commission consisting of seven members appointed by the city council. Members shall have demonstrated interest, competence, or knowledge in historic preservation. The commission shall be comprised of both professionals and lay members and shall be selected, as much as possible, from the fields of history, architecture, landscape architecture, architectural history, prehistoric or historic archaeology, planning, or related disciplines such as the building trades, cultural geography, cultural anthropology, real estate, or law. One member of the commission shall be a board member of the Loveland Historical Society. Three members of the commission shall be professionals or shall have extensive expertise in a preservation-related discipline including, but not limited to, history, architecture, planning, or archaeology. Recognizing that professionals may not be available, this requirement may be waived by the city council following a good faith effort to recruit such professionals. The term of office of each member shall be three years.

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

Section 3. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

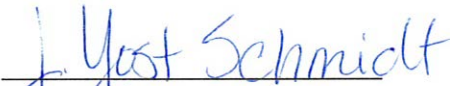
ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

1 **City of Loveland**
 2 **Historic Preservation Commission**
 3 **Meeting Summary**
 4 **September 17, 2012**

5 A meeting of the Loveland Historic Preservation Commission was held Monday, September 17, 2012 at 7:00
 6 P.M. in the City Council Chambers of the Civic Center at 500 East Third Street, Loveland, CO. Historic
 7 Preservation Commissioners in attendance were: Janelle Armentrout, Jim Cox, David Berglund, Stacey Kersley,
 8 Trudi Manuel and Matt Newman. John Fogle, City Council Liaison and staff members, Greg George and Nikki
 9 Garshelis of Development Services were also present.

10
 11 **Guests:** Mike Perry and Sharon Danhauer of the Loveland Historical Society

12
 13 **CALL TO ORDER**

14 *Commission Chair Cox called the meeting to order at 7:12 p.m.*

15
 16 **APPROVAL OF AGENDA**

17 *Commission Chair Cox asked for approval of the agenda. Commissioner Manuel motioned to approve the*
 18 *agenda. Commissioner Kersley seconded and the motion passed unanimously.*

19
 20 **APPROVAL OF MINUTES**

21 *Commissioner Berglund motioned for approval of the minutes. The motion was seconded by Commissioner*
 22 *Kersley. Commissioner Newman stated he would like to ad, under the item of the Swartz Farmstead Update, the*
 23 *HPC support for maintaining the structures. The motion passed unanimously with the addition.*

24
 25 **CITIZEN REPORTS**

26 **None**

27
 28 **CITY COUNCIL UPDATE**

29 *John Fogle advised the HPC that amending the code to include a permanent LHS member would be the most*
 30 *astute choice between the two presented in the Staff Report. The HPC agreed that staff should take the*
 31 *necessary steps to make this change.*

32
 33 **STAFF UPDATE**

34 *Greg George expressed his gratitude to the HPC for their patience and hard work on the Swartz Farmstead.*

35
 36 *Nikki Garshelis asked if there were any questions regarding the written staff report. She reviewed the following*
 37 *items in the report:*

- 38 • *The Milner Schwarz House preliminary form for national designation was been submitted to the*
 39 *state. Nikki said she is waiting to hear back from them on their eligibility determination and if it*
 40 *is too late, the October 5th deadline may be missed. The next deadline is in February 2013, she*
 41 *said.*
- 42 • *The Dinger family has expressed interest in forming a non-profit organization and raising the*
 43 *funds to place the historic carousel in downtown Loveland. They have requested that the City*
 44 *commit land for the building. The Mayor and City Manager have been notified and staff is*
 45 *waiting for further direction.*
- 46 • *The Realtor Workshop was cancelled due to lack of registrations. Commissioner Newman said*
 47 *he would like to discuss rescheduling the workshop to another date.*

48
 49
 50

51 **CONSIDERATION OF NEW BUSINESS**

52

53 **DOWNTOWN HISTORIC DISTRICT UPDATE**

54 *Nikki Garshelis* reported that the City Manager has given his approval to begin the National Historic District
55 designation process. The first steps will involve educating staff and defining the district boundaries. There was
56 a discussion about the boundaries remaining the same as shown on the 2009 map. Nikki will schedule a meeting
57 with some HPC members and staff to confirm the historic district. She said staff will also need assistance from
58 HPC when the public outreach meetings are scheduled. John Fogle suggested sending the list of property
59 owners, the map and list of past supporters to the HPC so they can get started with outreach efforts.
60

61 **PERMANENT LHS COMMISSIONER**

62 *Commission Chair Cox* motioned to have staff take the necessary steps to change the code adding a permanent
63 *Loveland Historical Society* member to the HPC, it was seconded by *Commissioner Berglund*, and it passed
64 *unanimously*.
65

66 **NEXT MEETING AGENDA**

- 67 • Swartz Farmstead Update
 - 68 • Milner Schwarz House National Designation Application Update
 - 69 • Downtown Historic District
 - 70 • Dinger Carousel Update
 - 71 • Bishop House Update
- 72

73 **COMMISSIONER COMMENTS**

- 74 • *Commissioner Manuel* asked staff to put the flyer about the differences between Loveland’s history
75 organizations on the website. Nikki said she will check into it but thought it was already on the website.
- 76

77 **Meeting adjourned at 7:46p.m.**



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: 4
MEETING DATE: 11/6/2012
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill

TITLE:

Appointment to Historic Preservation Commission

RECOMMENDED CITY COUNCIL ACTION:

Motion to appoint Mike Perry to serve as the Loveland Historical Society's member of the Historic Preservation Commission for a full term effective until June 30, 2015

OPTIONS:

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

DESCRIPTION:

This is an administrative item recommending appointment of a member to the Historic Preservation Commission.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible
-

SUMMARY:

In a separate item on this November 6, 2012 agenda, City Council will consider an ordinance on second reading amending Section 2.60.130 of the Loveland Municipal Code pertaining to the Historic Preservation Commission ("HPC".) This will amend the code to provide for a designated slot for a representative of the Loveland Historical Society. On October 15, 2012, the HPC unanimously approved the recommendation to appoint Mike Perry, Loveland Historical Society board member as the society's representative on the Historic Preservation Commission for a full term effective until June 30, 2015.

REVIEWED BY CITY MANAGER: *William D. Cahill*

LIST OF ATTACHMENTS:

None



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

AGENDA ITEM: 5
MEETING DATE: 11/6/2012
TO: City Council
FROM: Julia Holland, Human Resources Director
PRESENTER: Julia Holland

TITLE:

- A) A Resolution of the Loveland City Council regarding the compensation of the City Attorney
- B) A resolution of the Loveland City Council regarding the compensation of the City Manager

RECOMMENDED CITY COUNCIL ACTION:

Adopt the Resolutions

OPTIONS:

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

DESCRIPTION:

This is an administrative action regarding compensation of the City Attorney and the City Manager. At the direction of City Council, the 2013 annual base salary for the City Attorney and City Manager shall receive a three and a half percent (3.5%) merit increase beginning on the initial pay period in 2013.

BUDGET IMPACT:

- Positive
 - Negative
 - Neutral or negligible
-

SUMMARY:

On October 10, 2012, City Council conducted its annual evaluations. On October 16, 2012, City Council directed that the annual base salary for the City Attorney and City Manager increase by three and a half percent (3.5%) for 2013.

REVIEWED BY CITY MANAGER: *William D. Cahill*

LIST OF ATTACHMENTS:

1. A Resolution of the City Council Regarding the Compensation of the City Attorney
2. A Resolution of the City Council Regarding the Compensation of the City Manager

RESOLUTION #R-71-2012**A RESOLUTION OF THE LOVELAND CITY
COUNCIL REGARDING THE COMPENSATION
OF THE CITY ATTORNEY**

WHEREAS, on April 23, 2001, the City of Loveland (“the City”) and John Duval entered into an Agreement appointing John Duval (“Duval”) as Loveland’s City Attorney effective May 8, 2001 (the “Agreement”); and

WHEREAS, on March 2, 2004, the City and Duval entered into that certain “First Addendum to Employment Agreement” (the “First Addendum”) in which paragraph 6.B. of the Agreement was amended to provide a severance payment after Duval’s initial three years of employment with the City; and

WHEREAS, in January of 2005, the City and Duval entered into that certain “Second Addendum to Employment Agreement” (the “Second Addendum”) in which paragraph 4.B. of the Agreement was amended to provide that the City’s contribution to Duval’s 401a plan was increased from two and one-half percent (2.5%) of Duval’s annual salary to three percent (3%) of Duval’s annual salary; and

WHEREAS, on March 3, 2009 City Council adopted Resolution #R-20-2009 increasing the compensation of Duval based on its annual evaluation of Duval in his capacity as City Attorney; and

WHEREAS, on November 3, 2009, City Council adopted Resolution #R-107-2009 that decreased the compensation of Duval through the use of four furlough days based on the economic downturn and to be consistent with the 2010 budget which reduced pay to most city employees through the implementation of four furlough days; and

WHEREAS, on December 7, 2010, City Council adopted Resolution #R-107-2009 that increased Duval’s vacation benefits by 5 days annually, increased the annual maximum vacation accrual carryover from 480 hours to 520 hours, as reflected in the “Third Addendum to Employment Agreement” (the “Third Addendum”) and excluded furlough days from Duval’s compensation; and

WHEREAS, on May 17, 2011, City Council adopted Resolution #R-35-2011 that increased Duval’s compensation for 2011 with a one-time, merit-based payment of 2.5 percent (2.5%) of Duval’s current annual base salary as reflected in the “Fourth Addendum to Employment Agreement” (the “Fourth Addendum”); and

WHEREAS, on November 1, 2011, City Council adopted Resolution #R-72-2011 increasing the compensation of Duval based on its annual evaluation of Duval in his capacity as City Attorney; and

WHEREAS, on October 10th and 16th, 2012, pursuant to the terms of the Agreement and Loveland City Charter Section 9-1(g), City Council conducted its annual evaluation of Duval for 2012, and determined that Duval’s compensation for 2013 should be increased by three and one half percent (3.5%) of Duval’s current annual base salary.

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

Section 1. Duval’s compensation for 2013 should be increased by three and one half percent (3.5%) of Duval’s current annual base salary.

Section 2. Except as amended by this Resolution and the First Addendum, Second Addendum, Third Addendum and Fourth Addendum, Duval’s compensation and benefits as set forth in the Agreement shall remain unchanged and in full force and effect.

Section 3. The Agreement, as amended by the First Addendum, Second Addendum, Third Addendum and Fourth Addendum is hereby reaffirmed and ratified.

Section 4. Adequate cash reserves have been and shall be placed irrevocably in the City budget to be held for any severance payment made necessary pursuant to the terms of the Agreement.

Section 5. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED this ___ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

RESOLUTION #R-72-2012

**A RESOLUTION OF THE LOVELAND CITY
COUNCIL REGARDING THE COMPENSATION
OF THE CITY MANAGER**

WHEREAS, on September 14, 2010, the City of Loveland (“the City”) and William D. Cahill entered into an Agreement appointing William D. Cahill (“Cahill”) as Loveland’s City Manager effective November 1, 2010 (the “Agreement”); and

WHEREAS, on November 1, 2011, City Council adopted Resolution #R-71-2011 increasing the compensation of Cahill based on its annual evaluation of Cahill in his capacity as City Manager; and

WHEREAS, on October 10th and 16th, 2012, pursuant to the terms of the Agreement and Loveland City Charter Section 8-1(d), City Council conducted its annual evaluation of Cahill for 2012, and determined that Cahill’s compensation for 2013 should be increased by three and one half percent (3.5%) of Cahill’s current annual base salary.

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

Section 1. Cahill’s compensation for 2013 should be increased by three and one half percent (3.5%) of Cahill’s current annual base salary.

Section 2. Except as amended by this Resolution, Cahill’s compensation and benefits as set forth in the Agreement shall remain unchanged and in full force and effect.

Section 3. The Agreement is hereby reaffirmed and ratified.

Section 4. Adequate cash reserves have been and shall be placed irrevocably in the City budget to be held for any severance payment made necessary pursuant to the terms of the Agreement.

Section 5. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED this ___ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

A RESOLUTION OF THE LOVELAND CITYCOUNCIL REGARDING THE COMPENSATION OF THE CITY MANAGER 2013



CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT

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

AGENDA ITEM: 6
MEETING DATE: 11/6/2012
TO: City Council
FROM: Keith Reester, Public Works Department
PRESENTER: Dave Klockeman, PE, City Engineer

TITLE:

A Resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado, acting by and through the Colorado Department of Transportation, for design and construction of a Traffic Signal Interconnect System expansion along regionally significant corridors in Loveland

RECOMMENDED CITY COUNCIL ACTION:

Adopt the Resolution

OPTIONS:

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

DESCRIPTION:

This is an administrative action to consider a Resolution approving an Intergovernmental Agreement between the City of Loveland and the Colorado Department of Transportation (CDOT) for a Traffic Signal Interconnect System.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The funding for this grant, which brings a significant amount of unexpected federal funding to the City, along with the City General portion, was approved by Ordinance by City Council at the July 17, 2012 meeting.

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 4 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 the funding will 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:		\$ 883,000
	Local Match*:	\$ 0	
	Local Overmatch**:	<u>\$200,000</u>	
	Local Subtotal	\$200,000	<u>\$ 200,000</u>
	Project Total:		\$1,083,000

* 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 typically required in the amount of 17.21 percent of the total of the Local Match Funds added to the Federal Funds. For this specific type of project, Local Match funds are not required but are encouraged, showing that the Local Entity is interested in putting funding into a specific project. (Note: It was previously considered a condition of this project to provide a Local Match, so that amount was included in the project submittal. In the processing the contract for this project, CDOT determined that a Local Match was not required, but since it was included in the original award consideration, the funds are being designated at "Local Overmatch Funds" as they are necessary to complete the project as submitted.)

** 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. Overmatch Funds are encouraged and were included in this project.

The funding for this grant, which brings a significant amount of unexpected federal funding to the City, along with the City General portion, was approved by Ordinance by City Council at the July 17, 2012 meeting.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. A Resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado, acting by and through the Colorado Department of Transportation, for design and construction of a Traffic Signal Interconnect System expansion along regionally significant corridors in Loveland

RESOLUTION #R-72-2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, FOR DESIGN AND CONSTRUCTION OF A TRAFFIC SIGNAL INTERCONNECT SYSTEM EXPANSION ALONG REGIONALLY-SIGNIFICANT CORRIDORS

WHEREAS, the City of Loveland desires to design and construct a traffic signal interconnect system expansion along regionally-significant corridors within the City of Loveland (the “Project”), which is to be funded, in part, by federal-aid funds administered and made available through the State of Colorado, acting by and through the Colorado Department of Transportation (“CDOT”); and

WHEREAS, federal-aid funds are available for the Project in the amount of Eight Hundred and Eighty-three Thousand Dollars (\$883,000); and

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

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

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

Section 1. That the “State of Colorado Department of Transportation Agreement with City of Loveland,” attached hereto as Exhibit A and incorporated herein by reference (“Intergovernmental Agreement”), is hereby approved.

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

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.

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

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Assistant City Attorney

Exhibit A

(FMLAWRK)
PROJECT #AQC M830-065 (19289)
REGION # (PCO)

Rev 7/8/09
Routing # 13 HA4 49088
SAP O/L# 331000578

STATE OF COLORADO
Department of Transportation
Agreement
with
City of Loveland

TABLE OF CONTENTS

1. PARTIES	2
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY	2
3. RECITALS	2
4. DEFINITIONS	2
5. TERM and EARLY TERMINATION	3
6. SCOPE OF WORK	3
7. OPTION LETTER MODIFICATION	7
8. PAYMENTS	8
9. ACCOUNTING	10
10. REPORTING - NOTIFICATION	10
11. LOCAL AGENCY RECORDS	11
12. CONFIDENTIAL INFORMATION-STATE RECORDS	12
13. CONFLICT OF INTEREST	12
14. REPRESENTATIONS AND WARRANTIES	12
15. INSURANCE	13
16. DEFAULT-BREACH	14
17. REMEDIES	14
18. NOTICES and REPRESENTATIVES	16
19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE	17
20. GOVERNMENTAL IMMUNITY	17
21. STATEWIDE CONTRACT MANAGEMENT SYSTEM	17
22. FEDERAL REQUIREMENTS	18
23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)	18
24. DISPUTES	18
25. GENERAL PROVISIONS	18
26. COLORADO SPECIAL PROVISIONS	21
27. SIGNATURE PAGE	23
28. EXHIBIT A – SCOPE OF WORK	1
29. EXHIBIT B – LOCAL AGENCY RESOLUTION	1
30. EXHIBIT C – FUNDING PROVISIONS	1
31. EXHIBIT D – OPTION LETTER	1
32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST	1
33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS	1
34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE	1
35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	1
36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS	1
37. EXHIBIT J – FEDERAL REQUIREMENTS	1
38. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS	1



1. PARTIES

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

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

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

3. RECITALS

A. Authority, Appropriation, And Approval

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

Federal Authority

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

State Authority

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

B. Consideration

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

C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA. The City of Loveland will construct and install a fiber optic communication system .

D. References

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

4. DEFINITIONS

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

A. Agreement or Contract

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

B. Agreement Funds

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

C. Budget

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

D. Consultant and Contractor

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

E. Evaluation

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

F. Exhibits and Other Attachments

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

G. Goods

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

H. Oversight

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

I. Party or Parties

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

J. Work Budget

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

K. Services

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

L. Work

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

M. Work Product

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

5. TERM and EARLY TERMINATION.

The Parties' respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after ten (10) years of state controllers signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

6. SCOPE OF WORK

A. Completion

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

B. Goods and Services

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

C. Employees

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

D. State and Local Agency Commitments

i. Design

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

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

ii. Local Agency Work

- a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If the Local Agency enters into a contract with a Consultant for the Work:
 - (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
 - (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - (3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

- (4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
- (5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
- (6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
- (a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.
 - (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
 - (c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

Construction

- a) If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.
- b) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- c) The Local Agency shall be responsible for the following:
 - (1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.
 - (2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).
 - (a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23

C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefor, as required by 23 C.F.R. 633.102(e).

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

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

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

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

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

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

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

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

State's Commitments

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

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

ROW and Acquisition/Relocation

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

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

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

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

- (1) Right of way acquisition (3111) for federal participation and non-participation;
- (2) Relocation activities, if applicable (3109);
- (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

Utilities

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

Railroads

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

- a) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b) Obtain the railroad's detailed estimate of the cost of the Work.
- c) Establish future maintenance responsibilities for the proposed installation.
- d) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

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.

Maintenance Obligations

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

7. OPTION LETTER MODIFICATION

Option Letters may be used to extend Agreement terms, 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:

A. 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 D**), 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 of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

B. Option 2 – Option to add overlapping phase without increasing contract dollars.

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

C. 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 Local Agency within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

8. PAYMENTS

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

A. Maximum Amount

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

B. Payment

i. Advance, Interim and Final Payments

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

Interest

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

on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

Available Funds-Contingency-Termination

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

Erroneous Payments

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

C. Use of Funds

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

D. Matching Funds

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

E. Reimbursement of Local Agency Costs

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

i. Reasonable and Necessary

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

ii. Net Cost

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

9. ACCOUNTING

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

A. Local Agency Performing the Work

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

B. Local Agency-Checks or Draws

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

C. State-Administrative Services

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

D. Local Agency-Invoices

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

E. Invoicing Within 60 Days

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

F. Reimbursement of State Costs

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

10. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

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

B. Litigation Reporting

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

C. Noncompliance

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

D. Documents

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

11. LOCAL AGENCY RECORDS

A. Maintenance

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

B. Inspection

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

C. Monitoring

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

D. Final Audit Report

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

12. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. Confidentiality

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

B. Notification

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

C. Use, Security, and Retention

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

D. Disclosure-Liability

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

13. CONFLICT OF INTEREST

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

14. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

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

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the

State, the Local Agency shall provide the State with proof of the Local Agency's authority to enter into this Agreement within 15 days of receiving such request.

C. Licenses, Permits, Etc.

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

15. INSURANCE

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

A. The Local Agency

i. Public Entities

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

ii. Non-Public Entities

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

B. Contractors

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

i. Worker's Compensation

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

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000

any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

iii. Automobile Liability

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

iv. Additional Insured

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

v. Primacy of Coverage

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

vi. Cancellation

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

vii. Subrogation Waiver

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

C. Certificates

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

16. DEFAULT-BREACH

A. Defined

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

B. Notice and Cure Period

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

17. REMEDIES

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the

notice and cure period set forth in **§16(B)**. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

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

1. Obligations and Rights

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

2. Payments

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

3. Damages and Withholding

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

B. Early Termination in the Public Interest

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

i. Method and Content

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

Obligations and Rights

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

Payments

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

C. Remedies Not Involving Termination

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

i. Suspend Performance

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

Withhold Payment

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

Deny Payment

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

Removal

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

Intellectual Property

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

18. NOTICES and REPRESENTATIVES

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

time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Tim Tuttle – P.E.
CDOT – Region 4 – Traffic
1420 2 nd Street
Greeley, CO 80631
(970)350-2103
Tim.tuttle@dot.state.co.us

B. Local Agency:

Derek Schuler, P.E.
City of Loveland
105 W. Fifth Street
Loveland, CO 80537
(970)962-2647
schuld@ci.loveland.co.us

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

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

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

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

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

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

22. FEDERAL REQUIREMENTS

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

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

24. DISPUTES

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

25. GENERAL PROVISIONS

A. Assignment

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

B. Binding Effect

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

C. Captions

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

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification - General

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

G. Jurisdiction and Venue

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

H. Limitations of Liability

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

I. Modification

i. By the Parties

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

By Operation of Law

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

J. Order of Precedence

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

i. Colorado Special Provisions,

The provisions of the main body of this Agreement,

Exhibit A (Scope of Work),

Exhibit B (Local Agency Resolution),

Exhibit C (Funding Provisions),

Exhibit D (Option Letter),

Exhibit E (Local Agency Contract Administration Checklist),

Other exhibits in descending order of their attachment.

K. Severability

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

L. Survival of Certain Agreement Terms

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

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them.

N. Third Party Beneficiaries

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

O. Waiver

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

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

26. COLORADO SPECIAL PROVISIONS

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

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

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

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

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

3. GOVERNMENTAL IMMUNITY.

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

4. INDEPENDENT CONTRACTOR

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

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

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

7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this 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 Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree

with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

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

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

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

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

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

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

SPs Effective 1/1/09

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

27. SIGNATURE PAGE

Agreement Routing Number **13 HA4 49088**

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

<p align="center">THE LOCAL AGENCY City of Loveland</p> <p>By: _____ Official Name of Authorized Individual</p> <p>Title: _____ Official Title of Authorized Individual</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Donald E. Hunt, Executive Director</p> <hr/> <p>By: Timothy J. Harris, P.E., Chief Engineer</p> <p>Date: _____</p>
<p align="center">2nd The Local Agency Signature if Needed</p> <p>By: _____ Official Name of Authorized Individual</p> <p>Title: _____ Official Title of Authorized Individual</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
David J. McDermott, CPA

By: _____

Colorado Department of Transportation

Date: _____

28. EXHIBIT A – SCOPE OF WORK

COLORADO DEPARTMENT OF TRANSPORTATION DESIGN DATA		Orig.Date: 08/21/2012		Project Code # (SA#): 19289		STIP#: SNF5173	
		Rev.Date:		Project #: AQC M830-065			
		Revision #: 0		PE Project Code:			
		Region #: 04		Project Description: Loveland Fiber Optic Project			
Page 1 to 3 Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised							
Submitted By PM: TUTTLET				Approved by Program Engineer:			
Date:				County: 069			
Revised by:				Municipality: Loveland			
Date:				System Code: N-NHS Non-Interstate			
				Oversight By: Delegated/Locally Administered			
				Planned Length: 5.000			
Geographic Location: US34, US287, SH402 IN LOVELAND							
Type of Terrain: Rolling							
Description of Proposed Construction/Improvement(Attach map showing site location) INSTALL FIBER OPTIC COMMUNICATIONS SYSTEM							

1 Project Characteristics (Proposed) <input type="checkbox"/> Lighting <input type="checkbox"/> Handicap Ramps <input type="checkbox"/> Curb and Gutter <input type="checkbox"/> Curb Only <input type="checkbox"/> Sidwalk Width= <input type="checkbox"/> Bikeway Width= <input type="checkbox"/> Parking Lane Width= <input type="checkbox"/> Detours <input type="checkbox"/> Landscaping requirements (description):	Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input type="checkbox"/> None <input type="checkbox"/> Traffic Control Signals <input type="checkbox"/> Striping <input type="checkbox"/> Left-Turn Slots <input type="checkbox"/> Continuous Width= <input type="checkbox"/> Right-Turn Slots <input type="checkbox"/> Continuous Width= Signing <input type="checkbox"/> Construction <input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Other (description): Construction of a Fiber Optic network in the City of Loveland
---	---

2 Right of Way <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">Yes/No</td> <td style="width:10%;"></td> <td style="width:10%; text-align: center;">Est. #</td> </tr> <tr> <td>ROW &/or Perm. Easement Required</td> <td style="text-align: center;">No</td> <td></td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Relocation Required</td> <td style="text-align: center;">No</td> <td></td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Temporary Easement Required:</td> <td style="text-align: center;">No</td> <td></td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Changes in Access:</td> <td style="text-align: center;">No</td> <td></td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Changes to Connecting Roads:</td> <td style="text-align: center;">No</td> <td></td> <td style="text-align: center;">_____</td> </tr> </table>		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)
	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		_____																						

4 Railroad Crossings	# of Crossings:
Recommendations :	

5 Environmental	Type: None	Approved On: //	Project Code # Cleared Under:	Project # Cleared Under:
------------------------	------------	-----------------	-------------------------------	--------------------------

Comments:

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

7 Construction Method	Advertised By: None	NoAd Reason: Design	Entity / Agency Contact Name: Derek Schuler	Phone #: 970-962-2647
------------------------------	---------------------	---------------------	---	-----------------------

8 Safety Considerations	Project Under:	Guardrail meets current standards: No
<input type="checkbox"/> Variance in Minimum Design Standards Required	<input type="checkbox"/> Safety project not all 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):		

Page 2 of 3	Project Code #(SA#): 19289	Project #: AQC M830-065	Revise date:
Use Columns A, B, C, D and/or E to identify facility described below			
A = 287C		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"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other
10 Roadway Class			
Route	287C		
Repl	329.955		
Endrefpt	332.939		
Functional Classification	F		
Facility type	E		
Rural Code	2		
11 Design Standards			
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 l/outside			
Shoulder width r/outside			
Design Speed			
Cross Slope			
Max. super-elevation 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 Dist. ("z")			
Median Width			
Posted Speed			

Page 3 of 3	Project Code #(SA#): 19289	Project #: AQC M830-065	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 rail, capacity, and allowable surfacing thickness):										

13 Remarks										
<p>Loveland Fiber Optics Traffic Signal/ITS Interconnect System Scope of Work (Aug. 2012)</p> <p>The Colorado Department of Transportation (CDOT) will oversee the City of Loveland (city) when the city designs and constructs reliable fiber optics traffic signal/ITS devices and interconnect system expansion along regionally significant corridors in Loveland, CO. The project would include fiber optics for portions of US 34, US 287, SH 402, SW 14th St, Taft Ave, and Wilson Ave. This work may contain the following features: fiber cable, optics/switches to traffic signal cabinets, variable message signs, and roadway weather information systems.</p> <p>Congestion Mitigation & Air Quality (CMAQ) funds have been awarded to this project for construction. CDOT and the city believe it will be beneficial to perform this work because reduction in vehicle delays and air pollution will be accomplished in at least 3 ways:</p> <ol style="list-style-type: none"> 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. <p>This work will conform to CDOT's Specifications for Road and Bridge Construction, American with Disabilities Act and the Larimer County Urban Area Street Standards. The design phase of this work is already underway by a design consultant under city only funding/contract. The design phase will identify more exact requirements and will result in the production of detailed plans and specifications. The construction phase of the contract is planned for the spring/summer of 2013 and is anticipated to take approximately 6-12 months.</p>										

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

**LOCAL AGENCY
ORDINANCE
or
RESOLUTION**

29. EXHIBIT C – FUNDING PROVISIONS

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$883,000.00 which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds				\$883,000.00
	(100% of Participating Costs)			
b. Local Agency Matching Funds				\$0.00
	(0% of Participating Costs)			
d. State Funds (0% of Participating Costs)				\$0.00
	(Including Non-Participating Indirects)			
TOTAL BUDGETED FUNDS				\$883,000.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share				\$0.00
	(10% of Participating Costs)			
b. Local Agency				
Local Agency Share of Participating Costs		\$0.00		
Non-Participating Costs (Including Non-Participating Indirects)		\$0.00		
Estimated to be Billed to Local Agency				\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$883,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$883,000.00
FOR CDOT ENCUMBRANCE PURPOSES				
<i>*Note - \$0.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment.</i>				\$0.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				\$0.00
WBS Element 19289.10.30	Design	3020		\$0.00
WBS Element 19289.20.10	Const	3301		\$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 100% federal-aid funds at \$883,000.00 (CFDA #20 2050) to 0% Local Agency funds at \$0, it being understood that such ratio applies only to the \$883,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$883,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 0% 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 \$883,000.00, 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 \$883,000.00 (For CDOT accounting purposes, the federal funds of \$883,000.00, Local Agency matching funds of \$0.00, and Local Agency Overmatch funds of \$0.00 will be encumbered for a total encumbrance of \$883,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. ***** Note - \$0.00 is currently available. 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 . 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 Local Agency expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

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

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

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

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

iv. Independent CPA

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

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

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

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

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

Vendor name: _____

A. SUBJECT: (Choose applicable options listed below AND in section B and delete the rest)

1. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
2. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
3. Option to update funding (a new Exhibit C must be attached with the option letter and shall be labeled C-1 (future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.)

B. REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

(Insert the following language for use with Option #1):

In accordance with the terms of the original Agreement (insert FY, Agency code & CLIN routing # of Basic Contract) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The Agreement is now increased by (indicate additional dollars here) specified in Paragraph/Section/Provision _____ of the original Agreement.

(Insert the following language for use with Option #2):

In accordance with the terms of the original Agreement (insert FY, Agency code & CLIN routing # Basic Contract) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to add an overlapping phase in (indicate Fiscal Year here) that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous). Total funds for this Agreement remain the same (indicate total dollars here) as referenced in Paragraph/Section/Provision/Exhibit _____ of the original Agreement.

(Insert the following language for use with Option #3):

In accordance with the terms of the original Agreement (insert FY, Agency code & CLIN routing # of Basic Contract) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The Agreement is now (select one: increased and/or decreased) by (insert dollars here) specified in Paragraph/-Section/-Provision/Exhibit _____ of the original Agreement. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. (The following is a NOTE only so please delete when

using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)

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

The amount of the current Fiscal Year contract value is (*increased/decreased*) by (\$ *amount of change*) to a new Agreement value of (\$ _____) to satisfy services/goods ordered under the Agreement for the current fiscal year (*indicate Fiscal Year*). The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

The total Agreement value to include all previous amendments, option letters, etc. is (\$ _____).

The effective date of this Option Letter is upon approval of the State Controller or delegate.

APPROVALS:

For the The Local Agency:

Legal Name of the Local Agency

By: _____
Print Name of Authorized Individual

Signature: _____
Date: _____

Title: Official Title of Authorized Individual

State of Colorado:

John W. Hickenlooper, Governor

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

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

**State Controller
David J. McDermott, CPA**

By: _____

Date: _____

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

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.

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. AQC M830-065	STIP No. SNF5173.044	Project Code 19289	Region 04
Project Location City of Loveland			Date 8/24/2012
Project Description Loveland Fiber Optic Project			
Local Agency City of Loveland	Local Agency Project Manager Derek Schuler		
CDOT Resident Engineer Long Nguyen	CDOT Project Manager Tim Tuttle		
<p>INSTRUCTIONS:</p> <p>This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>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.</p> <p>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.</p> <p>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.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2-1	Review Project to ensure consistency with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5-1	Prepare Design Data - CDOT Form 463	X	X
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
5-4	Conduct Design Scoping Review meeting	X	
5-5	Conduct Public Involvement	X	
5-6	Conduct Field Inspection Review (FIR)	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 (FOR)	X	X
5-11	Justify Force Account Work by the Local Agency	X	#
5-12	Justify Proprietary, Sole Source, or Local Agency Furnished items	X	#
5-13	Document Design Exceptions - CDOT Form 464	X	#
5-14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5-15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8-6	Approve Shop Drawings	X	
8-7	Perform Traffic Control Inspections	X	X
8-8	Perform Construction Surveying	X	
8-9	Monument Right-of-Way	X	
8-10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	
	Provide the name and phone number of the person authorized for this task.		
	<u>Derek Schuler</u> <u>970-962-2647</u> Local Agency Representative Phone number		
8-11	Prepare and Approve Interim and Final Utility/Railroad Billings	X	
8-12	Prepare Local Agency Reimbursement Requests	X	
8-13	Prepare and Authorize Change Orders	X	
8-14	Approve All Change Orders		X
8-15	Monitor Project Financial Status	X	
8-16	Prepare and Submit Monthly Progress Reports	X	X
8-17	Resolve Contractor Claims and Disputes	X	
8-18	Conduct Routine and Random Project Reviews		
	Provide the name and phone number of the person responsible for this task.		
	<u>Long Nguyen</u> <u>970-350-2126</u> CDOT Resident Engineer Phone number		X
MATERIALS			
9-1	Conduct Materials Preconstruction Meeting	X	
9-2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X	X
9-8	Approve Mix Designs • Concrete • Hot Mix Asphalt	X X	
9-9	Check Final Materials Documentation	X	
9-10	Complete and Distribute Final Materials Documentation	X	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10-1	Fulfill Project Bulletin Board and Pre-construction Packet Requirements	X	
10-2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	X
10-3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10-4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" requirements	X	
10-5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10-6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10-7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11-1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11-2	Write Final Project Acceptance Letter	X	
11-3	Advertise for Final Settlement	X	
11-4	Prepare and Distribute Final As-Constructed Plans	X	
11-5	Prepare EEO Certification		
11-6	Check Final Quantities, Plans and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11-7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11-8	Obtain CDOT Form 17 - Contractor DBE Payment Certification from the Contactor and submit to the Resident Engineer	X	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		NA
11-10	Process Final Payment	X	
11-11	Complete and Submit CDOT Form 950 - Project Closure		X
11-12	Retain Project Records for Six Years from Date of Project Closure	X	X
11-13	Retain Final Version of Local Agency Contract Administration Checklist	X	X

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

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

No Federal appropriated funds have been paid or will be paid, by or on behalf 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, Agreement, loan, or cooperative agreement.

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

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

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

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 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 the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

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

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

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 23.41

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

[Delete this Exhibit if the State is doing the work]

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

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

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

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

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

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

- a. Qualifications,
- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and

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

Evaluation factors for final selection are the consultant's:

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

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

36. EXHIBIT I – FEDERAL – AID CONTRACT PROVISIONS

FHWA-1273 -- Revised May 1, 2012

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

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

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

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

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

Shall be fined under this title or imprisoned not more than 5 years or both."

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

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

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

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

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

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

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT J – FEDERAL REQUIREMENTS

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

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

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

B. **Executive Order 11246**

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

C. **Copeland "Anti-Kickback" Act**

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

D. **Davis-Bacon Act**

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

E. **Contract Work Hours and Safety Standards Act**

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

F. **Clear Air Act**

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

G. **Energy Policy and Conservation Act**

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

H. **OMB Circulars**

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

I. Hatch Act

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

J. Nondiscrimination

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

K. ADA

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

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

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

M. Drug-Free Workplace Act

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

N. Age Discrimination Act of 1975

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

O. 23 C.F.R. Part 172

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

P. 23 C.F.R Part 633

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

Q. 23 C.F.R. Part 635

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

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

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

S. Nondiscrimination Provisions:

S. Nondiscrimination Provisions:

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

i. Compliance with Regulations

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

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.

Solicitations for Subcontracts, Including Procurement of Materials and Equipment

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

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.

Sanctions for Noncompliance.

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

T. Incorporation of Provisions§22

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

37. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS
State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
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:

38. 7.1.1 Subrecipient DUNS Number;

39. 7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

40. 7.1.3 Subrecipient Parent DUNS Number;

41. 7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

42. 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:

43. 7.2.1 Subrecipient's DUNS Number as registered in CCR.

44. 7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

45. 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.

46. 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.



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: 11/6/2012
TO: City Council
FROM: Marcy Abreo, Public Works
PRESENTER: Marcy Abreo

TITLE:

A Resolution approving an Intergovernmental Agreement between the City of Loveland and the Town of Berthoud, Colorado for 2012 Rural Larimer County Transit Services

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to approve the resolution

OPTIONS:

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

DESCRIPTION:

This is an administrative action to approve an intergovernmental agreement with the Town of Berthoud for the operation of Larimer County rural transit service in 2012. City of Loveland Transit (COLT) is the designated recipient of the Section 5311 funds and as such, is providing pass-thru grant assistance to Berthoud. Loveland is not operating any service for the Town of Berthoud.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

The *Formula Grants For Other than Urbanized Areas* is a Federal Transit Administration (FTA) program targeted at rural areas, it's formula based, and provides funding to states for the purpose of supporting public transportation in rural areas, with populations of less than

50,000. The goal of the program is to provide the following services to communities with populations less than 50,000:

- Enhance the access of people in non-urbanized areas to health care, shopping, education, employment, public services, and recreation.
- Assist in the maintenance, development, improvement, and use of public transportation systems in non-urbanized areas.
- Encourage and facilitate the most efficient use of all transportation funds used to provide passenger transportation in non-urbanized areas through the coordination of programs and services.
- Assist in the development and support of intercity bus transportation.
- Provide for the participation of private transportation providers in non-urbanized transportation.

The results of the 2000 Census changed the landscape of transit operations in Larimer County by reclassifying the agencies in Fort Collins, Loveland, and Berthoud from rural to urbanized providers. The Census Bureau drew a Transit Management Area (TMA) boundary around the communities that determined where rural and urbanized transportation would be provided. This distinction allows for funding eligibility under the Federal Transit Administration (FTA) Section 5311 funding for rural Larimer County outside of the TMA boundary.

In 2012 the City of Loveland became the designated recipient to administer the grant on behalf of Berthoud. In previous years Larimer County was the designated recipient but due to administrative constraints the County is unable to administer the contract.

The Town of Berthoud will invoice the City of Loveland and request reimbursement for services they provide within the designated areas as outlined in the Exhibits of the IGA. Loveland will not provide service on behalf of Berthoud. This is being finalized late in the year due to a change of personnel and process in Berthoud as well as Loveland determining administrative process with the new duties of administering this grant.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Resolution

Intergovernmental Agreement (attached to the Resolution as Exhibit A)

RESOLUTION #R-74-2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE TOWN OF BERTHOUD, COLORADO FOR 2012 RURAL LARIMER COUNTY TRANSIT SERVICES

WHEREAS, in 22012, the City of Loveland became the designated recipient of federal funds made available by the Federal Transit Administration to support public transportations in rural areas (“5311 Funds”); and

WHEREAS, the City of Loveland and the Town of Berthoud desire to cooperate with one another to use the 5311 Funds made available to Loveland to support public transportation services provided by Berthoud to rural residents who reside within a designated area of Larimer County; and

WHEREAS, as governmental entities in Colorado, the City and Berthoud 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 Intergovernmental Agreement for 2012 Rural Larimer County Transit Services, attached hereto as Exhibit A and incorporated herein by reference (“Intergovernmental Agreement”), is hereby approved.

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

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.

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

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shawn L. Ellis
Assistant City Attorney

Exhibit A
INTERGOVERNMENTAL AGREEMENT
2012 Rural Larimer County Transit Services

THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made this ____ day of _____, 2012, *nunc pro tunc* January 1, 2012, by and between the CITY OF LOVELAND (“**Loveland**”) and the TOWN OF BERTHOUD (“**Contractor**”).

SECTION 1. PURPOSE. The purpose of this Agreement is to provide funding for public transportation services that primarily serve rural residents, many of whom are elderly. **Exhibit A**, “Scope of Services,” attached hereto and incorporated herein by reference, states the terms, conditions, and mutual understandings of the parties as to the services to be provided hereunder (“**Project**”) and the manner in which the Project shall be undertaken and completed.

SECTION 2. ACCOMPLISHMENT OF THE PROJECT.

A. General Requirements. The Contractor shall commence, carry out, and complete the Project, with all practicable dispatch, in a sound, economical, and efficient manner, in accordance with the terms and conditions of this Agreement, all applicable laws, regulations and published policies, and the terms and conditions of **Exhibit B**, “Insurance Requirements,” attached hereto and incorporated herein by reference. In general, the terms of the U.S. Department of Transportation (“**U.S. DOT**”) regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 C.F.R. Part 18, are applicable to Projects with governmental and non-governmental bodies.

B. Application of Federal, State, and Local Laws and Regulations

1. Federal, State, and Local Law. In performance of its obligations under this Agreement, the Contractor shall comply with all applicable provisions of federal, state, and local laws. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements, and all applicable state or local standards which are more stringent shall apply to the performance of the Project. The Contractor agrees to take appropriate measures necessary to ensure compliance by all third-party contractors and other entities participating in the Project with those federal requirements applicable to their performance in the Project. The Contractor shall notify Loveland of all third-party contracts using Project funds.

2. Revisions in Laws and Regulations. The Contractor acknowledges that federal laws, regulations, policies, and related administrative practices applicable to the Project on the date that this Agreement is executed may be modified from time to time.

3. Statement of Financial Assistance. The Contractor shall include the following provisions in any advertisement or invitation to bid for any procurement under this Agreement:

“Statement of Financial Assistance. This contract is subject to a financial assistance agreement between the City of Loveland and the State of Colorado.”

C. Changed Conditions. The Contractor shall notify Loveland immediately of any change in local conditions or any other event that may significantly affect its ability to perform the Project in accordance with the terms of this Agreement. In addition, the Contractor shall notify Loveland as soon as practicable of any decision pertaining to the Contractor’s conduct or litigation that may affect Loveland’s interests in the Project or Loveland’s administration or enforcement of applicable federal laws or regulations. Before the Contractor may name Loveland as a party to litigation for any reason, the Contractor agrees to inform Loveland; this provision applies to any type of litigation whatsoever, in any form.

D. No Obligations to Third Parties. Absent Loveland’s express written consent, and notwithstanding any concurrence by Loveland in or approval of the award of any contract of the Contractor (third-party concern) or subcontract of the Contractor (third-party subcontract) or the solicitation thereof, Loveland shall not be subject to any obligations or liabilities to third-party contractors or third-party subcontractors or any other person not a party to this Agreement in connection with the performance of this Project. This Agreement is not intended to create any third-party rights, and third parties are not entitled to rely upon any provision.

E. Code of Ethics. The Contractor agrees that no employee, officer, board member, or agent of the Contractor may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. The Contractor shall not use these federal funds for lobbying any official or employee of any federal agency, or member or employee of Congress, and shall disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with this federal assistance. No elected officer or employee of Loveland shall participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or organization in which he/she is an officer, director, or employee or in which he/she is directly or indirectly interested or has any personal or pecuniary interest, direct or indirect; nor shall they personally solicit or accept gratuities, favors, or anything of monetary value from the Contractor or its employees.

F. False or Fraudulent Statements or Claims. The Contractor acknowledges that it shall not make a false, fictitious, or fraudulent claim, statement, submission, or certification to Loveland in connection with the Project. The Contractor acknowledges and agrees that by signing this Agreement it certifies or affirms the truthfulness and accuracy of any statement it has made, makes, or may make pertaining to the statements contained in any documentation relating to this Agreement.

G. Documentation of Project Costs. All allowable costs charged to the Project shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature of the charges. The Contractor also agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and to the extent feasible, kept separate from documents not pertaining to the Project.

H. Record Retention. During the course of the Project and for three (3) years thereafter, the Contractor agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as Loveland may require. Upon request, the Contractor agrees to permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project.

I. Ineligible Bidders. Unless otherwise permitted by the Federal Transit Administration (“FTA”) or the state, the Contractor shall refrain from awarding any third-party contracts to a party included in the U.S. General Services Administration’s List of Parties Excluded from Federal Procurement or Non-procurement Programs.

J. Prohibition Against Discrimination in Federal Programs. The Contractor agrees to comply with, and ensure compliance by its third-party contractors and subcontractors under the Project, with all requirements of Title VI of the Civil Rights Act of 1964.

K. Equal Employment Opportunity. The Contractor shall comply with all pertinent and applicable laws, regulations, and ordinances of federal, state, and local governments in regard to employment and services.

L. Access Requirements for Individuals with Disabilities. The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990, as amended.

M. Drug and Alcohol Testing. The Contractor shall conform with FTA’s Drug and Alcohol Testing (Substance Abuse) regulations, as follows:

1. Drug Abuse. The Contractor agrees to comply with U.S. DOT regulations “Drug-Free Workplace Requirements (Grants),” 49 C.F.R. Part 29, Subpart F. To the extent the Contractor or any third-party contractor, or their employees, perform a safety sensitive function under the Project, the Contractor agrees to comply with, and assures the compliance of each affected third-party contractor and their employees, with 49 U.S.C. § 5331, and FTA regulations, “Prevention of Prohibited Drug Use in Transit Operations,” C.F.R. Part 633.

2. Alcohol Abuse. The Contractor agrees to comply with U.S. DOT regulations “Drug-Free Workplace Requirements (Grants),” 49 C.F.R. Part 29, Subpart F. To the extent the Contractor or any third-party contractor, or their employees, perform safety sensitive functions under the Project, the Contractor agrees to comply with, and assures the compliance of each affected third-party contractor and their employees, with 49 U.S.C. § 5331, and FTA regulations, “Prevention of Alcohol Misuse in Transit Operations,” 49 C.F.R. Part 654.

3. Test Reports. The Contractor shall report its testing results to Loveland when requested to do so.

N. Severability. To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement 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.

O. School Bus Operations. Pursuant to 49 U.S.C. § 5323(f) and 49 C.F.R. Part 605, the Contractor may not engage in school bus operations exclusively for the transportation of student and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded equipment, vehicles, or facilities.

P. Labor Protection. The Contractor agrees to comply with the terms and conditions of the Section 13(c) special warranty for the Section 5311 program agreed to by the Secretaries of Transportation and Labor dated May 31, 1979, and the procedures implemented by the Department of Labor or any revision thereto.

Q. Charter Service Operations. The Contractor shall comply with 49 U.S.C. § 5323(d) and 49 C.F.R. Part 604, which provides that recipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions in 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be “incidental,” *i.e.* it must not interfere with or detract from the provisions of mass transportation.

R. Change Orders. Bilateral changes within the scope of this Agreement may be executed using a change order letter signed by both parties to this Agreement if: (1) the changes to the specifications shall result in an adjustment to the price, delivery schedule, or time of performance; (2) the changes result in no adjustment to the price, delivery schedule, or time of performance, in which case the change order shall contain a mutual release of claims for adjustment of price, delivery schedule, or time of performance; (3) the changes are priced-based on the unit prices to be paid for the goods and/or services established in this Agreement; or (4) the changes are priced equal to or less than established catalog generally extended to the public or on prices or rates set by law or regulation. Other modifications shall be executed by formal amendment to this Agreement.

S. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto that may require continued performance or compliance beyond the termination date of the Agreement shall survive such termination date and shall be enforceable by Loveland as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.

SECTION 3. MISCELLANEOUS

A. Authority. The Contractor warrants that it has the lawful authority to enter into this Agreement, and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully, and that the undersigned signatory for the Contractor has been lawfully delegated the authority to sign this Agreement on behalf of the Contractor.

B. Remedies. Remedies for the Contractor’s failure to comply with any federal or state laws or regulations specified herein shall be limited to the remedies specified in such laws and regulations together with the remedies stated in this Agreement.

C. Available Funds. This Agreement is subject to and contingent upon sufficient funds being appropriated, budgeted, or otherwise made available to the Contractor for purposes of meeting all or any portion of the Contractor’s obligations hereunder.

D. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions for the parties, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*, as amended.

E. Independent Contractor (4 C.C.R. 801-2). The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be or shall be deemed to be an agent or employee of Loveland. The Contractor shall pay when due all required employment taxes and income tax and local head tax on any monies paid by the state pursuant to this Agreement. The Contractor acknowledges that the Contractor and its employees are not entitled to unemployment insurance benefits unless the Contractor or third party provides such coverage and that Loveland does not pay for or otherwise provide such coverage. The Contractor shall have no authorization, express or implied, to bind Loveland to any agreements, liability, or understanding except as expressly set forth herein.

F. Insurance. The Contractor shall comply with the insurance requirements as set forth in Exhibit B.

G. 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 Agreement. Any provision of this Agreement, 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 shall not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

SECTION 4. TERM AND TERMINATION.

A. Term. This Agreement shall continue in full force and effect from the date that the Colorado Department of Transportation executes a 2012 5311 Contract with Loveland, until December 31, 2012, unless sooner terminated as provided in this section. Within forty-five days (45) after the termination of the Agreement, the Contractor shall be compensated for all service provided prior to termination.

B. Termination For Convenience. Loveland may terminate this Agreement for convenience at any time; provided that no less than thirty (30) days advance written notice of said termination is provided. Loveland shall be obligated to pay for all services provided through the date of termination.

C. Termination For Cause. Upon written notice, the Contractor agrees that Loveland may suspend or terminate all or part of the financial assistance provided herein if the Contractor has violated the terms of this Agreement, or if Loveland determines that the purpose of the statute under which the Project was authorized would not be adequately served by continuation of federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of the Agreement that significantly endangers substantial performance of the

Project shall provide sufficient grounds for Loveland to terminate this Agreement. In general, termination of any financial assistance under this Agreement shall not invalidate obligations properly incurred by the Contractor and concurred in by Loveland before the termination date to the extent those obligations cannot be canceled. However, if Loveland determines that the Contractor has willfully misused federal assistance funds by failing to make adequate progress or failing to adhere to the terms of this Agreement, Loveland reserves the right to require the Contractor to refund the entire amount of federal funds provided under this Agreement or any lesser amount as may be determined by Loveland.

D. Termination For Non-appropriation of Funds. Loveland may summarily terminate this Agreement if insufficient funds are appropriated or budgeted or funds are otherwise unavailable to Loveland for meeting all or any portion of Loveland's obligations.

IN WITNESS WHEREOF, this Agreement has been executed on the date first written above.

CITY OF LOVELAND

TOWN OF BERTHOUD

By: _____

By: *[Signature]*

Title: _____

Title: *MAYOR*

ATTEST:

ATTEST:

City Clerk

Mary K. Cowdin
Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM: •

Assistant City Attorney

R. B. Fickel
Town Attorney

EXHIBIT A
SCOPE OF SERVICES (BERTHOUD)

A. Services. The Contractor will provide transportation to seniors, disabled residents, low-income residents and the general public who reside within the designated boundaries as shown in **Exhibit C**. The Contractor will provide the following demand response services.

1. Services will be available Monday through Friday throughout the year from January 3, 2012 through December 31, 2012, except on the following holidays: New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the Friday after Thanksgiving, Christmas Eve, and Christmas Day.
2. Service will be available from 7:00 a.m. to 5:00 p.m.
3. Services will be accessed through a centralized local telephone number.
4. Services will be available only to residents of the service area defined in the map attached hereto as Exhibit C.
5. Services will be available only to destinations in the service area defined in the map attached hereto as **Exhibit D**.

B. Project Budget. Loveland will provide a maximum of \$55,000 in FTA 5311 funds to be used to fund eligible trips provided by BATS. These funds will be matched by the Town of Berthoud in the required ratios.

C. Planning Support. The Contractor shall make available records and information of its performance related to this Agreement. Requests for information shall be responded to and information made available within reasonable timeframes. The Contractor shall also participate in planning activities designed to solve problems, improve service and control costs.

D. Reimbursement.

1. Loveland will reimburse the Contractor with federal funds for eligible trips at the contracted rate, after the applicable local match, up to a maximum amount of \$55,000 for operating Rural Berthoud service, based on actual units of service provided. Reimbursement will be at a cost of \$22.00 per one-way trip; provided, however, that any fares collected by the Contractor will be deducted from the reimbursement amount. These fares and any other project income will be retained by the Contractor and used towards provision of service. Local match shall come from local funds.
2. Loveland will administer federal funds for this Project under the terms of this Agreement, provided that the federal funds to be administered by Loveland are made available and remain available.
3. Loveland will reimburse the Contractor for eligible project costs incurred from the date on which the 2012 5311 contract with CDOT is executed through December 31, 2012, within forty-five (45) days following submission of each request for reimbursement. Requests shall be submitted no later than the fifth (5th) day of each month following the month of service and requests shall be made on the reporting forms detailed in **Exhibit E**. Late submittal of such

reporting forms may result in late reimbursement for the month's expenses.

E. Marketing. The Contractor will work with the Loveland to distribute marketing materials on-board and to destinations within the service area. The Contractor will not be expected to make trips for the sole purpose of distributing marketing materials.

**EXHIBIT B
INSURANCE REQUIREMENTS**

The insurance required shall be procured and maintained in full force and effect for the duration of this Agreement and shall be written for not less than the following amounts, or greater if required by law. The Certificate Holder shall be the City of Loveland, 500 E. Third Street, Loveland, CO 80537.

Workers' Compensation and Employers' Liability:

Minimum limits shall be as follows:

State of Colorado:	Statutory
Applicable Federal:	Statutory
Employer's Liability:	\$100,000 Each Accident
	\$500,000 Disease-Policy Limit
	\$100,000 Disease-Each Employee

Waiver of Subrogation

Commercial General Liability:

The policy shall be written on an Occurrence Form including the following coverages: Premises Operations; Products and Completed Operations; Personal and Advertising Injury; Medical Payments; Contractual Liability; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CGOOOI. Minimum limits shall be as follows:

Bodily Injury & Property Damage General Aggregate Limit	\$1,000,000
Products & Completed Operations Aggregate Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$500,000

Other conditions:

1. Products and Completed Operations to be maintained for one (1) year after final payment. Contractor shall continue to provide evidence of such coverage to the County on an annual basis during the aforementioned period (as appropriate).
2. The Contractor agrees that the insurance afforded Loveland is primary.
3. If coverage is to be provided on Claims Made forms, contractor must refer policy to Risk Management Department for approval and additional requirements.

Employee Dishonesty Coverage:

The Contractor shall secure Employee Dishonesty Coverage with a limit of at least \$150,000.

Commercial Automobile Liability

Coverage shall include all owned, non-owned, and hired autos. Minimum limits shall be as follows:

Bodily Injury & Property Damage Combined Single Limit	\$1,000,000
Uninsured/Underinsured Motorist	\$1,000,000

All insurance policies (except Workers' Compensation) shall include Loveland and its elected officials and employees as additional insureds as their interests may appear. The additional insured endorsement should be at least as broad as ISO form CG20 1 for General Liability coverage and similar forms for Commercial Auto and Umbrella Liability.

Loveland reserves the right to reject any insurer it deems not financially acceptable by insurance industry standards. Property and Liability Insurance Companies shall be licensed to do business in Colorado and shall have an AM Best rating of not less than B+

Certificates of insurance on all policies shall give Loveland written notice of not less than thirty (30) days prior to cancellation or material change in coverage.

The Contractor shall furnish Loveland certificates of insurance. The Contractor will receive all sub-contractors certificates of insurance. Such certificates must meet all requirements listed above. **ANY DEVIATIONS THAT DO NOT MEET OR EXCEED THE STANDARDS GIVEN ABOVE MUST BE APPROVED BY LOVELAND PRIOR TO COMMENCEMENT OF WORK BY THE CONTRACTOR.**

Exhibit C – Figure 1

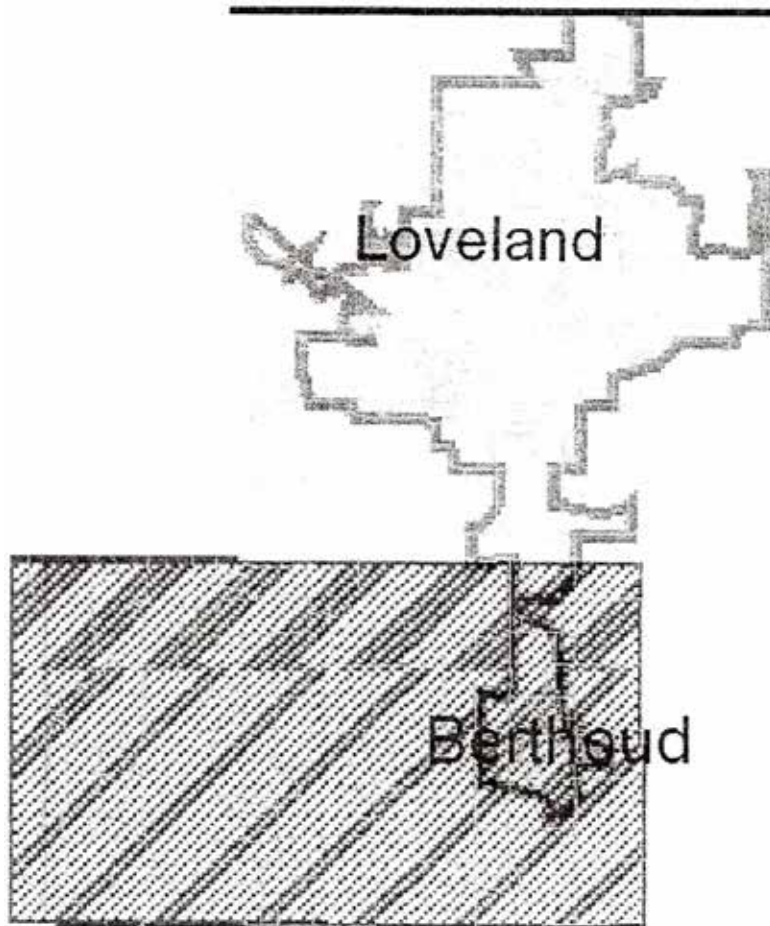
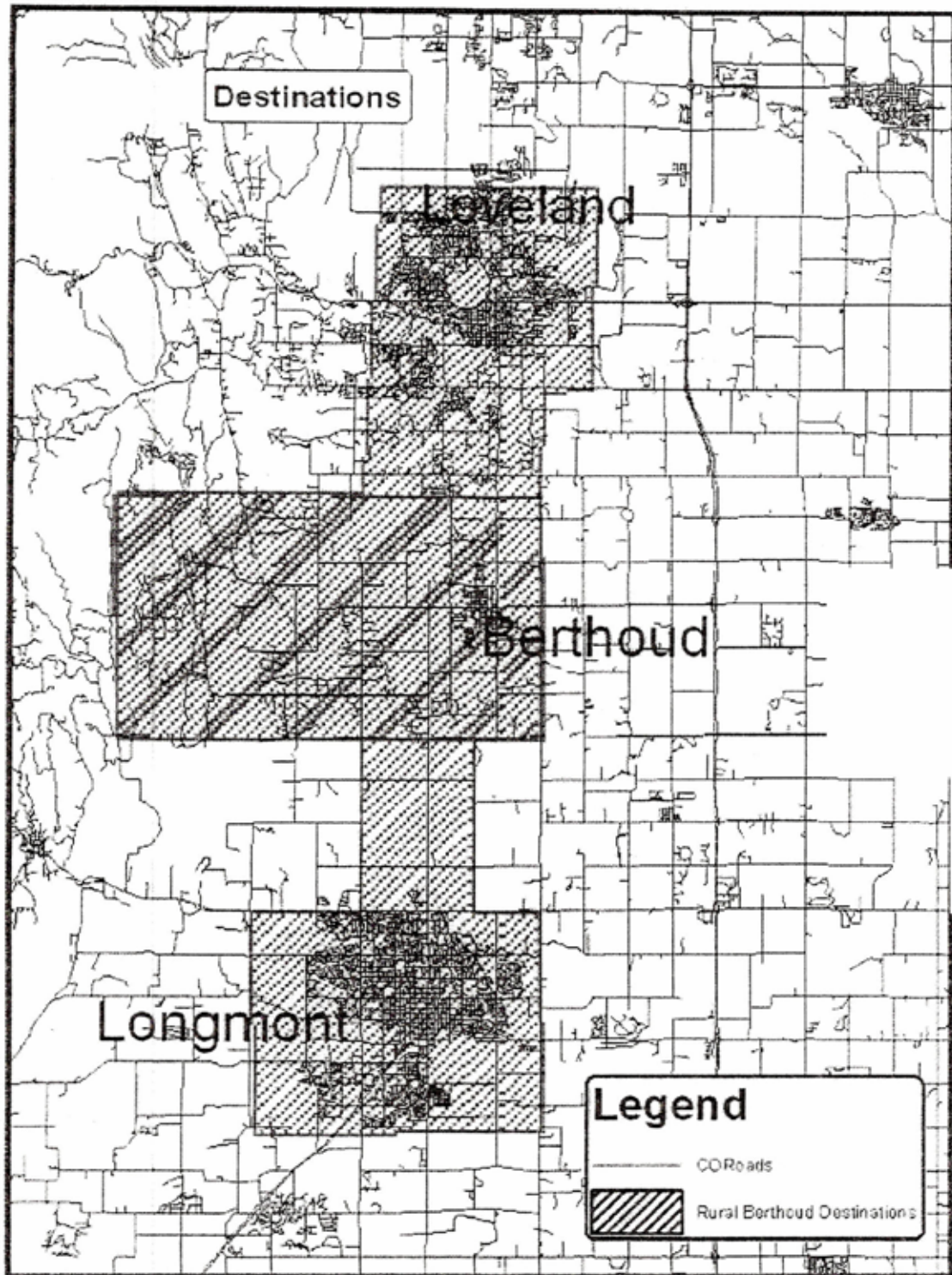


Exhibit D- Figure 2



**EXHIBIT E
REPORTING REQUIREMENTS**

Report for	January		
Trips by	TMA	Non-TMA	Total
Ambulatory	0	0	0
Non-Ambulatory	0	0	0
Personal Care	0	0	0
Guests	0	0	0
Total	0	0	0
Trips by Passenger Classification	TMA	Non-TMA	Total
Disabled- < 60	0	0	0
Disabled - < 60	0	0	0
Non-disabled	0	0	0
General	0	0	0
Total	0	0	0
Client Information (# of persons)	TMA	Non-TMA	Total
Total Number of	0	0	0
Total Clients 2 60	0	0	0
Total New Clients	0	0	0
Gender	TMA	Non-TMA	Total
Male	0	0	0
Female	0	0	0
Total	0	0	0
Trips by Age Group	TMA	Non-TMA	Total
0-5	0	0	0
6	0	0	0
18 - 24	0	0	0
25 - 59	0	0	0
60+	0	0	0
Unknow	0	0	0
Total	0	0	0
Trips by Ethnicity	TMA	Non-TMA	Total
White	0	0	0
Hispanic	0	0	0
Black/African	0	0	0
Asian	0	0	0
American	0	0	0
Native Hawaiian/Other	0	0	0
Other	0	0	0
Unknown	0	0	0
Total	0	0	0

Trips by Trip Purpose	TMA	Non-TMA	Total
Medical	a	a	0
Non-Medical	a	0	a
Nutrition	0	0	0
Employment	0	0	0
Education	0	0	0
Shopping	0	0	0
Social Recreation	0	0	0
Daycare	0	0	0
Personal	0	0	0
Other	0	0	0
Total	0	0	0
Trips by Location (Origin)	TMA	Non-TMA	Total
Fort Collins	0	a	a
Bellevue	0	0	0
Berthoud	0	0	0
LaPorte	0	0	0
Loveland	0	0	0
Timnath	a	0	0
Wellington	0	0	0
Other Larimer	0	0	0
Unknown	0	0	0
Total	0	0	0
System Performance	TMA	Non-TMA	Total
Average Number	0	0	0
Total Vehicle	0	0	0
Total Vehicle	0	0	0
Total Vehicle	0	0	0
Total Cost of Accident	a	0	0
Service Information	TMA	Non-TMA	Total
Cancellations	0	0	0
No-Shows	0	0	0
ADA Eligible	0	0	0
Wheel Chair	0	0	0
Cost per One-Way	\$0.00	\$0,00	\$0,00
Cost per Vehicle Hour	\$0,00	\$0,00	\$0,00
Cost per Vehicle Mile	\$0,00	\$0,00	\$0,00
Total Operating Expenses	\$0,00	\$0.00	\$0,00
Fares/Donations Collected	\$0,00	\$0,00	\$0,00
Net Operating Expenses	\$0.00	\$0,00	\$0,00



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: 8
MEETING DATE: 11/6/2012
TO: City Council
FROM: Ken Cooper, Public Works - Facilities Management
PRESENTER: Ken Cooper

TITLE:

A resolution approving an agricultural farming lease with Dennis Orback for real property owned by the City of Loveland near the intersection of State Highway 402 and Interstate 25

RECOMMENDED CITY COUNCIL ACTION:

Adopt the action as recommended.

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 adopt a resolution approving a lease with Dennis Orback to farm the 97 acres of City-owned property at the southwest corner of Highway 402 and I-25.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible
-

SUMMARY:

The City purchased 97 acres of farmland from Paul Ehrlich at the end of 2007. The property is located at the southwest corner of Highway 402 and I-25 and was annexed into the City at that time. Rick and Rod Johnson had farmed the property for about 25 years for several different owners, and the City decided to continue that relationship with the Johnsons.

During the pre-sale negotiations, the City learned the farmland there yielded a profitable crop in only half of the previous ten years. Therefore, it was decided not to enter into a share-cropping arrangement and instead the City leased the property to the Johnsons at no cost and no risk. There was no risk for the City to lose money in a bad crop year, and any profit/loss from the crops went to the Johnsons.

The arrangement with the Johnsons continued until 2012. By that time, the farming market had changed and it became apparent the City could make money on a cash-lease for the property. The City hired local farmer and engineer, Lar Voss, to assist with the project. Mr. Voss recommended a three-year lease term, allowing the City to get the best price per acre. A formal Request For Proposals process was undertaken in August, 2012. The City received four proposals from local farmers:

Dennis Orback	Johnson & Sons	Jonathan Schwarz	John Van Hattem
\$150/acre	\$128/acre	\$126/acre	\$120/acre
\$13,500/year	\$11,520/year	\$11,340/year	\$10,800/year

After reviewing the proposals and completing reference checks, staff recommends moving forward with Dennis Orback to farm the property. Mr. Orback provided the City with the highest bid per acre and is aware of the various challenges specific to the property, which include:

- A relatively shallow underground pipe from the Gard Lateral Ditch Company which crosses the property.
- Coordination requirements for irrigation water with the two adjacent farms.
- Recent Xcel pipeline project along Highway 402 following the easement on the north border of the City property.
- The City's desire to list and sell the entire property, which could result in a premature end of this three-year farming lease.

In this lease, the City will continue to pay for the costs associated with the irrigation water, which are between \$1,000 - \$2,000 each year. The Johnsons and the City agreed in writing to terminate their lease effective December 31, 2012, so Mr. Orback can begin farming the property on January 1, 2013.

REVIEWED BY CITY MANAGER: *William D. Cahill*

LIST OF ATTACHMENTS:

- Resolution
- Agricultural Farming Lease (attached to the Resolution as Exhibit A)

RESOLUTION #R-75-2012_

A RESOLUTION APPROVING AN AGRICULTURAL FARMING LEASE WITH DENNIS ORBACK FOR REAL PROPERTY OWNED BY THE CITY OF LOVELAND NEAR THE INTERSECTION OF STATE HIGHWAY 402 AND INTERSTATE 25

WHEREAS, the City of Loveland is the owner of certain real property located within the City of Loveland near the intersection of State Highway 402 and Interstate 25 and legally described as set forth in Exhibit A to the attached Agricultural Farming Lease (“Property”); and

WHEREAS, Dennis Orback desires to lease the Property from the City for the purposes of agricultural farming; and

WHEREAS, the City Council desires to lease the Property to Mr. Orback on the terms and conditions set forth in the Agricultural Farming Lease.

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

Section 1. That the Agricultural Farming Lease, attached hereto as Exhibit A and incorporated herein by reference (“Lease”), is hereby approved.

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

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

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shawn L. Oltz
Assistant City Attorney

AGRICULTURAL FARMING LEASE

This Agricultural Farming Lease (“Lease”) is entered into this ____ day of _____, 2012 by and between the **City of Loveland**, a Colorado municipality (“City”), and **Dennis Orback**, an individual (“Tenant”).

In consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. **Premises.** The City hereby leases to the Tenant the following-described premises for agricultural farming purposes: see **Exhibit A**, attached hereto and incorporated herein by reference (“**Premises**”).
2. **Use.** The Tenant agrees to farm the Premises in a good and farm-like manner; to use the Premises for agricultural crop production and, in due season, to plow or otherwise prepare the ground, plant, cultivate, irrigate, and harvest the crops grown thereon; to follow acceptable farming rotation practices; to properly clean out the ditches on the Premises prior to irrigation season; and to engage in such farming practices and soil conservation practices as will protect the fertility of the Premises. The Tenant agrees to keep the Premises free of noxious weeds, trespassers, hunting and any other uses not allowed hereunder.
3. **Rent.** The Tenant shall pay the City rent in the amount of One Hundred and Fifty Dollars (\$150.00) per acre, per year (“**Rent**”). Rent shall be due upon possession of the Premises and thereafter shall be payable to the City by March 1 of each year thereafter. Rent shall be delivered to the City as directed in paragraph 17, below.
4. **Term.** This Lease shall be effective from January 1, 2013 to December 31, 2015, unless sooner terminated as provided herein. This Lease shall automatically continue in full force and effect for successive one year terms until terminated by either party.
5. **Farming Income and Expenses.** The Tenant shall receive one hundred percent (100%) of the crop income and any Production Flexibility payments from the Farm Service Agency. The Tenant shall pay all expenses in connection with the agricultural farming of the Premises, including, without limitation, expenses associated with preparing the ground, planting, cultivating, irrigating, fertilizing, providing pest control, providing weed control, and harvesting the crops.
6. **Hazardous Substances.** The Tenant shall be solely responsible for any and all hazardous substances used or stored on the Premises and shall indemnify, save, and hold harmless the City, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney’s fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of the Tenant’s use or storage of said hazardous substances on the Premises.
7. **Water.** The City shall provide the Tenant with water to irrigate the Premises for agricultural purposes and pay all applicable assessments. The Tenant shall not use said water for

any other purpose. Said water and the allocated amounts for the Premises are described in **Exhibit B**, attached hereto and incorporated herein by reference.

8. Herbicides and Pesticides. The Tenant shall maintain a list of all herbicides or pesticides applied in relation to the Tenant's use of the Premises, including the application area, amount and purpose. Such list shall be available to the City upon request and shall be provided to the City prior to any annual renewal of the Lease.

9. Fencing and Driveways. The Tenant shall keep and maintain all appurtenances to and improvements on the Premises, including, without limitation, fences, buildings, and private driveways and roadways, in good repair at all times, at the Tenant's sole cost and expense. No alterations or extraordinary repairs to the appurtenances to and improvements on the Premises shall be made by the Tenant without the City's prior written approval. Once approved, all such alternations and repairs shall be done at the Tenant's sole cost and expense.

10. Insurance Requirements.

a. General Liability Insurance. The Tenant shall procure and keep in force during the duration of this Lease a policy of comprehensive general liability insurance insuring the Tenant and naming the City as an additional insured against any liability for personal injury, bodily injury, or death arising out of its use of the Premises with at least One Million Dollars (\$1,000,000) each occurrence. The Tenant shall furnish to the City a certificate of insurance evidencing insurance coverage required by this Lease.

b. Workers Compensation Insurance. The Tenant shall pay and maintain workers compensation insurance, if required by law. (Note: if under Colorado law the Tenant is not required to carry workers' compensation insurance, the Tenant shall execute a Certificate of Exemption and Waiver attached hereto as **Exhibit C** and incorporated herein by reference.)

c. Crop Insurance. The City and the Tenant shall each be responsible for paying and maintaining crop damage (optional) insurance.

11. Indemnification. To the extent permitted by law, the Tenant hereby covenants and agrees to indemnify, save, and hold harmless the City, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of the use of the Premises by the Tenant, its employees, or agents. This paragraph shall survive the expiration or termination of this Lease.

12. Termination.

a. Either party shall have the right to terminate this Lease as to the whole or a part of the Premises, without cause, upon one hundred twenty (120) days written notice of termination to the other party. The City shall endeavor to give the Tenant as much notice as possible in order to prevent the Tenant from suffering any lost crops or inability

to harvest. However, in the event the City’s termination notice occurs after the Tenant has planted crops and the termination date occurs before the crops can be harvested, the City’s liability shall be limited to basic costs including inputs, farm operations at the CSU custom farming rates, and _____ percent (___%) of _____ for management costs for that portion of the Premises subject to the written notice of termination; provided that total liability shall not exceed two hundred fifty percent (250%) of the annual lease payment.

b. If the Tenant violates any provision of this Lease, or violates any applicable law, the City shall have the right to terminate this Lease for cause upon thirty (30) days written notice of termination to the Tenant, during which time the Tenant shall have the right to cure any such violation. In the event the City terminates this Lease in accordance with this subparagraph, the City shall not be liable for any damages sustained by the Tenant, including those resulting from lost crops or inability to harvest.

13. **Other Agreements and Regulations.** This Lease is made subject to the agreements and contracts entered into with the Big Thompson Soil Conservation District and the regulations prescribed by the U.S. Department of Agriculture’s Natural Resources Conservation Service, including the Farm Bill Conservation Programs (see www.nrcs.usda.gov).

14. **Governing Law and Venue.** This Lease shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

15. **Assignment.** The Tenant shall not assign this Lease without the City’s prior written consent. This Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors, and assigns.

16. **Severability.** In the event a court of competent jurisdiction holds any provision of this Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Lease.

17. **Notices.** Written notices required under this Lease and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by regular U.S. mail:

If to the City: Ken Cooper, Facilities Manager
Department of Public Works
City of Loveland
410 East 5th Street
Loveland, CO 80537
Phone: (970) 962-2635
Email: coopek@ci.loveland.co.us

If to the Tenant: _____

EXHIBIT A**Legal Description of Premises****Parcel I:**

Lot 2, Ehrlich MLD #03-S2229, County of Larimer, State of Colorado.

Parcel II:

A parcel of land located in the North ½ of Section 27, Township 5 North, Range 68 West of the Sixth Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the west line of the Northwest ¼ of Section 27, Township 5 North, Range 68 West of the Sixth Principal Meridian, monumented on the north by a 2.5" aluminum cap marked "1995 LS 20676" and on the south by a 2.5" aluminum cap marked "1993 LS 12374" as bears north 00 degrees 14 minutes 56 seconds west with all bearing contained herein relative thereto.

Commencing at the northwest corner of Section 27, Township 5 North, Range 68 West of the Sixth Principal Meridian, County of Larimer, State of Colorado; thence run north 89 degrees 38 minutes 50 seconds east along the north line of the Northwest ¼ of said Section 27 for a distance of 30.00 feet; thence leaving said north line run south 00 degrees 14 minutes 56 seconds east for a distance of 30.00 feet to a point on the south right of way line of State Highway 402 said right of way line being 30.00 feet southerly and parallel with the north line of the aforesaid Northwest ¼; thence run north 89 degrees 38 minutes 50 seconds east along said south right of way line for a distance of 1776.91 feet to the point of beginning; thence continue north 89 degrees 38 minutes 50 seconds east along said south right of way line for a distance of 244.93 feet to the westerly right of way to Interstate Highway 25; thence leaving said south right of way line run southeasterly along said westerly right of way for the following four courses;

1. Thence run south 00 degrees 01 minutes 18 seconds east for a distance of 4.72 feet;
2. Thence run south 56 degrees 02 minutes 04 seconds east for a distance of 59.72 feet;
3. Thence run south 34 degrees 14 minutes 24 seconds east for a distance of 1289.50 feet;
4. Thence run south 23 degrees 48 minutes 54 seconds east a distance of 1129.70 feet to the southerly line of Parcel 4 of the land survey plat dated March 31, 1997 and recorded April 4, 1997 at Reception No. 97020793, thence leaving said westerly right of way line run along said southerly line for the following two courses:

1. Thence run south 89 degrees 28 minutes 20 seconds west for a distance of 1030.62 feet;
2. Thence run north 00 degrees 06 minutes 52 seconds east for a distance of 697.05 feet to the south line of Parcel 3 of the aforesaid land survey plat;

Thence leaving said southerly line run south 89 degrees 28 minutes 19 seconds west along said south line for a distance of 371.82 feet; thence leaving said south line run north 00 degrees 47 minutes 40 seconds west for a distance of 563.23 feet to the center of a concrete ditch and the beginning of a curve concave to the north having a radius of 180.22 and a chord bearing north 85 degrees 53 minutes 47 seconds west; thence run westerly along the center of said concrete ditch for the following four courses:

1. Thence run westerly along the arc of said curve through a central angle of 27 degrees 18 minutes 47 seconds for a distance of 85.91 feet to the end of said curve;
2. Thence run north 72 degrees 14 minutes 24 seconds west for a distance of 214.69 feet to the beginning of a curve concave to the south having a radius of 1155.17 feet and a chord bearing of north 76 degrees 28 minutes 52 seconds west;
3. Thence run westerly along the arc of said curve through a central angle of 08 degrees 28 minutes 58 seconds for a distance of 171.03 feet to the end of said curve;
4. Thence run north 80 degrees 43 minutes 21 seconds west a distance of 313.76 feet; thence leaving the center of said concrete ditch run north 43 degrees 50 minutes 12 seconds east for a distance of 1007.44 feet to the point of beginning, County of Larimer, State of Colorado.

EXHIBIT B

Description of Water Rights

- 1.** All water associated with share certificate number 6100 in the Consolidated Home Supply Ditch and Reservoir Company.
- 2.** All water associated with share certificate numbers 738, 745, and 757 in the Big Thompson Ditch and Manufacturing Company.
- 3.** All rights for carriage associated with share certificate number 52 in the Consolidated Christian-Connors Lateral Ditch Company.

Copies of the above-referenced share certificates are attached.



CITY OF LOVELAND
MUNICIPAL AIRPORT

4900 Earhart Road • Loveland, Colorado 80538
(970) 962-2852 • FAX (970) 962-2855 • TDD (970) 962-2620

AGENDA ITEM: 9
MEETING DATE: 11/6/2012
TO: City Council
FROM: Jason Licon, Airport
PRESENTER: Jason Licon, Keith Reester

TITLE:

- A. A Resolution authorizing the City Manager to execute a grant agreement with the State of Colorado Division of Aeronautics (CDAG #13-FNL-S01) for equipment, improvements and funding pertaining to the Fort Collins-Loveland Municipal Airport.
- B. Public hearing and consideration of an Ordinance enacting a supplemental budget and appropriation to the 2012 Ft. Collins-Loveland Municipal Airport budget for the purchase of snow removal equipment

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the resolution and 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 is necessary to resolve several year-end issues and finalize the 2012 budget. Several of the issues are new and the remainder we have been following throughout the year and have waited until now to provide the best forecast for the cost to the end of the year.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The action leverages state funding for 50% of the cost of replacing aging snow removal equipment.

SUMMARY:

The Denver International Airport (DEN) and the State of Colorado's Department of Transportation, Division of Aeronautics are partnered in a program that allows for the acquisition of used equipment from DEN for use by other Colorado airports. The State of Colorado assists with the equipment acquisition through a 50% matching grant for the purchase of the equipment. Through this program our airport has exercised the opportunity to obtain a used rotary snowplow. This piece of equipment would cost over \$300,000 if new, and our airport was able to obtain it for \$18,000. With the 50% match grant from the state the total Cities contributions are \$9,000. This rotary plow will replace a similar unit that was acquired through this same program in the past, and is critical for expedited snow removal from the airport runways and taxiways.

REVIEWED BY CITY MANAGER:

William D. Cabell

LIST OF ATTACHMENTS:

1. Resolution
2. Ordinance

RESOLUTION # R-76-2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE STATE OF COLORADO DIVISION OF AERONAUTICS (CDAG #13-FNL-S01) FOR EQUIPMENT, IMPROVEMENTS AND FUNDING PERTAINING TO THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT

WHEREAS, the General Assembly of the State of Colorado has declared in Title 43 of the Colorado Revised Statutes, Article 10, 1991 in C.R.S. 43-10-101 (“the Act”) that: “...there exists a need to promote the safe operation and accessibility of general aviation and intrastate commercial aviation in this state; that improvement of general aviation and intrastate commercial aviation transportation facilities will promote diversified economic development across the state; and that accessibility to airport facilities for residents of this state is crucial in the event of a medical or other type of emergency”; and

WHEREAS, the Act created the Colorado Aeronautical Board (“the Board”) to establish policy and procedures for distribution of monies in the Aviation Fund and created the Division of Aeronautics (“the Division”) to carry out the directives of the Board, including technical and planning assistance to airports and the administration of the state aviation system grant program. (See C.R.S. §43-10-103, C.R.S. §43-10-105, and C.R.S. §43-10-108.5 of the Act); and

WHEREAS, any entity operating a public-accessible airport in the state may file an application for and be a recipient of a grant to be used solely for aviation purposes (an “Application”); and

WHEREAS, The Division is authorized to assist such airports as request assistance by means of a Resolution passed by the applicant’s duly-authorized governing body, which understands that all funds shall be used exclusively for aviation purposes and that it will comply with all grant procedures and requirements as defined in the Division’s Grant program Project Management Manual, revised 2009 (“the Manual”); and

WHEREAS, the City of Fort Collins and the City of Loveland (“the Cities”) own and operate in the State the Fort Collins-Loveland Municipal Airport (“the Airport”); and

WHEREAS, the Cities have applied for a grant (CDAG #13-FNL-S01) attached hereto as Exhibit A and incorporated by reference (the “Grant Agreement”), from the Division which provides additional funding for such Airport projects of nine thousand dollars (\$9,000.00), subject to the Cities providing matching funds of nine thousand dollars (\$9,000.00).

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

Section 1. That the Council of the City of Loveland (“the Council”), as one of the duly authorized governing bodies of the grant applicant, hereby formally requests assistance from the Colorado Aeronautical Board and the Division of Aeronautics in the form of a state

aviation system grant. The City of Loveland states that such grant shall be used solely for aviation purposes, as determined by the State, and as generally described in the Application.

Section 2. That the City of Loveland makes the commitment (a) to keep the Airport facility accessible to, and open to, the public during the entire useful life of the grant funded improvements/equipment; or (b) to reimburse the Division for any unexpired useful life of the improvements/equipment on a pro-rata basis. By signing the Grant Agreement, the City of Loveland further commits to keep open and accessible for public use all grant funded facilities, improvements and services for their useful life, as determined by the Division and stated in the Grant Agreement.

Section 3. That the Council hereby designates Jason Licon, Airport Director, as the Project Director, as described in the Manual, and authorizes the Project Director to act in all matters relating to the work project proposed in the Application in its behalf, and further authorizes the City Manager to execute the Grant Agreement with such modifications in form or substance as the City Manager, in consultation with the City Attorney’s Office, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 4. That the City of Loveland has appropriated or will appropriate or otherwise make available in a timely manner its share of all funds that are required to be provided by the Cities under the terms and conditions of the Grant Agreement.

Section 5. That the City of Loveland, subject to the foregoing, hereby accepts all guidelines, procedures, standards, and requirements described in the Manual as applicable to the performance of the grant work and hereby approves the Grant Agreement submitted by the State, including all terms and conditions contained therein.

Section 6. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this _____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

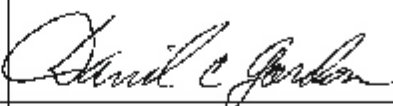



Assistant City Attorney

A Resolution Authorizing the City Manager to Execute a Grant Agreement with the State of Colorado Division of Aeronautics (CDAG #13-FNL-S01, Amendment #2) for Equipment, Improvements and Funding Pertaining to the Fort Collins-Loveland Municipal Airport



CDOT-OSC Contract Template Approval Form

Template Approval Type: <input checked="" type="checkbox"/> New Template Approval <input type="checkbox"/> Template Renewal If So, Date of Last Approval: <input type="checkbox"/> Documentation of Previously Approved Template	
Template Name: Aeronautics	Contract Type: Grant
Template Description/Purpose: To promote aviation for the betterment of the Colorado Aviation System	
CDOT Contracting Unit: Center of Procurement and Contract Services	
CDOT Template Owner (Primary): CDOT Controller's Office Phone: 303-757-9752 E-mail: jason.kotzker@dot.state.co.us	CDOT Template Owner (Secondary): Division of Aeronautics Phone: 303-261-4418 E-mail: kaitlyn.westendorf@dot.state.co.us
Date Approved by OSC: 7/8/11	Date of Next Renewal: (2 years from last approval?) 7/8/13
CDOT Approver Name: David Gordon Phone: 303-261-4418 E-mail: david.gordon@dot.state.co.us	CDOT Approver Signature: 
OSC Approver Name: RaLea Sluga Phone: 303-866-2127 E-mail: RaLea.sluga@state.co.us	OSC Approver Signature: 

STATE OF COLORADO
Colorado Department of Transportation
Colorado Aeronautical Board
Division of Aeronautics
Grant Agreement
with
Cities of Ft. Collins/Loveland

TABLE OF CONTENTS

1. PARTIES.....	1
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.....	1
3. RECITALS.....	2
4. DEFINITIONS.....	2
5. TERM.....	3
6. STATEMENT OF WORK.....	3
7. PAYMENTS TO GRANTEE.....	3
8. REPORTING - NOTIFICATION.....	5
9. GRANTEE RECORDS.....	5
10. CONFIDENTIAL INFORMATION-STATE RECORDS.....	6
11. CONFLICTS OF INTEREST.....	6
12. REPRESENTATIONS AND WARRANTIES.....	7
13. INSURANCE.....	7
14. BREACH.....	8
15. REMEDIES.....	9
16. NOTICES and REPRESENTATIVES.....	10
17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE.....	11
18. GOVERNMENTAL IMMUNITY.....	11
19. STATEWIDE CONTRACT MANAGEMENT SYSTEM.....	11
20. GENERAL PROVISIONS.....	12
21. COLORADO SPECIAL PROVISIONS.....	14
22. SIGNATURE PAGE.....	16

EXHIBIT A (Colorado Discretionary Aviation Grant Application)
EXHIBIT B (Resolution)

1. PARTIES

This Grant Agreement (“Grant”) is entered into by and between the Cities of Ft. Collins/Loveland (hereinafter called “Sponsor”), and the STATE OF COLORADO acting by and through the Colorado Department of Transportation, Division of Aeronautics (“State” or “Division”). The Sponsor represents and warrants to the State that it has the authority to act on behalf of the Cities of Ft. Collins/Loveland (the “Airport”) and to bind the Airport to the provisions in this Grant (the Sponsor and the Airport are collectively hereinafter called the “Grantee”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). Except as provided in Section 7(B)(v), the State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in CRS §43-10-108.5 and funds have been budgeted, appropriated and otherwise made available pursuant to CRS §§39-27-112(2)(b), 43-10-109 and 43-10-102 and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

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

C. Purpose

The purpose of this Grant is to promote aviation for the betterment of the Colorado Aviation System.

D. References

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

4. DEFINITIONS

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

A. Budget

“Budget” means the budget for the Work described in **Exhibit A**.

B. Evaluation

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in §6 and §19.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Colorado Discretionary Aviation Grant Program Application), and **Exhibit B** (Resolution in accordance with the General Assembly of the State of Colorado declared in CRS §43-10-101).

D. Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

E. Grant

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

F. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

G. Local Funds

“Local Funds” provided by any city, county or other private entity to fund performance of the Work.

H. Manual

“Manual” refers to the Aviation Grant Management Manual as approved by the Colorado Aeronautical Board.

I. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

J. Program

“Program” means the Colorado Discretionary Aviation grant program that provides the funding for this Grant.

K. Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6, §19 and **Exhibit A**.

L. Services

“Services” means the required services to be performed by Grantee pursuant to this Grant.

M. Subgrantee

“Subgrantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

N. Work

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and Exhibit A, including the performance of the Services and delivery of the Goods. The Work is further described in the plans and specifications for the project as approved by the Federal Aviation Administration (“FAA”) or the Division.

O. Work Product

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

5. TERM

A. Initial Term-Work Commencement

The Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on 06/30/2016 unless sooner terminated or further extended as specified elsewhere herein.

6. STATEMENT OF WORK

A. Brief Project Description:

Element A: DIA Surplus Equipment

B. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit A** and in the plans and specifications for the project as approved by the FAA or Division on or before 06/30/2016. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

C. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State. Grantee is subject to its local procurement standards. If none exist, Grantee is subject to the general procurement standards of the State.

D. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee’s or Subgrantees’ employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is \$9,000.00 as determined by the State based on available funds.

The maximum amount payable under this Grant to Grantee by the State is 50% of the project cost not to exceed \$9,000.00 for Element A, as determined by the State from available funds in Fund 160, GL Number 4512000010 & SAP Vendor 2000212 & SAP Partner N/A (if applicable), and Cost Center VDG13-033. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A**. The State and Grantee shall participate in providing the Grant amount as follows:

State: \$9,000.00
 Local Funds: \$9,000.00

Federal: \$0.00

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Grant, shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State. Grant Funds remaining following the completion and approval of the Work or the termination/expiration of the Grant will be returned to the State.

ii. Interest

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

iii. Available Funds-Contingency-Termination

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

iv. Erroneous Payments

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

v. Retroactive Payments

The State shall pay Grantee for costs or expenses incurred or performance by the Grantee prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules and regulations applicable to the Work provide for such retroactive payments to the Grantee. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or any Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit A**. This shall be used solely for aviation purposes as defined in CRS §43-10-102(3) and this Grant shall not be used for the subsidization of airlines. Misuse of Grant Funds, including subsidization for airlines, may result in immediate termination of this Grant for cause and forfeiture of any remaining Grant Funds.

D. Local Funds

Grantee shall provide Local Funds as provided in **Exhibit A**. Grantee shall have raised the full amount of Local Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request.

E. Payment Compliance

All Grant reimbursements shall comply with Title 49 Part 18 of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Additionally, Grantee shall only be reimbursed for costs allowable under 2 CFR Part 125, Appendix A. Sponsor requests that all Grant Funds be distributed by the State to the Airport.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in the Manual.

B. Litigation Reporting

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

C. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

D. Subgrants

Copies of any and all subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

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

B. Inspection

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

C. Monitoring

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

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

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, any State records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101 et seq.

A. Confidentiality

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

B. Notification

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

C. Use, Security, and Retention

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

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. To the extent permitted by law, the Grantee 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 Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this §10.

11. CONFLICTS OF INTEREST

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

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee’s Signatory

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

C. Licenses, Permits, Etc.

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

13. INSURANCE

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

A. Grantee

i. Public Entities

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

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to Subgrantees that are not "public entities".

B. Grantee and Subgrantees

Grantee shall require each Grant with Subgrantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Worker’s Compensation

Worker’s Compensation Insurance as required by State statute, and Employer’s Liability Insurance covering all of Grantee and Subgrantee employees acting within the course and scope of their employment.

ii. General Liability

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

iii. Automobile Liability

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

iv. Additional Insured

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

v. Primacy of Coverage

Coverage required of Grantee and Subgrantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. Subrogation Waiver

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

C. Certificates

Grantee and all Subgrantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Subgrantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant or any subgrant, Grantee and each Subgrantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH**A. Defined**

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and

may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B), provided however, that the State may terminate this Grant pursuant to §15(B) without a breach. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

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

i. Obligations and Rights

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

ii. Payments

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

iii. Damages and Withholding

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

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made.

Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Remedies Not Involving Termination

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

i. Suspend Performance

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

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

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

iv. Removal

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

v. Intellectual Property

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

16. NOTICES and REPRESENTATIVES

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

A. State:

Todd Green Program Manager
Colorado Department of Transportation
5126 Front Range Parkway
N/A
Watkins, CO 80137
todd.green@state.co.us

B. Grantee:

Jason Licon Project Director
Fort Collins/Loveland Municipal Airport
4900 Earhart Road
N/A
Loveland, CO 80538
liconj@ci.loveland.co.us

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State’s rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works.

18. GOVERNMENTAL IMMUNITY

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.

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

address or correct any identified problem in a timely manner and maintain work progress.

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

20. GENERAL PROVISIONS

A. Assignment and Subgrants

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

B. Binding Effect

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

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

D. Counterparts

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

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

To the extent permitted by law, Grantee 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 Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended. If Grantee is a "public entity" within the meaning of GIA, liability is controlled and limited by the provisions of the GIA.

G. Jurisdiction and Venue

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

H. Modification

i. By the Parties

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

ii. By Operation of Law

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

I. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. The provisions of the main body of this Grant,
- iii. **Exhibit A**, and
- iv. **Exhibit B**.

J. Severability

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

K. Survival of Certain Grant Terms

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

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

M. Third Party Beneficiaries

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

N. Waiver

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

O. CORA Disclosure

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

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

21. COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all Grants except where noted in italics.

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

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

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

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

C. GOVERNMENTAL IMMUNITY

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW.

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

G. BINDING ARBITRATION PROHIBITED.

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

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

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. 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 Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

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

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

K. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101

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

L. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101

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

SPs Effective 1/1/09

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

22. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

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

<p style="text-align: center;">GRANTEE Cities of Ft. Collins/Loveland</p> <p>By: _____ Print Name of Authorized Individual</p> <p>Title: _____ Print Title of Authorized Individual</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO</p> <p style="text-align: center;">John W. Hickenlooper, Governor Colorado Department of Transportation Donald E. Hunt – Executive Director</p> <p>_____</p> <p>By: David C. Gordon, Aeronautics Division Director Signatory avers to the State Controller or delegate that Grantee has not begun performance or that performance is authorized by federal law or a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: _____</p>
<p style="text-align: center;">2nd Grantee Signature if Needed</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

<p>STATE CONTROLLER David J. McDermott, CPA</p> <p>By: _____</p> <p>Colorado Department of Transportation</p> <p>Date: _____</p>



Airport Surplus Equipment Registry 2012 DIA Surplus Sale

Airport: Fort Collins-Loveland Municipal Airport	Grant Number: 13-FNL-S01
Sponsor: Cities of Ft. Collins/Loveland	
Sale Date: Wednesday October 17, 2012	

DESCRIPTION	SERIAL #	Sale Price	State Share	Local Share	Useful Life
1. Blower	W-16-0025	\$18,000	\$9,000	\$9,000	2 years
2.		\$	\$	\$	2 years
3.		\$	\$	\$	2 years
4.		\$	\$	\$	2 years
5.		\$	\$	\$	2 years
6.		\$	\$	\$	2 years
7.		\$	\$	\$	2 years
TOTAL		\$18,000	\$9,000	\$9,000	

Printed Name & Title LARRY MARK, FOWL OPS Mgr.
Sponsoring Agency Representative

Signature [Signature] Date 10/17/12
Sponsoring Agency Representative

By signing this form you are certifying that sufficient local funds are available for this CDAG Grant

Signature [Signature] Signature [Signature]
DIA Saly Representative - Liz Trevino Div. of Aeronautics Safe Coordinator - Shari Seiterberg



Colorado Surplus Airport Equipment Program Assurance

The purpose of the Colorado Surplus Airport Equipment Program is to support and improve the State Aviation System. Eligibility requirements for the Colorado Surplus Airport Equipment Program are as follows:


1. Must be an owner or sponsor of a Colorado Public-Use Airport.
2. Equipment purchased through the Colorado Surplus Airport Equipment Program must be exclusively used on a Colorado Public-Use Airport.

Each airport sponsor is responsible for the purchase, receipt, and control of surplus equipment purchased through the Surplus Equipment Program. Surplus equipment is defined as used, non-expendable property with a useful life. The useful life of the surplus equipment will be established by the Division of Aeronautics Surplus Sale Coordinator in conjunction with the airport sponsor.

Surplus equipment purchased through the Surplus Equipment Program shall be used on COLORADO PUBLIC-USE AIRPORTS ONLY and will be maintained by the airport entity for the useful life of the equipment. The Division of Aeronautics, as manager of the program may view the equipment during visits to the airport to ensure the equipment is being used for the aviation purposes intended.

Surplus equipment purchased through the Surplus Equipment Program may be disposed of, traded, or sold by the airport at any time after the pre-determined useful life of the equipment. Approval is needed if purchased surplus equipment is disposed of, traded, or sold before the end of its pre-determined useful life. A letter to the Division of Aeronautics is needed stating the justification for the disposal and the intent of the proceeds of the sale, if any.

I will comply with the above assurances regarding the Surplus Equipment Program. I will coordinate with the Division of Aeronautics if the equipment is disposed of prior to the end of its useful life. Noncompliance with the above assurances may affect my ability to receive State aviation grant funds in the future.

Signature  Date 10-17-12
Sponsoring Agency

Signature  Date 10-17-12
Division of Aeronautics

EXHIBIT B - RESOLUTION

WHEREAS:

The General Assembly of the State of Colorado declared in Title 43 of the Colorado revised Statutes, Article 10, 1991 in CRS §43-10-101 (the Act) "... that there exists a need to promote the safe operations and accessibility of general aviation in this state; that improvements to general aviation transportation facilities will promote diversified economic development across the state; and that accessibility to airport facilities for residents of this state is crucial in the event of a medical or other type of emergency..."

The Act created the Colorado Aeronautical Board ("the Board") to establish policy and procedures for distribution of monies in the Aviation Fund and created the Division of Aeronautics ("the Division") to carry out the directives of the Board, including technical and planning assistance to airports and the administration of the state aviation system grant program. SEE CRS §43-10-103 and C.R.S. §43-10-105 and CRS §43-10-108.5 of the Act.

Any entity operating a public-accessible airport in the state may file an application for and be recipient of a grant to be used solely for aviation purposes. The Division is authorized to assist such airports as request assistance by means of a Resolution passed by the applicant's duly-authorized governing body, which understands that all funds shall be used exclusively for aviation purposes and that it will comply with all grant procedures and requirements as defined in the Division's Aviation Grant Management Manual, revised 2009, ("the Manual").

NOW, THEREFORE, BE IT RESOLVED THAT:

The Cities of Ft. Collins/Loveland as a duly authorized governing body of the grant applicant, hereby formally requests assistance from the Colorado Aeronautical Board and the Division of Aeronautics in the form of a state aviation system grant. The **Cities of Ft. Collins/Loveland** states that such grant shall be used solely for aviation purposes, as determined by the State, and as generally described in the Application.

Each airport-operating entity that applies for and accepts a grant that it thereby makes a COMMITMENT

- a) to keep the airport facility accessible to, and open to, the public during the entire useful life of the grant funded improvements/ equipment; or b) to reimburse the Division for any unexpired useful life of the improvements/ equipment, or a pro-rata basis.

By signing this grant agreement, the applicant commits to keep open and accessible for public use all grant funded facilities, improvements and services for their useful life, as determined by the Division and stated in the Grant Agreement.

FURTHER BE IT RESOLVED:

That the **Cities of Ft. Collins/Loveland** hereby designates Jason Licon as the Project Director, as described in the Manual and authorizes the Project Director to act in all matters relating to the work project proposed in the Application in its behalf, including executions of the grant contract.

FURTHER:

The Cities of Ft. Collins/Loveland has appropriated or will appropriate or otherwise make available in a timely manner all funds, if any, that are required to be provided by the Applicant under the terms and conditions of the grant contract.

FINALLY:

The Cities of Ft. Collins/Loveland hereby accepts all guidelines, procedures, standards and requirements described in the Manual as applicable to the performance of the grant work and hereby approves the grant contract submitted by the State, including all terms and conditions contained therein.

for The **Cities of Ft. Collins/Loveland** Grantee

ATTEST

FIRST READING November 6, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 FT. COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET FOR THE PURCHASE OF SNOW REMOVAL EQUIPMENT

WHEREAS, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the Airport 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 Airport 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 revenues and/or reserves in the amount of \$18,000 from fund balance and a grant from the State of Colorado in the Airport Fund 600 are available for appropriation. Revenues in the total amount of \$18,000 are hereby appropriated for the purchase of snow removal equipment 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 Fund 600 Airport Fund		
Revenues		
Fund Balance		9,000
600-00-000-0000-38617	Contribution- State of Colorado	9,000
Total Revenue		18,000
Appropriations		
600-23-290-0000-48240	Machinery & Equipment	18,000
Total Appropriations		18,000

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

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

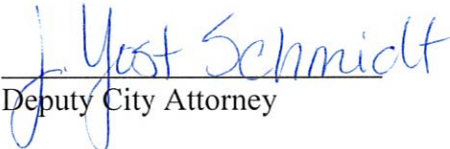
ADOPTED this ____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney


CITY OF LOVELAND

BUDGET OFFICE

 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 10
MEETING DATE: 11/6/2012
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Public Hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget

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 is necessary to resolve several year-end issues and finalize the 2012 budget. Several of the issues are new and the remainder we have been following throughout the year and have waited until now to provide the best forecast for the cost to the end of the year.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

For many of the items outside revenue is the funding source so there is not an impact. Other items funded by fund balance reduce the flexibility to do other projects within the fund.

SUMMARY:

The Ordinance is necessary to make adjustments in several departments. Staff has been monitoring these issues throughout the year to arrive at a single more accurate forecast. The details of the adjustments are as follows.

1. Additional funding is added to the Municipal Court for prisoner stay charges from Larimer County due to higher than expected usage;
2. Contributions to the Economic Development Department and costs for the painting of the Aims Mural are appropriated;
3. Funding for contractually based sales tax rebates are budgeted in the Economic Development Department;
4. A State grant and donations are budgeted for additional overtime and the purchase of K9 vests in the Police Department;
5. Additional funding is added for the Transit Division to match the Federal Transit Authority grant for the Flex Service;
6. Due to the dry summer, additional funding is added to the Parks & Recreation Department budget for irrigation costs;
7. The well that provides water for irrigation at the Civic Center is no longer operational and cannot be rehabilitated. In order to provide irrigation next year, staff recommends adding a new 3" tap from the Water Enterprise. \$22,000 is appropriated for work to connect the existing system to the new tap, and \$258,000 is appropriated for tap fees and plant improvement fees.
8. Donations from the Kroh Charitable Trust and the Esther Sjoström Memorial are appropriated for art and history exhibits and a bench for the Rialto Theater Center Lobby;
9. Funding is added for emergency repairs at the Water Treatment Plant Filter Plant 8 to shore up the filter box walls.
10. High energy usage has resulted in the required purchase of wholesale electricity from Platte River Power Authority at a higher than projected rate. Additional funding for purchased power is appropriated. This cost will be recovered through resale to City of Loveland customers at the retail rates.
11. While most of the cleanup from the October 2011 snow storm was completed by the end of the year, a significant amount of yard material continued to be delivered to the Recycling Center, driving up disposal costs of yard waste. Additional funds are appropriated to meet this need.
12. Funding for the purchase of the land for the Fire Station 2 relocation and expansion project.

REVIEWED BY CITY MANAGER:

William D. Cabell

LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget.

FIRST READING November 6, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET

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 revenues and/or reserves in the amount of \$3,667,520 from fund balance, grants and donations in the General Fund (\$357,520), Fire Capital Expansion Fee Fund (\$55,000), Water Enterprise Fund (\$150,000), Power Enterprise Fund (\$3,000,000) and Solid Waste Enterprise Fund (\$115,000) are available for appropriation. Revenues in the total amount of \$3,667,520 are hereby appropriated for the purchase of supplies and materials for donations for specific purposes, construction of a water line to irrigate the Civic Center, purchase of land for the relocation of a fire station, emergency repairs at the Water Treatment Plant, additional appropriations for purchased power due to higher usage, and increased funding for yard waste removal; 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:

General Fund 100

Revenues

Fund Balance		311,940
100-18-180-1500-35324-EDAIMSMURAL	Contributions for Aims Mural	15,500
100-21-202-2113-32100	State Grant	16,000
100-21-202-2102-35305-PDK9DO	K9 Donations	4,440
100-23-234-0000-32002	Federal Transit Authority Grant	122,420
100-52-720-8004-35305	Donations	5,640
100-52-720-8003-35305	Donations	3,500
100-52-730-0000-35305	Donations	500

Total Revenue 479,940

Appropriations

100-13-115-0000-43450	Professional Services	8,000
100-18-180-1500-43176	Incentives/Sales Tax Rebates	2,500
100-18-180-1500-43714-EDAIMSMURAL	Aims Mural	15,500
100-21-202-2113-41021	Overtime	16,000
100-21-202-2102-43594	K9 Vests	4,440
100-23-234-0000-43450	Professional Services	122,420
100-51-563-0000-43668	Irrigation Water- Parks Grounds	19,000
100-51-564-0000-43668	Irrigation Water- Public Grounds	2,000
100-51-564-0000-43668	Repair and Mainenance	280,440
100-52-720-8004-42328	Exhbits	5,640
100-52-720-8003-42328	Exhbits	3,500
100-52-730-0000-42899	Other Supplies - Lobby Seating	500

Total Appropriations 479,940

**Supplemental Budget
Fire CEF Fund 264**

Revenues

Fund Balance		89,000
--------------	--	--------

Total Revenue 89,000

Appropriations

264-22-222-0000-49010-GF1204	Fire Station 2 Land Acquisition	89,000
------------------------------	---------------------------------	--------

Total Appropriations 89,000

**Supplemental Budget
Water Fund 300**

Revenues

Fund Balance	150,000
--------------	---------

Total Revenue	150,000
----------------------	----------------

Appropriations

330-46-318-2902-49360-W1011C	Construction - Water Treatment Plant Repairs	150,000
------------------------------	--	---------

Total Appropriations	150,000
-----------------------------	----------------

**Supplemental Budget
Power Fund 330**

Revenues

Fund Balance	3,000,000
--------------	-----------

Total Revenue	3,000,000
----------------------	------------------

Appropriations

330-45-301-2906-44001-PW139	Purchased Power	3,000,000
-----------------------------	-----------------	-----------

Total Appropriations	3,000,000
-----------------------------	------------------

**Supplemental Budget
Solid Waste Fund 360**

Revenues

Fund Balance	115,000
--------------	---------

Total Revenue	115,000
----------------------	----------------

Appropriations

360-23-272-0000-43657	Waste Disposal	115,000
-----------------------	----------------	---------

Total Appropriations	115,000
-----------------------------	----------------

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

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

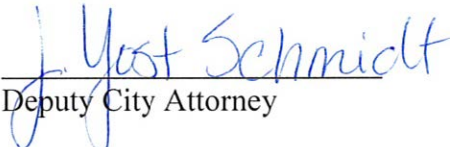
ADOPTED this ____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney


CITY OF LOVELAND

BUDGET OFFICE

 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 11
MEETING DATE: 11/6/2012
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Public Hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to Loveland Special Improvement District #1 2012 budget and authorizing District bond prepayment.

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 reserves from prepaid assessments to call bonds, reducing the principal amount on the bonds to be repaid.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

Early payment of the bonds reduces interest and principal payments in the future.

SUMMARY:

The Special Improvement District #1 (SID) was established to allow for the collection of assessments from property owners in the district to back bonded debt used to construct infrastructure improvements located within the district. The District is in east Loveland north of Eisenhower Boulevard along Rocky Mountain Avenue, extending north above Houts Reservoir.

A large property within the district prepaid the assessment. The funds are used to call District bonds early reducing the debt service in the District.

The City does not have any legal obligation towards this debt.

REVIEWED BY CITY MANAGER: *William D. Cahill*

LIST OF ATTACHMENTS:

1. An Ordinance enacting a supplemental budget and appropriation to Loveland Special Improvement District #1 2012 budget and authorizing District bond prepayment.

FIRST READING November 6, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 2012 BUDGET AND AUTHORIZING DISTRICT BOND PREPAYMENT

WHEREAS, the Loveland Special Improvement District #1 (“District”) receives prepayment of assessments from time to time, which amounts are credited to the Loveland Special Improvement Fund 702 (the “SID Fund”) and reserved for future bond payments or appropriated, from time to time, to call District bonds early, thereby reducing debt service costs; and

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

WHEREAS, the City Council, acting as the acting as the ex-officio Board of Directors of the Loveland Special Improvement District #1, desires to authorize the expenditure of these funds and the prepayment of District bonds by enacting a supplemental budget and appropriation to the District’s 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 ACTING AS THE EX-OFFICIO BOARD OF DIRECTORS OF THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1:

Section 1. That the City Council, acting as ex-officio Board of Directors of the District, hereby authorizes the prepayment of District bond debt in the amount of \$200,000.00.

Section 2. That revenues are available for appropriation from reserves and are hereby appropriated to call District bonds early, reducing the debt services amount. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Loveland Special Improvement District #1 Fund 702**

Revenues		
Fund Balance		200,000
Total Revenue		200,000
Appropriations		
702-91-902-0000-46110	Principal	200,000
Total Appropriations		200,000

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. That as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

ADOPTED this ____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk
APPROVED AS TO FORM:

J. Yost Schmidt

Deputy City Attorney


CITY OF LOVELAND

BUDGET OFFICE

 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 12
MEETING DATE: 11/6/2012
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Public Hearing and an ordinance on first reading enacting a supplemental budget and appropriation to 2012 budget for the Loveland Urban Renewal Authority

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 tax increment financing (TIF) revenues above what was anticipated in the budget for projects previously approved and under contractual relationships.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

Additional revenues will be used to improve a new parking lot, continue the Facade Grant program, and pay down contractual reimbursements to developers.

SUMMARY:

Receipts from TIF collections are higher than were projected in the budget in all three project areas. The additional revenue is allocated as follows:

Downtown project area

- Partial funding (\$20,000) for improvements related to a new parking lot in the downtown area. The other funding source is General Improvement District #1.
- Additional funding for the Facade Grant program (\$1,810).

Finley Block Project area

- Additional payments to the developer of the Lincoln Place project based on the Amended and Restated Master Finance Agreement.

Crossroads Project Area

- Additional payments to the Centerra Metropolitan District in accordance with the Master Finance Agreement.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to 2012 budget for the Loveland Urban Renewal Authority

FIRST READING November 6, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 BUDGET FOR THE LOVELAND URBAN RENEWAL AUTHORITY

WHEREAS, the Loveland Urban Renewal Authority has reserved funds on hand not appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council, acting as the Board of Commissioners of the Loveland Urban Renewal Authority, desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the Authority’s budget for 2011, 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, ACTING AS THE BOARD OF COMMISSIONERS OF THE LOVELAND URBAN RENEWAL AUTHORITY:

Section 1. That revenues in the amount of \$366,210 in the Loveland Urban Renewal Authority Fund 603 are available for appropriation. Revenues in the total amount of \$366,210 are hereby appropriated for the Facade Grant Program and improvements related to a new parking lot in the Downtown Project Area, for reimbursement to the developer of the Lincoln Place property in the Finley’ Addition Plan Area pursuant to the Amended and Restated Master Finance Agreement, and for payment to Centerra Metropolitan District based on the Master Financing Agreement 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
Loveland Urban Renewal Authority - Fund 603**

Revenues

603-80-870-0000-30100	Property Taxes	21,810
603-80-871-0000-30100	Property Taxes	44,400
603-80-872-0000-30100	Property Taxes	300,000

Total Revenue **366,210**

Appropriations

603-80-870-0000-43840	Grants	1,810
603-23-232-0000-49360-DT1201	Construction	20,000
603-80-871-0000-43786	Developer Reimbursements	44,400
603-80-872-0000-46460	URA - Centerra TIF Distribution	300,000

Total Appropriations **366,210**

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

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

ADOPTED this ____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney


CITY OF LOVELAND

BUDGET OFFICE

 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 13
MEETING DATE: 11/6/2012
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Public hearing and consideration of an ordinance enacting a supplemental budget and appropriation to the 2012 Loveland General Improvement District #1 for downtown parking improvements.

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 funding for improvements necessary to construct a new parking lot in the downtown area.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

Fund balance is used as the funding source limiting flexibility to fund other projects.

SUMMARY:

The City has obtained a lease from the Burlington Northern Santa Fe Railroad (BNSF) for a piece of land within the railroad right-of-way sitting directly west of the rail line and between 4th Street and 3rd Street. The lease is solely to create new surface parking and pedestrian improvements, no other uses are contemplated. The City will improve the lot to create approximately 37 new parking spaces and develop attached sidewalk improvements on Railroad Avenue to connect 3rd Street with pedestrian facilities on 4th Street to cross the

railroad tracks. The City will also deconstruct existing remnant improvements on 3rd Street that lead pedestrians to cross the tracks unsafely at the former 3rd Street crossing and construct, with appropriate solutions, additional barriers-to-access for this crossing.

The lease payment is \$2,000 per year for the lot and will be paid annually from revenues in the General Improvement District (GID). Weather permitting the project will be constructed in spring 2013.

The District encompasses the downtown area with boundaries of 3rd Street on the south, 7th Street on the north, Railroad Avenue on the west and Jefferson Avenue to the east, except along 4th Street where Washington Avenue is the eastern boundary.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2012 Loveland General Improvement District #1 for downtown parking improvements

FIRST READING November 6, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 LOVELAND GENERAL IMPROVEMENT DISTRICT #1 BUDGET FOR DOWNTOWN PARKING IMPROVEMENTS

WHEREAS, Loveland General Improvement District #1 (“District”) has received or has reserved funds not appropriated at the time of the adoption of the District budget for 2012; and

WHEREAS, the City Council, acting as the ex officio Board of Directors of the District, desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the District 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, acting as the ex officio Board of Directors of the Loveland General Improvement District #1:

Section 1. That revenues in the amount of \$50,000 from reserves in the Loveland General Improvement District #1 Fund 602 are available for appropriation. Revenues in the total amount of \$50,000 are hereby appropriated for parking lot improvements 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
Loveland Special Improvement District #1 Fund 602**

Revenues		
Fund Balance		50,000
Total Revenue		50,000
Appropriations		
602-90-901-0000-49360-DT1201	Construction	50,000
Total Appropriations		50,000

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).

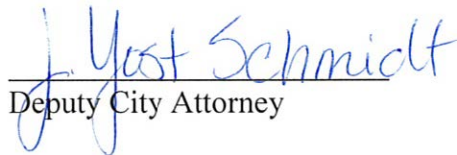
ADOPTED this ____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



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

AGENDA ITEM: 14
MEETING DATE: 11/6/2012
TO: City Council
FROM: Julia Holland, Human Resources Department
PRESENTER: Julia Holland

TITLE:

An Ordinance Amending Ordinance 5709 To Remove From The 2013 Pay Plan And Adopt A Revised Police Department Step Plan For Nine (9) Designated Police Department Positions

RECOMMENDED CITY COUNCIL ACTION:

Approve Ordinance as recommended.

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. Approval of this ordinance amends the 2013 Pay Plan, adopted by Council on second reading on October 16, 2012, to include the addition of the revised Police Department Step Plan for nine (9) designated Police Department positions. These nine (9) positions are currently in a modified step plan, placed within the City-wide Pay Plan established ranges. As a result of a compensation survey, conducted with the assistance of a third party, Mountain States Employers' Council (MSEC), it is necessary to adjust the Step Plan to ensure the City fosters appropriate workplace performance/practices and attracts and retains employees.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The amendment of the 2013 Pay Plan to exclude the nine (9) designated Police Department positions and adopt a Police Department Step Plan will not require any additional funding for implementation. Costs associated with the necessary adjustments to implement the plan will be

covered from the 2013 3.5% merit pool funds, approved by Council through the adoption of the 2013 budget.

SUMMARY:

The original Police Step Plan was implemented in 2003 to 2004, with only minor adjustments being made since that time. As a result, it was determined the City needed to review the current pay system and practices. Based upon the MSEC compensation study, we have extracted the (9) positions from the City-wide pay plan. These positions were previously included in the City-wide Plan pay ranges, although they followed a "modified step plan". It is recommended that these positions be placed in a separate step plan. Movement from one step to the next will be based upon performance and time in job. As part of this change the nine positions will no longer be eligible for annual increases from the merit pool budget starting in 2013. Increases will only occur during either step level movement and/or when the market warrants an adjustment to the steps. In order to uphold our fiscal responsibility and practices, the cost of implementing this plan will be funded from the 3.5% merit pool that was approved by Council through the adoption of the 2013 budget.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance, including 2013 Police Department Step Plan
2. Police Department Step Plan Pay Study

FIRST READING November 6, 2012

SECOND READING _____

ORDINANCE NO.**AN ORDINANCE AMENDING ORDINANCE 5709 TO REMOVE FROM THE 2013 PAY PLAN AND ADOPT A REVISED POLICE DEPARTMENT STEP PLAN FOR NINE (9) DESIGNATED POLICE DEPARTMENT POSITIONS**

WHEREAS, Chapter 2.68 of the Loveland Municipal Code provides that the City Council shall from time to time adopt, by ordinance, an employee pay plan setting forth pay grades and compensation ranges for city employees; and

WHEREAS, the City Council previously adopted Ordinance No. 5637 approving a pay plan by for calendar year 2012 (the “2012 Pay Plan”) setting forth pay grades and compensation ranges for city employees for calendar year 2012, ; and

WHEREAS, the City Council most recently adopted a pay plan by Ordinance No. 5709 for calendar year 2013 (the “2013 Pay Plan”) setting forth pay grades and compensation ranges for city employees for calendar year 2013 and superseding all prior ordinances adopting an employee pay plan as of the first pay period of 2013, ; and

WHEREAS, the 2013 Pay Plan included the nine (9) designated Police Department positions at the pay levels listed on **Exhibit A** attached hereto and incorporated herein by this reference (the “Designated Police Department Positions”); and

WHEREAS, based upon a recent compensation survey conducted with the assistance of the Mountain States Employers’ Council, it has been determined that in order to foster appropriate workplace performance and practices and to attract and retain qualified employees, the Designated Police Department Positions should be removed from the 2013 Pay Plan and placed in a separate step pay plan, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference (the “2013 Police Department Step Pay Plan”).

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

Section 1. That Ordinance 5709 and the 2013 Pay Plan adopted thereunder are hereby amended to remove the Designated Police Department Positions from the 2013 Pay Plan.

Section 2. That the 2013 Police Department Step Pay Plan, including the pay grades and compensation ranges for the Designated Police Department Positions, attached hereto as **Exhibit B** is hereby adopted and shall take effect for the first pay period of 2013.

Section 3. That notwithstanding the foregoing, the 2012 Pay Plan as adopted by Ordinance

5637 shall continue in full force and effect from the date of this Ordinance until it is superseded by the 2013 Pay Plan as provided in Ordinance 5709 and as amended herein.

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.

Section 5. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

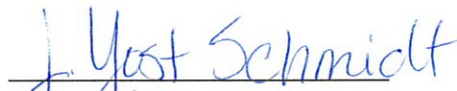
Adopted this ____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A**NINE (9) DESIGNATED POLICE DEPARTMENT POSITIONS
REMOVED FROM 2013 PAY PLAN**

<u>Position Title</u>	<u>Previous Pay Level</u>
Police Sergeant	Pay Level 10
Police Officer/Police Specialist	Pay Level 8
Police Records Supervisor	Pay Level 8
Communications Specialist Supervisor	Pay Level 8
Community Service Officer	Pay Level 6
Lead Communications Specialist	Pay Level 6
Communications Specialist	Pay Level 5
Lead Police Records Specialist	Pay Level 4
Police Records Specialist	Pay Level 3

2013 Police Department Step Plan

Position	# EE	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Officer/Specialist	69	\$55,700	\$58,700	\$61,400	\$64,000	\$66,700	\$69,500	\$72,300
Police Sergeant	16	\$74,700	\$78,100	\$81,300	\$84,700	\$88,250	\$91,900	N/A
CSO	4	\$42,300	\$44,600	\$46,650	\$48,700	\$50,850	\$53,000	\$55,100
Comm Specialist	14	\$41,800	\$44,050	\$46,075	\$48,100	\$50,200	\$52,300	\$54,400
Lead Communication Specialist	1	\$46,000	\$48,500	\$50,750	\$52,900	\$55,150	\$57,450	\$59,800
Comm Supervisor	3	\$57,600	\$60,800	\$63,550	\$66,200	\$69,000	\$71,900	\$74,800
Records Specialist	7	\$33,700	\$35,525	\$37,150	\$38,700	\$40,325	\$42,000	\$43,700
Lead Records Specialist	1	\$37,000	\$39,000	\$40,800	\$42,600	\$44,450	\$46,300	\$48,200
*Records Supervisor	1	\$56,200	\$59,250	\$62,000	\$64,600	\$67,300	\$70,100	\$73,000

*C Level Vacation Accrual

Step Key: Performance (Meets Expectations) and Months of Service			
Step 1	0 to 12 Months	Step 5	49 to 60 Months
Step 2	13 to 24 Months	Step 6	61 to 72 Months
Step 3	25 to 36 Months	Step 7	> 73 Months
Step 4	37 to 48 Months		

Introduction

The current Police Step Plan was implemented in 2003 to 2004, with only minor adjustments being made since that time. As a result, it was determined the City needed to review the current pay system and practices. There are several factors that led to this decision, aside from the length in time since its last thorough review, such as compression between Sergeants and Officers, the excessive time it takes to administer the plan, and the behavioral affects of the current plan.

Mountain States Employers Council, Inc, (MSEC) consultants conducted a market study to determine if the current plan was competitive with other public employers, particularly in Northern Colorado. As part of the study, a comprehensive market analysis on base compensation and salary structure for the positions was conducted. MSEC developed recommendations on salary ranges with steps based on the data collected and compared current rates of pay with the identified labor

Recommendation

After the study was completed it was determined that we would maintain steps instead of moving the positions into a 'Free Range' pay plan. As a result, the nine positions will be pulled from the City-wide pay plan and put into a step only plan. The employees in the nine positions will no longer be eligible for merit pay in addition to step movement. Movement to the next pay step will be based upon performance and time in position.

The estimated cost to bring employees to the appropriate step based on months of service in their current position is \$150,000. To uphold our fiscal responsibility as a City, it is recommended that the cost of implementing this plan be appropriated from the 3.5 percent merit pool that was approved through the budget on October 16, 2012. The merit pool budget will also cover performance based merit increases for 2012 performance. There are a number of long term employees that are currently paid at or above the top step of their corresponding range. Their base pay will be frozen until there is market movement to justify a change in the range/step. Market salaries will be reviewed annually.

Summary

A revised Police plan is necessary to ensure the City is paying competitively based on market, and in order to foster an environment of high performance and appropriate workplace performance/practices. It is important to note the City of Loveland currently only has one Pay Plan, in which the employees currently on the step system are placed within a specific range in an open range system. The revised step plan will create a step-based system, not contained within the range system of the City-wide Pay Plan.



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: 15
MEETING DATE: 11/6/2012
TO: City Council
FROM: Larry Howard, Water and Power Department
PRESENTER: Larry Howard, Water and Power Department

TITLE:

Public hearing and first reading of an Ordinance amending the Loveland Municipal Code at Section 19.04.023 regarding water rights for service outside the City limits

RECOMMENDED CITY COUNCIL ACTION:

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

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
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 amend the Loveland Municipal Code at Section 19.04.023. The proposed ordinance is intended to clarify when water rights are required for city water service to property not annexed into the City of Loveland.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

The proposed ordinance is intended to clarify in the Loveland Municipal Code when water rights are required for city water service to property not annexed into the City of Loveland.

It has been the city's practice to collect water rights for all new outside city water services at the time of application for water service. The proposed ordinance codifies this practice.

For services existing prior to 1979, water rights were not routinely collected at the time of the original application for service. Currently, the Loveland Municipal Code states in Section 19.04.023 that water rights are required in connection with any county building permit on a parcel of land which has not been a part of any annexation for which water rights were transferred to the city. However, for an existing outside city water service a county building permit could be required for minor items which would not affect the type, size or use of the existing water meter. The proposed amendment would clarify that water rights in such a situation would be due only upon annexation, or if there is a change in the type, size or use of the existing water meter consistent with a subdivision or redevelopment of the property as defined in the City of Loveland Site Development Performance Standards and Guidelines.

The Loveland Utilities Commission, at its meeting on October 15, 2012, unanimously recommended that the City Council adopt the ordinance.

REVIEWED BY CITY MANAGER: *William D. Cabell*

LIST OF ATTACHMENTS:

Ordinance (redline draft)
Ordinance

FIRST READING November 6, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT SECTION 19.04.023 REGARDING WATER RIGHTS FOR SERVICE OUTSIDE THE CITY LIMITS

WHEREAS, the City of Loveland’s Water Utility serves customers both inside and outside the City limits; and

WHEREAS, the City’s policies regarding collection of water rights from customers inside and outside the City limits have evolved over time; and

WHEREAS, the City’s current policy regarding collection of water rights from customers outside the City limits is set forth in the City’s administrative application for outside city water service (for new outside City water customers) and Section 19.04.023 of the Loveland Municipal Code (for existing outside City water customers); and

WHEREAS, the City’s Water Utility has proposed certain amendments to Section 19.04.023 to clarify the City’s policy regarding collection of water rights from customers outside the City limits;

WHEREAS, on October 15, 2012, the Loveland Utilities Commission reviewed the proposed amendments and adopted a motion recommending that the City Council adopt an ordinance revising Section 19.04.023 to incorporate said amendments; and

WHEREAS, the City Council desires to amend Section 19.04.023 as proposed as being in the best interest of the City’s Water Utility ratepayers.

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

Section 1. That Section 19.04.023 of the Loveland Municipal Code is hereby amended to read as follows:

19.04.023 Water rights for service outside the city limits.

~~Water rights are required for original city water service in connection with any county building permit on a parcel of land which has not been a part of any annexation for which water rights were transferred to the city. For non-residential uses, the quantity of water rights required will be determined according to the size of tap as specified in Section 19.04.020B. For residential uses, the quantity of water required will be determined as the lesser of either that quantity necessary according to the tap size as in Section 19.04.020B., or as calculated in Section 19.04.020A. in an amount equal to that which would be required in connection with the~~

~~residential development of a parcel of land in the city of the same size as the parcel of land on which the applicant's proposed improvements will be located. The fact that the premises for which the permit is sought is located on a parcel of land which has already received city water service shall not affect the requirement of this Section that water rights shall be transferred for any parcel of land requiring original city water service.~~

~~A. Water rights are required for outside city water service. For nonresidential uses, the quantity of water rights required shall be determined in accordance with Section 19.04.020B. (calculated in the same manner as if the property to be served were located inside the city). For residential uses, the quantity of water rights required shall be determined as the lesser of the quantity specified in Section 19.04.020B., or Section 19.04.020A. (calculated in the same manner as if the property to be served were located inside the city). For irrigation use only, the quantity of water rights required shall be determined in accordance with Section 19.06.040B. or Section 19.050.050, as applicable, (calculated in the same manner as if the property to be served were located inside the city).~~

~~B. Water rights required for outside city water service shall be due at the time of application for outside city water service. Any outside city customer who has received a city water meter prior to December 1, 2012 but has not paid water rights to the city shall be required to provide water rights to the city upon the earlier of the following to occur to the property receiving city water service: (i) annexation; (ii) subdivision; (iii) "redevelopment," as defined in the City of Loveland Site Development Performance Standards and Guidelines; (iv) change in meter classification (residential, nonresidential, or irrigation); (v) change in meter size; or (vi) installation of additional meters. Notwithstanding anything herein to the contrary, water rights shall not be due upon any of the following to occur to the property receiving city water service: (i) minor changes to the property that do not rise to the level of "redevelopment," such as roof replacements, or basement finishes that do not increase the gross floor area of a building or structure by at least twenty-five percent over the gross floor area existing as of February 1, 1988; (ii) the addition of outbuildings that do not require a change in meter size or additional meters; or (iii) the addition of a fire hydrant.~~

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

ADOPTED this _____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shawn L. Ellis
Assistant City Attorney

FIRST READING November 6, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT SECTION 19.04.023 REGARDING WATER RIGHTS FOR SERVICE OUTSIDE THE CITY LIMITS

WHEREAS, the City of Loveland’s Water Utility serves customers both inside and outside the City limits; and

WHEREAS, the City’s policies regarding collection of water rights from customers inside and outside the City limits have evolved over time; and

WHEREAS, the City’s current policy regarding collection of water rights from customers outside the City limits is set forth in the City’s administrative application for outside city water service (for new outside City water customers) and Section 19.04.023 of the Loveland Municipal Code (for existing outside City water customers); and

WHEREAS, the City’s Water Utility has proposed certain amendments to Section 19.04.023 to clarify the City’s policy regarding collection of water rights from customers outside the City limits;

WHEREAS, on October 15, 2012, the Loveland Utilities Commission reviewed the proposed amendments and adopted a motion recommending that the City Council adopt an ordinance revising Section 19.04.023 to incorporate said amendments; and

WHEREAS, the City Council desires to amend Section 19.04.023 as proposed as being in the best interest of the City’s Water Utility ratepayers.

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

Section 1. That Section 19.04.023 of the Loveland Municipal Code is hereby amended to read as follows:

19.04.023 Water rights for service outside the city limits.

- A. Water rights are required for outside city water service. For nonresidential uses, the quantity of water rights required shall be determined in accordance with Section 19.04.020B. (calculated in the same manner as if the property to be served were located inside the city). For residential uses, the quantity of water rights required shall be determined as the lesser of the quantity specified in Section 19.04.020B., or Section 19.04.020A. (calculated in the same manner as if the property to be served were located inside the city). For irrigation use only, the quantity of water rights required shall be

determined in accordance with Section 19.06.040B. or Section 19.050.050, as applicable, (calculated in the same manner as if the property to be served were located inside the city).

- B. Water rights required for outside city water service shall be due at the time of application for outside city water service. Any outside city customer who has received a city water meter prior to December 1, 2012 but has not paid water rights to the city shall be required to provide water rights to the city upon the earlier of the following to occur to the property receiving city water service: (i) annexation; (ii) subdivision; (iii) “redevelopment,” as defined in the City of Loveland Site Development Performance Standards and Guidelines; (iv) change in meter classification (residential, nonresidential, or irrigation) (v) change in meter size; or (vi) installation of additional meters. Notwithstanding anything herein to the contrary, water rights shall not be due upon any of the following to occur to the property receiving city water service: (i) minor changes to the property that do not rise to the level of “redevelopment,” such as roof replacements, or basement finishes that do not increase the gross floor area of a building or structure by at least twenty-five percent over the gross floor area existing as of February 1, 1988; (ii) the addition of outbuildings that do not require a change in meter size or additional meters; or (iii) the addition of a fire hydrant.

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

ADOPTED this _____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



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: 16
MEETING DATE: 11/6/2012
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE:

Public Hearing and consideration of an ordinance on first reading amending the City of Loveland Investment Policy

RECOMMENDED CITY COUNCIL ACTION:

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

DESCRIPTION:

This is a legislative action to adopt an ordinance on first reading that will provide for more discretion in the management of the City's investment portfolio. The proposed ordinance implements a change to the City's Investment Policy Section VIII regarding prohibited investments. The specific provisions currently in place provide that investments that fall in a credit rating below the required level for acquisition are to be sold as soon as practical. The proposed change allows the City to conduct analysis of the downgraded investment to determine the risk of default prior to maturity and sets up a procedure to allow downgraded securities to be held to maturity or to a more profitable time. The purpose is to reduce realized losses to the City's portfolio. The impetus for the policy change is a series of downgrades by rating agencies of securities issued by highly rated banks and financial institutions. All corporate securities held by the City are high quality investment grade.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

When rating agencies downgraded banks and other financial institutions, the value of securities issued by the institutions lost market value. If the downgraded securities were sold immediately after the downgrades, the City's portfolio would have had a realized loss of several hundred thousand dollars. By holding the securities, the immediate realized loss has been avoided. If held to final maturity, the securities will not incur any realized loss due to market conditions.

SUMMARY: The most recent U.S. economic recession began in December of 2007 and ended in June 2009. The U.S. economy is still recovering from much of the downturn. Since the Great Depression of 1929 to 1933, the most recent recession is the most severe economic correction that the nation has experienced. On August 5, 2011, Standard & Poor's ("S&P"), one of three major credit rating firms, announced that it was lowering its rating on the long term credit of the United States. The other two major credit ratings firms, Moody's and Fitch, have reaffirmed their AAA (the highest rating available) ratings of the U.S. Treasury and government sponsored enterprise credit. The downgrade of the long term credit of the United States by S&P caused many problems for states and municipalities that invest in the highly rated securities that are issued by these entities.

In late 2011 and early 2012, the rating agencies began a systematic review of the credit-worthiness of corporate entities with specific focus on banks and other financial institutions that are closely linked to the housing and mortgage industries. The rating agencies' systematic review has resulted in many downgrades of corporations. The downgrades affect approximately \$17.5 million of securities held in the City of Loveland investment portfolio.

To be considered an eligible investment, corporate securities must carry two credit ratings with a minimum rating of AA-, Aa3, or AA- from S&P, Moody's and Fitch. The current wording of the investment policy provides that:

"If an eligible investment drops in its credit rating below the required level, the investment will be considered a prohibited investment and will be sold as soon as practical." (Investment Policy Section VIII. Suitable and Authorized Investments)

Because the market value of the corporate securities fell after the downgrades, the City would have experienced a sizable realized loss if the securities had been sold. Staff estimated that the realized loss would have been approximately \$700,000. This would be about one-fourth of the total anticipated revenue on the portfolio in 2012. The more prudent approach was determined to be to hold the securities and avoid the immediate realized loss.

In the monthly investment reports since the downgrades occurred, Council has been informed about the downgrades. Staff has also been working with the Citizens' Finance Advisory Commission ("CFAC"), which has advisory responsibility to the Council, to develop new investment policy wording to provide more flexibility to prudently manage investments that have been downgraded. The process begins with a financial and economic analysis of each downgraded security to assess the risk and probability of the security not being able to reach its maturity date without delay or default of payments. The results of the analysis are to be reported to the City Manager with a recommendation to hold the security. If the City Manager does not agree with the recommendation to hold the security, it would be sold. If the City Manager agrees with the recommendation to hold the security, the City Council shall be informed of the situation, and Council may use its normal process to bring the decision to Council for further discussion and review. At its regular meeting in September, the CFAC moved to recommend the proposed change to Council.

Proposed City Ordinance

The proposed ordinance makes a change to the investment policy at Section VIII. Suitable and Authorized Investments. The proposed wording specifically outlines the process summarized immediately above. The wording is provided below:

Prohibited Investments:

- Purchases on margin or short sales –
- Derivative securities that are in effect a leveraged anticipation of future movements in interest rates or some price indices –
- Collateralized mortgage obligations due to their complexity and prepayment rate uncertainty –
- Lending securities with an agreement to buy them back after a stated period of time.
- If an eligible investment drops in its credit rating below the required level, ~~the investment will be considered a prohibited investment and will be sold as soon as practical.~~ the security will be reviewed for possible retention or sale.

Retention of Investments that fall below required Credit Ratings for Investment.

Should a currently held investment have its credit rating reduced below the level allowed for purchase, a determination must be made to sell or retain the investment. The following actions will be followed to confirm a decision to retain the investment. Otherwise, the investment shall be sold as expeditiously as possible.

- First, an analysis shall be conducted to confirm that the investment remains consistent with the objectives of this investment policy.
- Second, should retention be determine the preferred action rather than realizing unacceptable losses, a report detailing those findings shall be provided to the City Manager. Accomplishing this within a reasonable timeframe following the notification of the credit rating downgrade is a goal, but not an inflexible timeline. Exceptional circumstances are within the purview of the City Manager.
- Third, the City Manager may not concur with the recommendation to retain an investment and direct the sale of the investment.
- Fourth, should the City Manager concur with the retention recommendation, the City Council shall be so informed, by communicating the City Manager's position, including the original recommendation and a copy of the report. Council may exercise its normal process to bring the matter before the Council for a Study Session, Special or Regular Meeting.
- This procedure shall apply to any subsequent reduction in the credit rating of an investment. There is no limitation on the number of times an investment may be reviewed using the retention procedures.

The investment policy also contains an existing provision, which remains unmodified, regarding the application of the proposed changes in the investment policy to existing investments. Under Section XI, Policy Exemption, each time the investment policy is amended this section is utilized as a “safe harbor” for existing investments.

REVIEWED BY CITY MANAGER:

William D. Cabell

LIST OF ATTACHMENTS:

Redlined Exhibit A (Section VIII of Investment Policy)

Ordinance on first reading with Exhibit A

Redlined to Show Changes from Existing Section VIII Exhibit A

Section VIII. SUITABLE AND AUTHORIZED INVESTMENTS, of the City Investment Policy dated February, 2003 (approved by Resolution on February 4, 2003 and amended by Ordinance 5650 adopted November 6, 2011), shall be further amended to read in full as follows:

VIII. SUITABLE AND AUTHORIZED INVESTMENTS

Most City funds are scheduled for specific purposes with maturities selected to coincide as closely as possible with the periods in which monies will be spent for their intended purpose, even though new money is coming in to replace the expended funds. Since the nature of the yield curve tends to be positive (i.e. the longer the term of investment the higher the rates that are available) the City will attempt to stagger the maturity dates on investments to meet the anticipated cash flow needs based on a cash flow analysis and the available yield curve information. However, it is the intention of the City to maximize investment return within the constraints delineated in this policy and according to investment marketability and diversification. In maximizing investment return, it is anticipated that specific securities may be sold prior to maturity.

Eligible Investments:

- All investments authorized by C.R.S. 24-75-601.1 and 24-75-702 (exhibit A)
- Fully insured and/or collateralized certificates of deposit of commercial banks who have submitted a letter documenting that they are a Colorado Banking Board Eligible Public Depository
- Interest bearing advances from one city fund to any other city fund
- The following investments will be permitted by this investment policy:

1. United States Treasury and Agency Issues

Eligible Security Description:

Securities that are issued by the United States Treasury or Agencies of the United States Government for which the full faith and credit of the United States Treasury guarantees fully all principal and interest payments.

Credit Rating:

Securities which carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's Investor service, or Fitch. Securities qualified under Section 2a-7 will be investment eligible on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 from the respective rating agencies.

Maturity Risk Restriction:

At the time of purchase, securities must have a maturity of no greater than five years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 100% of the total portfolio may be invested in securities purchased in United States Treasury and Agency issues.

2. Government Sponsored Enterprises (“GSE”)Eligible Security Description:

Securities issued by federal government sponsored enterprises (“GSE”) such as, but not limited to the Federal Agricultural Mortgage Corporation, Federal Farm Credit Bank, the Federal Home Loan Bank, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation. These securities are not guaranteed by the full faith and credit of the United States Government, however, they hold an implied federal guarantee.

Credit Rating:

Must be senior debt obligations which carry two credit ratings with a minimum rating of AA-/Aa3/AA- from standard & Poor’s, Moody’s, or Fitch. Securities qualified under Section 2a-7 will be eligible for investing on the agencies’ short-term credit scale, requiring a minimum rating of A1/P1/F1 from Standard & Poor’s, Moody’s or Fitch.

Maturity Risk Restriction:

At the time of purchase, securities must have a maturity no greater than five years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 75% of the portfolio may be invested in Government Sponsored Enterprises. No more than 35% of the total portfolio may be invested in the securities of any single GSE.

3. State and Local Debt IssuesEligible Security Description:

General obligation or revenue obligation of any state of the United States, the District of Columbia, or any territorial possession of the United States, or, of any political subdivision, institution, department, agency, instrumentality, or authority or any such governmental entities.

Credit Rating:

Obligations which carry a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor’s Moody’s or Fitch. Securities qualified under section 2s-7 will be eligible for investing on the agencies’ short-term credit scale, requirement a minimum rating of A1/P1/F1 respectively from Standard & Poor’s, Moody’s, or Fitch. If a short-term rating has not been assigned, then apply the long-term credit scale.

The City may invest in its own bond, lease, or note issues, and those of its urban renewal authority without a rating, consistent with existing state law.

Maturity Risk Restriction:

At the time of purchase, such securities must have a maturity no greater than five years from the date of settlement.

Diversification Limit:

Up to 50% of the portfolio may be invested in State and Local Government debt issues. No more than 10% of the total portfolio may be invested in the securities of any single government entity.

4. Corporate Securities

Eligible Security Description:

United States dollar denominated debt instruments issued by a corporation or bank which is organized and operated within the United States and has a net worth in excess of two hundred fifty million dollars.

Credit Rating:

Must be obligations which carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's, or Fitch. Securities which qualify under section 2a-7 will be eligible for investing on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 respectively from Standard & Poor's, Moody's, or Fitch. If a 2a-7 security has no assigned short-term rating, then apply the long-term scale criteria.

Maturity Risk Restriction:

At the time of purchase such securities must have a maturity no greater than three years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 25% of the portfolio may be invested in Corporate Debt, exclusive of any amount invested in GSE securities. No more than 5% of the total portfolio may be invested in the securities of any single corporation.

5. Local Government Investment Pools (LGIP)

Eligible Security Description:

Shares in local government investment pools organized and operated per Colorado Revised Statutes.

Credit Rating:

Must carry a minimum rating of AAAm/Aaa from Standard & Poor' or Moody's.

Maturity Risk Restriction:

At the time of purchase of shares in the LGIP, they must be fully redeemable on the next business day.

Diversification Limit:

Up to 100% of the portfolio may be invested in local government pools. No more than 50% of the total portfolio may be invested in shares of any single LGIP.

6. Money Market Funds

Eligible Security Description:

Accounts that pool money from many investors, have a fund manager, and trade the fund's assets in accordance with the fund's objective. The Fund must be actively controlled by a registered investment company under the "Investment Company Act of 1940", as amended, and Securities Exchange Commission rule 2a-7 (17 CFR 270.2a-7). The fund must have assets in excess of one billion dollars, hold only securities eligible under C.R.S. section 24-75-601.1, a maximum maturity no greater than three years, and shares redeemable the next business day.

Credit Rating:

Must carry a minimum rating of AAAM/Aaa respectively from Standard & Poor's or Moody's.

Maturity Risk Restriction:

At the time of purchase, shares must be fully redeemable on the next business day.

Diversification Limit:

Up to 50% of the portfolio may be deposited in Money Market Funds. No more than 20% of the total portfolio may be invested in any single fund.

7. Repurchase and Reverse Repurchase Agreements

Eligible Security Description:

Agreements between a seller and a buyer whereby the seller agrees to repurchase the securities at an agreed upon price and usually at a stated time. Such securities subject to these agreements must have a coupon rate that is fixed from the time of settlement until its maturity date, and must be marketable. The title to or a perfected security interest in such securities, along with any necessary transfer documents, must be transferred to the investing public entity or to a custodian acting on behalf of the investing public entity. Such securities must actually be delivered to a third-party custodian or third-party trustee for safekeeping on behalf of the public entity. The collateral securities of repurchase agreements must be collateralized at no less than one hundred two percent and marked to market no less frequently than weekly. Eligible securities consist of only those referenced in this Section: 1. United States Treasury and Agency Issues and, 2. Government Sponsored Enterprises.

Credit Rating:

The counter-party must carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's, or Fitch. Securities qualified under Section 2a.7 will be eligible for investing on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 respectively from Standard & Poor's, Moody's, or Fitch. If a 2a-7 qualified security has no assigned short-term rating, then apply the long-term scale criteria.

Maturity Risk Restriction:

For Repurchase Agreements, at the time of purchase such agreements must have a maturity no greater than one year from the date of settlement to the maximum possible maturity date. The forward delivery period on such securities may not exceed 60 days. For Reverse Repurchase Agreements, at the time of purchase, such agreements must have a maturity no greater than 90 days from the date of settlement to the maximum possible maturity date. Requirements for both Repurchase Agreements and Reverse Repurchase Agreements, at the time of purchase are 1) the forward delivery period on such securities may not exceed 30 days 2) securities must be fully marketable 3) City must have title to or a perfected interest in said securities 4) all required documents must be transferred to acting safekeeping agent 5) securities must be delivered versus payment into the City's safekeeping account 6) securities must be collateralized at no less than one hundred two percent and marked to market value no less frequently than weekly.

Diversification Limit:

Up to 50% of the portfolio may be invested in Repurchase Agreements and up to 20% of the portfolio may be invested in Reverse Repurchase Agreements. No more than 20% of the total portfolio may be invested in either of these agreements with any single counter-party.

8. Deposits in State or Nationally Chartered Depository Institutions

Eligible Security Description:

Such depositories must be participants in the State of Colorado Public Deposit Protection Act (PDPA) collateralization program as defined in C.R.S. Section 11-10.5-103, whereby, the bank must pledge their own securities.

Credit Rating:

As depositories are often unrated by nationally recognized credit rating agencies, any deposit and accrued interest above the Federal Depository Insurance Corporation (FDIC) maximum insured amount must be collateralized through the Public Deposit Protection Act. The Colorado Division of Banking and Colorado Division of Financial Services are responsible to monitor and assure adequate collateralization in reserve. For deposits above the FDIC limit and if a long-term credit rating is available from Standard & Poor's, Moody's, and Fitch, on the bank, then a minimum rating of A-/A3/A- respectively is required. If no such rating is assigned, then the bank must carry an acceptable rating from Bauer Financial.

Maturity Risk Restriction:

Demand Deposit, Savings, and Money Market accounts have no final maturity, therefore, can remain on deposit as long as the financial institution retains a Bauer financial rating of two stars for deposits fully insured by the FDIC or three stars for deposits subject to PDPA. All financial institutions must have an Adjusted Risk Based Capital (RBC) greater than eight as reported on their quarterly Call report.

Diversification Limit:

Up to 75% of the portfolio may be deposited in State of Nationally Chartered Depository institutions. No more than 30% of the total portfolio may be invested in any single type of bank instrument (Demand Deposit, Saving, Time Deposit, Money Market) at one depository.

Prohibited Investments:

- Purchases on margin or short sales -
- Derivative securities that are in effect a leveraged anticipation of future movements in interest rates or some price indices –
- Collateralized mortgage obligations due to their complexity and prepayment rate uncertainty –
- Lending securities with an agreement to buy them back after a stated period of time –
- If an eligible investment drops in its credit rating below the required level, the investment will be ~~considered a prohibited investment and will be sold as soon as practical~~reviewed for possible retention or sale.

Retention of Investments that fall below required Credit Ratings for Investment:

Should a currently held investment have its credit rating reduced below the level allowed for purchase, a determination must be made to sell or retain the investment. The following actions will be followed to confirm a decision to retain the investment. Otherwise, the investment shall be sold as expeditiously as possible.

- First, an analysis shall be conducted to confirm that the investment remains consistent with the objectives of this investment policy.
- Second, should retention be determine the preferred action rather than realizing unacceptable losses, a report detailing those findings shall be provided to the City Manager. Accomplishing this within a reasonable timeframe following the notification of the credit rating downgrade is a goal, but not an inflexible timeline. Exceptional circumstances are within the purview of the City Manager.
- Third, the City Manager may not concur with the recommendation to retain an investment and direct the sale of the investment.
- Fourth, should the City Manager concur with the retention recommendation, the City Council shall be so informed, by communicating the City Manager's position, including the original recommendation and a copy of the report. Council may exercise its normal

process to bring the matter before the Council for a Study Session, Special or Regular Meeting.

- This procedure shall apply to any subsequent reduction in the credit rating of an investment. There is no limitation on the number of times an investment may be reviewed using the retention procedures.

FIRST READING November 6, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY OF LOVELAND INVESTMENT POLICY

WHEREAS, the City is a home-rule municipality under Article XX of the Colorado Constitution, with the authority to exercise as large a measure of home rule in municipal affairs as may be granted in the republican form of government, which the State of Colorado is obligated to maintain under its enabling act ; and

WHEREAS, Loveland Municipal Code Section 3.04.070 provides for deposit of City funds and for the investment of City funds as authorized by ordinance and state law; and

WHEREAS, the City has adopted the City of Loveland Investment Policy dated February, 2003, and, by Ordinance 5650, amended the Policy (collectively, the “City Investment Policy”), which sets forth authorized investments for City funds; and

WHEREAS, Section VIII of the City Investment Policy contains provisions requiring the sale of investments that fall in credit rating below the required level for acquisition “as soon as practical”, and

WHEREAS, recent credit rating downgrades make it desirable to modify the City Investment Policy to provide for an analysis of downgraded investments and, in appropriate circumstances, to permit downgraded securities to be held to maturity or to a more profitable time in order to reduce realized losses to the City’s investment portfolio and serve the interests of the public.

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

Section 1. That the City Council hereby amends the Section III of the City Investment Policy to read in full as set forth on Exhibit A attached hereto and incorporated herein by this reference.

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

Section 3. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

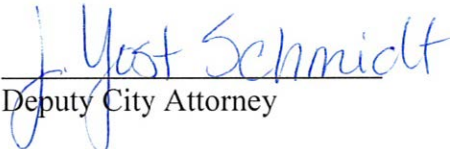
ADOPTED this _____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

Exhibit A

Section VIII. SUITABLE AND AUTHORIZED INVESTMENTS, of the City Investment Policy dated February, 2003 (approved by Resolution on February 4, 2003 and amended by Ordinance 5650 adopted November 6, 2011), shall be further amended to read in full as follows:

VIII. SUITABLE AND AUTHORIZED INVESTMENTS

Most City funds are scheduled for specific purposes with maturities selected to coincide as closely as possible with the periods in which monies will be spent for their intended purpose, even though new money is coming in to replace the expended funds. Since the nature of the yield curve tends to be positive (i.e. the longer the term of investment the higher the rates that are available) the City will attempt to stagger the maturity dates on investments to meet the anticipated cash flow needs based on a cash flow analysis and the available yield curve information. However, it is the intention of the City to maximize investment return within the constraints delineated in this policy and according to investment marketability and diversification. In maximizing investment return, it is anticipated that specific securities may be sold prior to maturity.

Eligible Investments:

- All investments authorized by C.R.S. 24-75-601.1 and 24-75-702 (exhibit A)
- Fully insured and/or collateralized certificates of deposit of commercial banks who have submitted a letter documenting that they are a Colorado Banking Board Eligible Public Depository
- Interest bearing advances from one city fund to any other city fund
- The following investments will be permitted by this investment policy:

1. United States Treasury and Agency Issues

Eligible Security Description:

Securities that are issued by the United States Treasury or Agencies of the United States Government for which the full faith and credit of the United States Treasury guarantees fully all principal and interest payments.

Credit Rating:

Securities which carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's Investor service, or Fitch. Securities qualified under Section 2a-7 will be investment eligible on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 from the respective rating agencies.

Maturity Risk Restriction:

At the time of purchase, securities must have a maturity of no greater than five years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 100% of the total portfolio may be invested in securities purchased in United States Treasury and Agency issues.

2. Government Sponsored Enterprises (“GSE”)Eligible Security Description:

Securities issued by federal government sponsored enterprises (“GSE”) such as, but not limited to the Federal Agricultural Mortgage Corporation, Federal Farm Credit Bank, the Federal Home Loan Bank, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation. These securities are not guaranteed by the full faith and credit of the United States Government, however, they hold an implied federal guarantee.

Credit Rating:

Must be senior debt obligations which carry two credit ratings with a minimum rating of AA-/Aa3/AA- from standard & Poor’s, Moody’s, or Fitch. Securities qualified under Section 2a-7 will be eligible for investing on the agencies’ short-term credit scale, requiring a minimum rating of A1/P1/F1 from Standard & Poor’s, Moody’s or Fitch.

Maturity Risk Restriction:

At the time of purchase, securities must have a maturity no greater than five years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 75% of the portfolio may be invested in Government Sponsored Enterprises. No more than 35% of the total portfolio may be invested in the securities of any single GSE.

3. State and Local Debt IssuesEligible Security Description:

General obligation or revenue obligation of any state of the United States, the District of Columbia, or any territorial possession of the United States, or, of any political subdivision, institution, department, agency, instrumentality, or authority or any such governmental entities.

Credit Rating:

Obligations which carry a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor’s Moody’s or Fitch. Securities qualified under section 2s-7 will be eligible for investing on the agencies’ short-term credit scale, requirement a minimum rating of A1/P1/F1 respectively from Standard & Poor’s, Moody’s, or Fitch. If a short-term rating has not been assigned, then apply the long-term credit scale.

The City may invest in its own bond, lease, or note issues, and those of its urban renewal authority without a rating, consistent with existing state law.

Maturity Risk Restriction:

At the time of purchase, such securities must have a maturity no greater than five years from the date of settlement.

Diversification Limit:

Up to 50% of the portfolio may be invested in State and Local Government debt issues. No more than 10% of the total portfolio may be invested in the securities of any single government entity.

4. Corporate Securities

Eligible Security Description:

United States dollar denominated debt instruments issued by a corporation or bank which is organized and operated within the United States and has a net worth in excess of two hundred fifty million dollars.

Credit Rating:

Must be obligations which carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's, or Fitch. Securities qualified under section 2a-7 will be eligible for investing on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 respectively from Standard & Poor's, Moody's, or Fitch. If a 2a-7 security has no assigned short-term rating, then apply the long-term scale criteria.

Maturity Risk Restriction:

At the time of purchase such securities must have a maturity no greater than three years from the date of settlement to the maximum possible maturity date.

Diversification Limit:

Up to 25% of the portfolio may be invested in Corporate Debt, exclusive of any amount invested in GSE securities. No more than 5% of the total portfolio may be invested in the securities of any single corporation.

5. Local Government Investment Pools (LGIP)

Eligible Security Description:

Shares in local government investment pools organized and operated per Colorado Revised Statutes.

Credit Rating:

Must carry a minimum rating of AAAm/Aaa from Standard & Poor's or Moody's.

Maturity Risk Restriction:

At the time of purchase of shares in the LGIP, they must be fully redeemable on the next business day.

Diversification Limit:

Up to 100% of the portfolio may be invested in local government pools. No more than 50% of the total portfolio may be invested in shares of any single LGIP.

6. Money Market FundsEligible Security Description:

Accounts that pool money from many investors, have a fund manager, and trade the fund's assets in accordance with the fund's objective. The Fund must be actively controlled by a registered investment company under the "Investment Company Act of 1940", as amended, and Securities Exchange Commission rule 2a-7 (17 CFR 270.2a-7). The fund must have assets in excess of one billion dollars, hold only securities eligible under C.R.S. section 24-75-601.1, a maximum maturity no greater than three years, and shares redeemable the next business day.

Credit Rating:

Must carry a minimum rating of AAAM/Aaa respectively from Standard & Poor's or Moody's.

Maturity Risk Restriction:

At the time of purchase, shares must be fully redeemable on the next business day.

Diversification Limit:

Up to 50% of the portfolio may be deposited in Money Market Funds. No more than 20% of the total portfolio may be invested in any single fund.

7. Repurchase and Reverse Repurchase AgreementsEligible Security Description:

Agreements between a seller and a buyer whereby the seller agrees to repurchase the securities at an agreed upon price and usually at a stated time. Such securities subject to these agreements must have a coupon rate that is fixed from the time of settlement until its maturity date, and must be marketable. The title to or a perfected security interest in such securities, along with any necessary transfer documents, must be transferred to the investing public entity or to a custodian acting on behalf of the investing public entity. Such securities must actually be delivered to a third-party custodian or third-party trustee for safekeeping on behalf of the public entity. The collateral securities of repurchase agreements must be collateralized at no less than one hundred two percent and marked to market no less frequently than weekly. Eligible securities consist of only those referenced in this Section: 1. United States Treasury and Agency Issues and, 2. Government Sponsored Enterprises.

Credit Rating:

The counter-party must carry two credit ratings with a minimum rating of AA-/Aa3/AA- respectively from Standard & Poor's, Moody's, or Fitch. Securities qualified under Section 2a.7 will be eligible for investing on the agencies' short-term credit scale, requiring a minimum rating of A1/P1/F1 respectively from Standard & Poor's, Moody's, or Fitch. If a 2a-7 qualified security has no assigned short-term rating, then apply the long-term scale criteria.

Maturity Risk Restriction:

For Repurchase Agreements, at the time of purchase such agreements must have a maturity no greater than one year from the date of settlement to the maximum possible maturity date. The forward delivery period on such securities may not exceed 60 days. For Reverse Repurchase Agreements, at the time of purchase, such agreements must have a maturity no greater than 90 days from the date of settlement to the maximum possible maturity date. Requirements for both Repurchase Agreements and Reverse Repurchase Agreements, at the time of purchase are 1) the forward delivery period on such securities may not exceed 30 days 2) securities must be fully marketable 3) City must have title to or a perfected interest in said securities 4) all required documents must be transferred to acting safekeeping agent 5) securities must be delivered versus payment into the City's safekeeping account 6) securities must be collateralized at no less than one hundred two percent and marked to market value no less frequently than weekly.

Diversification Limit:

Up to 50% of the portfolio may be invested in Repurchase Agreements and up to 20% of the portfolio may be invested in Reverse Repurchase Agreements. No more than 20% of the total portfolio may be invested in either of these agreements with any single counter-party.

8. Deposits in State or Nationally Chartered Depository InstitutionsEligible Security Description:

Such depositories must be participants in the State of Colorado Public Deposit Protection Act (PDPA) collateralization program as defined in C.R.S. Section 11-10.5-103, whereby, the bank must pledge their own securities.

Credit Rating:

As depositories are often unrated by nationally recognized credit rating agencies, any deposit and accrued interest above the Federal Depository Insurance Corporation (FDIC) maximum insured amount must be collateralized through the Public Deposit Protection Act. The Colorado Division of Banking and Colorado Division of Financial Services are responsible to monitor and assure adequate collateralization in reserve. For deposits above the FDIC limit and if a long-term credit rating is available from Standard & Poor's, Moody's, and Fitch, on the bank, then a minimum rating of A-/A3/A- respectively is required. If no such rating is assigned, then the bank must carry an acceptable rating from Bauer Financial.

Maturity Risk Restriction:

Demand Deposit, Savings, and Money Market accounts have no final maturity, therefore, can remain on deposit as long as the financial institution retains a Bauer financial rating of two stars for deposits fully insured by the FDIC or three stars for deposits subject to PDPA. All financial institutions must have an Adjusted Risk Based Capital (RBC) greater than eight as reported on their quarterly Call report.

Diversification Limit:

Up to 75% of the portfolio may be deposited in State of Nationally Chartered Depository institutions. No more than 30% of the total portfolio may be invested in any single type of bank instrument (Demand Deposit, Saving, Time Deposit, Money Market) at one depository.

Prohibited Investments:

- Purchases on margin or short sales -
- Derivative securities that are in effect a leveraged anticipation of future movements in interest rates or some price indices –
- Collateralized mortgage obligations due to their complexity and prepayment rate uncertainty –
- Lending securities with an agreement to buy them back after a stated period of time –
- If an eligible investment drops in its credit rating below the required level, the investment will be reviewed for possible retention or sale.

Retention of Investments that fall below required Credit Ratings for Investment:

Should a currently held investment have its credit rating reduced below the level allowed for purchase, a determination must be made to sell or retain the investment. The following actions will be followed to confirm a decision to retain the investment. Otherwise, the investment shall be sold as expeditiously as possible.

- First, an analysis shall be conducted to confirm that the investment remains consistent with the objectives of this investment policy.
- Second, should retention be determine the preferred action rather than realizing unacceptable losses, a report detailing those findings shall be provided to the City Manager. Accomplishing this within a reasonable timeframe following the notification of the credit rating downgrade is a goal, but not an inflexible timeline. Exceptional circumstances are within the purview of the City Manager.
- Third, the City Manager may not concur with the recommendation to retain an investment and direct the sale of the investment.
- Fourth, should the City Manager concur with the retention recommendation, the City Council shall be so informed, by communicating the City Manager's position, including

the original recommendation and a copy of the report. Council may exercise its normal process to bring the matter before the Council for a Study Session, Special or Regular Meeting.

- This procedure shall apply to any subsequent reduction in the credit rating of an investment. There is no limitation on the number of times an investment may be reviewed using the retention procedures.



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: 17
MEETING DATE: 11/6/2012
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Kerri Burchett, Current Planning

TITLE:

An ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for property located in the "Mirasol First Subdivision" to the City of Loveland, Larimer County, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Adopt 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 quasi-judicial action to consider an ordinance on second reading that would amend the density, maximum number of units and off-street parking ratios established in the Mirasol Community General Development Plan. The Mirasol PUD consists of 24 acres located south of 4th Street SE, east of S. Madison Avenue and west of S. St. Louis Avenue. The applicant is the Housing Authority of the City of Loveland.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

The PUD was approved as an affordable senior housing development consisting of single family and duplex dwellings and independent living apartments. The GDP amendment requests to:

- Add 4 additional dwelling units to Phase III of the development; increasing the density from 9.1 to 9.3 units per acre;

- Adjust the parking ratio for group assisted living homes or "greenhouse" homes to 0.6 parking spaces per dwelling unit. A greenhouse home is a specific skilled nursing model that allows residents to live in a home environment. The residents do not drive and the revised parking ratio is proposed to accommodate only staff and guests.

The Planning Commission held a public hearing to consider the request on September 10, 2012 and unanimously recommended approval of the GDP Amendment. City Council adopted the ordinance on first reading by unanimous vote on October 16, 2012.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

- A. Ordinance
- B. City staff report

FIRST READING October 16, 2012

SECOND READING November 6, 2012

ORDINANCE #5719

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR PROPERTY LOCATED IN THE "MIRASOL FIRST SUBDIVISION" TO THE 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 following described property known as "MIRASOL FIRST SUBDIVISION" located within the City of Loveland, Colorado, and more particularly described as:

PROPERTY DESCRIPTION

All that portion of the SE 1/4 of the NE 1/4 of Section 24, Township 5 north, range 69 west of the 6th P.M., County of Larimer, State of Colorado, more particularly described as follows:

Considering the west line of said SE 1/4 of the NE 1/4 of Section 24 as bearing N 00 degrees 42'55" E and with all bearings contained herein relative thereto:
 COMMENCING at the SW corner of said SE 1/4 of the NE 1/4; THENCE along said west line of the SE 1/4 of the NE 1/4, N 00 degrees 42'55" E, 198.00 feet;
 THENCE leaving said West line, S 89 degrees 17'05" E, 170.00 feet to the true POINT OF BEGINNING.

THENCE continuing S 89 degrees 17'05" E, 226.00 feet;
 THENCE parallel with said west line of the SE 1/4 of the NE 1/4, N 00 degrees 42'55" E, 412.00 feet to an existing east-west fence line; THENCE along said fence line, N 89 degrees 51'48" W, 396.02 feet to said West line of the SE 1/4 of the NE 1/4;
 THENCE along said West line, N 00 degrees 42'55" E, 358.25 feet to the South line of that certain parcel of land described in deed recorded in book 1607 at page 809, records of said County, and the westerly prolongation of the South line of that certain parcel of land described in book 1953 at page 136, records of said county;
 THENCE along said South line of book 1607 at page 809 and said South line of book 1953 at page 136, S 89 degrees 55'21" E, 1324.02 feet to the East line of said SE 1/4 of the NE 1/4;
 THENCE along said East line, S 00 degrees 52'30" W, 966.08 feet to the South line of said SE 1/4 of the NE 1/4;

THENCE along said South line, N 89 degrees 53'39" W, 200.02 feet,
 THENCE S 00 degrees 54'39" W, 34.78 feet to the center-line of a Farmers Ditch as referenced
 in book 2257 at page 1364,
 THENCE following said center-line N 85 degrees 44'56" W, 138.22 feet,
 THENCE S 89 degrees 04'43" W, 148.28 feet,
 THENCE N 79 degrees 59'50" W, 37.75 feet,
 THENCE N 69 degrees 55'28" W, 118.11 feet,
 THENCE N 83 degrees 36'54" W, 90.79 feet,
 THENCE N 88 degrees 36'57" W, 73.11 feet,
 THENCE N 53 degrees 10'13" W, 33.70 feet,
 THENCE N 80 degrees 40'27" W, 128.22 feet,
 THENCE N 71 degrees 40'22" W, 53.47 feet,
 THENCE N 68 degrees 05'19" W, 66.95 feet,
 THENCE N 65 degrees 54'52" W, 93.23 feet to a line which is parallel with said West line of the
 SE 1/4 of the NE 1/4 and passes through the true POINT OF BEGINNING,
 THENCE leaving said ditch center-line along said parallel line, N 00 degrees 42'55" E, 45.05
 feet to the true POINT OF BEGINNING.

Said described parcel of land contains 24.22 Acres, more or less (\pm).

Which property is now included within the boundaries designated as the Mirasol Community PUD (#P-87), shall be included within the boundaries of the district designated as follows:

MIRASOL COMMUNITY PUD SECOND AMENDMENT (# P-87)

The above described tract of land contains 24.199 acres more or less and is subject to all easement and rights-of-way now on record or existing.

Section 2. That **MIRASOL COMMUNITY PUD SECOND AMENDMENT (#P-87)** shall be subject to the General Development Plan for Mirasol Community PUD Amendment No. 2 (#P-87), which Plan is hereby approved and which is on file in the office of Development Services and incorporated herein by this reference.

Section 3. That **MIRASOL COMMUNITY PUD SECOND AMENDMENT (#P-87)** shall be subject to all applicable zoning regulations for the City of Loveland except where they conflict with the General Development Plan applicable to the property.

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

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

Dated this 6th day of November, 2012.

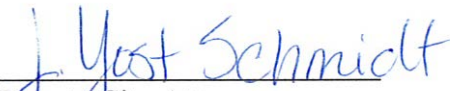
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:



Deputy City Attorney



DEVELOPMENT SERVICES Current Planning

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

MEMORANDUM

TO: City Council

FROM: Kerri Burchett, Principal Planner

DATE: October 16, 2012

RE: Mirasol Community PUD, General Development Plan Amendment

I. EXHIBITS

- A. Staff power point presentation
- B. Planning Commission Minutes dated September 10, 2012
- C. Planning Commission staff report, including:
 - 1. Applicant's Narrative
 - 2. Conceptual Rendering of Phase III
 - 3. General Development Plan Amendment

II. EXECUTIVE SUMMARY

A. Project Description

The City Council public hearing is to consider an amendment to the general development plan for the Mirasol Community PUD. The PUD was developed by the Housing Authority of the City of Loveland and approved by City Council in April of 2005. The GDP includes three phases and was designed as an affordable senior housing community providing a variety of for-sale and for-rent single family, duplex and independent living apartments. Phase 1 of the development has been completed, which included a 48 unit apartment complex, 55 single family/duplex units and a centralized community building. Phase II, which consisted of a 60-unit independent living apartment complex, is currently under construction.

The GDP Amendment is applicable to Phase III of the PUD, which is the final phase of the development. Phase III consists of 2 parcels: D and E, located at the southeast corner of the intersection of South Saint Louis Avenue and Finch Street (see vicinity map on page 3). The GDP Amendment is the first step in the planning process for the development of a skilled nursing project on these parcels. The applicant is currently preparing plans to develop a "greenhouse" model of skilled nursing that creates a home

environment for residents. The "greenhouse" concept is an innovative new approach that has recently been developed. Planning for the project is in a conceptual stage and would consist of 6 separate one-story buildings with each building containing 10 beds. Additional information on the greenhouse skilled nursing concept is include as **Attachment #1** of the Planning Commission staff report (**Exhibit C**) and a conceptual rendering of the development is provided in **Attachment #2** of the Planning Commission staff report. The specific site planning and development for the parcels will require a neighborhood meeting and Planning Commission approval of a preliminary development plan in the future.

The following modifications are requested to the GDP:

1. Increase in the maximum number of units and density: The GDP permitted a total of 56 units within parcels D and E. In anticipation of the greenhouse development, the applicant is requesting to increase the number of units to 60 to accommodate 10 units within 6 one-story buildings. The density in the GDP would increase from 9.1 to 9.3 units per acre with the additional 4 units. The property is designated as Medium Density Residential (MDR) in the City's Comprehensive Master Plan. The proposed density is within the targeted density range of 4 to 10 units per acre in the MDR residential category.
2. Modify the off-street parking ratio: The off-street parking ratio required in the GDP is 1 space per unit for independent living apartments. Assisted living facilities and group homes require 1 space for every unit plus 1 space for every staff member. The applicant is requesting a new parking ratio of 0.6 spaces per unit specific to group assisted living/greenhouse homes. In the group assisted living/greenhouse homes, the residents will not drive. The parking demand primarily comes from the staff and visitors. The applicant has researched parking demands for similar facilities in the country and has indicated that the 0.6 parking spaces per unit has proven to be adequate to accommodate both staff and visitors during the peak times of the day. The GDP narrative provided by the applicant contains addition information on the projects that were included in the comparison (**Attachment #1**).

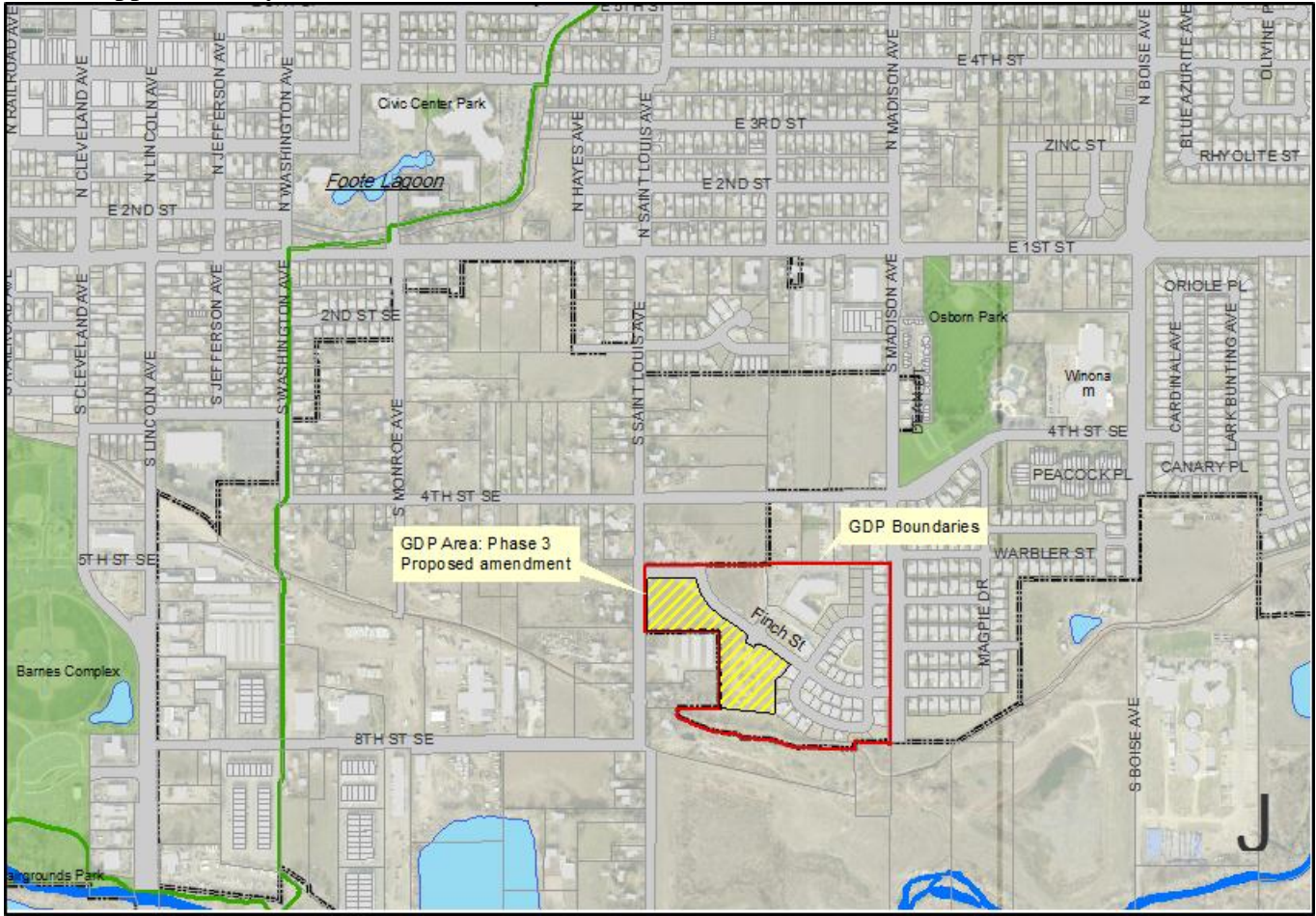
The following table is a summary of a comparison between the standards contained in the approved GDP and the standards requested in the GDP amendment.

Table 1. GDP Amendment Comparison Summary

	Existing GDP Standard	Proposed GDP Standard
Density	9.1	9.3
Maximum Units	220	224
Parking	Independent living: 1 space per unit; assisted living/group homes: 1 space per unit plus 1 space per staff member	Group assisted living/greenhouse homes: 0.6 spaces per unit

B. Project Location

The PUD is located south of 4th Street SE, east of S. Madison Avenue and west of S. St. Louis Avenue and contains approximately 24 acres.



C. Planning Commission Hearing

The Planning Commission held a public hearing regarding the GDP Amendment on September 10, 2012. Two neighbors spoke at the hearing with general questions about the Housing Authority's future plans and design concerns with the development. The design of the development is still in a conceptual stage and will require a subsequent neighborhood meeting and Planning Commission approval of a preliminary development plan. No concerns were identified regarding the GDP Amendment. The Planning Commission unanimously recommended approval of the request. The minutes from the hearing are included as Exhibit B to this staff memorandum. Since the Planning Commission hearing, staff has made a minor adjustment to the language of condition of approval #1 to add the legal description of the property for clarification purposes.

III. RECOMMENDED CONDITIONS

The following conditions are recommended by City staff and the Planning Commission.

Transportation Development Review

1. Prior to the issuance of any building permit within Lots 1 and 2, Block 2 of the Mirasol Second Subdivision, pursuant to the provisions in Section 16.40.010.B of the Loveland Municipal Code, the Developer shall design and construct the ultimate adjacent improvements to Saint Louis Avenue, unless designed and constructed by others.
2. All public improvements shall comply with the Larimer County Urban Area Street Standards (LCUASS).

Water/Wastewater

3. St. Louis Avenue Improvements: Prior to issuance of any building permits within Block 2, Lot 1 of the Property, the Developer shall install that portion of the 24-inch waterline located in South St. Louis Avenue.



Mirasol P.U.D. GDP Amendment

City Council
October 16, 2012

Location:

- Between S. St. Louis & Madison Ave, south of 4th Street
- 24 acres

Includes:

- Phase I: 48 unit apartment; 55 single family & duplex units
- Phase II: 60 units apartment
- Phase III: 5 acres

Mirasol Community PUD



Request

- 1. Increase maximum number of units and density.
Add 4 units, density 9.3 du/ac
- 1. Modify parking ratio for group assisted living/greenhouse homes.
0.6 parking spaces/unit

	Existing GDP Standard	Proposed GDP Standard
Density	9.1	9.3
Maximum Units	220	224
Parking	Independent living: 1 space per unit; assisted living/group homes: 1 space per unit plus 1 space per staff member	Group assisted living/greenhouse homes: 0.6 spaces per unit

- 3. Design of project is not a component of the request. The design will require preliminary development plan approval by the Planning Commission.



Recommendation

- Staff recommendation of approval with conditions listed in staff report.
- Planning Commission recommendation of approval
- Commission vote was unanimous.
-



**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
September 10, 2012**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on September 10, 2012 at 6:30 p.m. Members present: Vice Chairman Middleton; and Commissioners Dowding, Krenning, Leadbetter, and Ray. Commissioners Absent: Meyers, Fancher and Crescibene. City Staff present: Kerri Burchett, Current Planning; Judy Schmidt, Deputy City Attorney.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

COMMISSIONER COMMENTS

Commissioner Molloy reminded the other Commissioners of October 9th study session with City Council regarding oil and gas regulations.

APPROVAL OF THE MINUTES

Commissioner Dowding made a motion to adopt the meeting minutes of August 27th. Upon a second by Commissioner Molloy the motion was unanimously adopted (Commissioner Ray abstained).

REGULAR AGENDA

1. Mirasol GDP Amendment.

This is a public hearing to consider an amendment to the general development plan for the Mirasol Community PUD. The PUD was approved as an affordable senior housing development consisting of single family, duplex and independent living apartments.

Commissioner Dowding made a motion to move this item to the Consent Agenda. Commissioner Ray seconded the motion.

Vice Chair Middleton explained by moving the item to the Consent Agenda there would not be any public input or discussion on the item. Citizens in attendance indicated that they would like to speak on the item, so the motion failed and the item remained on the regular agenda.

Kerri Burchett, Current Planning, gave a brief staff presentation on this item. She described the amendment, explaining that the amendment was to the maximum number of units, density and off-street parking requirements. She reported that the amendment was for the final phase of the

1 development. She clarified that the proposed GDP Amendment is the first step in the planning
 2 process for the development of a skilled nursing project and reported that specific site planning and
 3 development for the project would require a future neighborhood meeting as well as future approval
 4 by the Planning Commission of the Preliminary Development Plan.

5
 6 **Rich Eckwall, Loveland Housing Authority**, briefly described the project and gave a brief
 7 overview of the skilled nursing, Green House model.

8
 9 **Christian Fussy, Lantz-Boggio Architects**, spoke about the Green House model and stated that
 10 they have been very successful in other communities. He stated that there would be parallel parking
 11 and that the parking ratio was reduced because the residences in the Green Houses were immobile
 12 and that the majority of the traffic and parking would be from staff or family.

13
 14 **Commissioner Dowding** suggested that parking may be greater during holiday times and asked if
 15 the project would be assisted or critical living.

16
 17 **Mr. Eckwall** stated that it would be assisted living with skilled nursing. He further commented that
 18 they have discussed and presented the plan to the State Health Department for their approval.

19
 20 **Ms. Burchett** clarified that the request is for an amendment to the GDP. The specific design of the
 21 project has not been reviewed by staff. She reported that an application for a preliminary
 22 development plan will need to be submitted to the City and the Planning Commission would again
 23 review the item at the time the preliminary development plan is brought forward.

24
 25 **CITIZEN PARTICIPATION**

26
 27 **Jon Mielki, 1200 45th Street SE**, expressed concerns regarding decreased property values due to the
 28 development and asked if the Housing Authority would be purchasing any additional property in the
 29 area.

30
 31 **Diane Ruby, 1304 Finch**, spoke of concerns regarding lighting, emergency vehicle access and safety
 32 for residents along St. Louis Avenue. She stated Mirasol was a great asset to the community and
 33 urged them to consider giving priority in the Green House facility to current residents of Mirasol
 34 needing to transition into a skilled nursing facility in the future. She thanked Ms. Burchett for always
 35 being available to answer her questions and concerns.

36
 37 **Mr. Eckwall** stated that at this time, they have no future plans on expanding the campus. He further
 38 stated that the design of the assisted living is still in the conceptual stage and they will be going back
 39 to the neighborhood to gather comments when the design is completed.

40
 41 ***Commissioner Molloy made a motion to make the findings listed in Section VIII of the Planning***
 42 ***Commission staff report dated September 10, 2012 and, based on those findings, recommend that***

1 *City Council approve the Mirasol Community PUD General Development Plan Second*
2 *Amendment, subject to the conditions listed in said report, as amended on the record. Upon a*
3 *second by Commissioner Dowding the motion was unanimously adopted.*
4

5 Mr. Eckwell accepted the conditions.
6

7 **RECOMMENDED CONDITIONS**
8

9 The following conditions are recommended by City Staff.
10

11 Transportation Development Review
12

- 13 1. Prior to the issuance of any building permits within the GDP, pursuant to the provisions in
14 Section 16.40.010.B of the Loveland Municipal Code, the Developer shall design and construct
15 the ultimate adjacent improvements to Saint Louis Avenue, unless designed and constructed by
16 others.
17
- 18 2. All public improvements shall comply with the Larimer County Urban Area Street Standards
19 (LCUASS).
20

21 Water/Wastewater
22

- 23 3. St. Louis Avenue Improvements: Prior to issuance of any building permits within Block 2,
24 Lot 1 of the Property, the Developer shall install that portion of the 24-inch waterline located in
25 South St. Louis Avenue.
26

27 **ADJOURNMENT**
28

29 *Commissioner Dowding made a motion to adjourn. Upon a second by Commissioner Krenning*
30 *the motion was unanimously adopted.*
31

32 
33 Rich Middleton, Vice Chair

34 
35 Vicki Mesa, Secretary
36
37



Development Services Current Planning

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

Planning Commission Staff Report September 10, 2012

Agenda #: Regular Agenda - 1
Title: GDP Amendment for Mirasol Community PUD
Applicant: Housing Authority of the City of Loveland
Request: **General Development Plan Amendment**
Location: East of S. St. Louis Avenue, west of S. Madison Avenue, and south of 4th Street SE
Existing Zoning: Planned Unit Development
Staff Planner: Kerri Burchett

Staff Recommendation

Subject to additional evidence presented at the public hearing, City staff recommends the following motions:

Recommended Motions:

1. *Move to make the findings listed in Section VIII of the Planning Commission staff report dated September 10, 2012 and, based on those findings, recommend that City Council approve the Mirasol Community PUD General Development Plan Second Amendment, subject to the conditions listed in said report, as amended on the record.*

Summary of Analysis

This is a public hearing to consider an amendment to the general development plan for the Mirasol Community PUD. The PUD was approved as an affordable senior housing development consisting of single family, duplex and independent living apartments. The GDP amendment requests the following:

- Modify the maximum number of permitted units in Phase III to add 4 additional units. The total number of units requested for parcels D and E is 60 units;
- Adjust the parking ratio for group assisted living homes or "greenhouse" homes to 0.6 parking spaces per unit. A greenhouse home is a specific skilled nursing model that allows residents to live in a home environment. The residents do not drive and the parking ratio is proposed to be adjusted to accommodate only staff and guests.

Staff believes that all key issues have been resolved based on City Code and standards. The neighborhood did not voice objections concerning the amendment request at the neighborhood meeting. A preliminary development plan for the actual site planning and development of the greenhouse homes will require a subsequent neighborhood meeting and approval of the Planning Commission at a future date.

I. SUMMARY

This proposal is the second amendment to the Mirasol Community Planned Unit Development (PUD) General Development Plan. The PUD is located south of 4th Street SE, east of S. Madison Avenue and west of S. St. Louis Avenue and contains approximately 24 acres. The PUD was developed by the Housing Authority of the City of Loveland and was designed as an affordable senior housing community providing a variety of for-sale and for-rent single family, duplex and independent living apartments. Phase I of the development has been completed, which included a 48 unit apartment complex, 55 single family/duplex units and a centralized community building. Phase II, which consisted of a 60-unit independent living apartment complex, is currently under construction.

The GDP Amendment is applicable to Phase III of the PUD, which is the final phase of the development. Phase III consists of 2 parcels: D and E, located at the southeast corner of the intersection of South Saint Louis Avenue and Finch Street (see vicinity map on page 3). The GDP Amendment is the first step in the planning process for the development of a skilled nursing project on these parcels. The applicant is currently preparing plans to develop a "greenhouse" model of skilled nursing that creates a home environment for residents. The "greenhouse" concept is an innovative new approach that has recently been developed. Planning for the project is in a conceptual stage and would consist of 6 separate one-story buildings with each building containing 10 beds. Additional information on the greenhouse skilled nursing concept is include as **Attachment #1** to this report and a conceptual rendering of the development is provided in **Attachment #2**. The specific site planning and development for the parcels will require a neighborhood meeting and Planning Commission approval of a preliminary development plan in the future.

The following modifications are requested to the GDP:

1. Increase in the maximum number of units and density: The GDP permitted a total of 56 units within parcels D and E. In anticipation of the greenhouse development, the applicant is requesting to increase the number of units to 60 to accommodate 10 units within 6 one-story buildings. The density in the GDP would increase from 9.1 to 9.3 units per acre with the additional 4 units. The property is designated as Medium Density Residential (MDR) in the City's Comprehensive Master Plan. The proposed density is within the targeted density range of 4 to 10 units per acre in the MDR residential category.
2. Modify the off-street parking ratio: The off-street parking ratio required in the GDP is 1 space per unit for independent living apartments. Assisted living facilities and group homes require 1 space for every unit plus 1 space for every staff member. The applicant is requesting a new parking ratio of 0.6 spaces per unit specific to group assisted living/greenhouse homes. In a group assisted living/greenhouse homes, the residents will not drive. The parking demand primarily comes from the staff and visitors. The applicant has researched parking demands for similar facilities in the country and has indicated that the 0.6 parking spaces per unit has proven to be adequate to accommodate both staff and visitors during the peak times of the day. The GDP narrative provided by the applicant contains addition information on the projects that were included in the comparison (**Attachment #1**).

The following table is a summary of a comparison between the standards contained in the approved GDP and the standards requested in the GDP amendment.

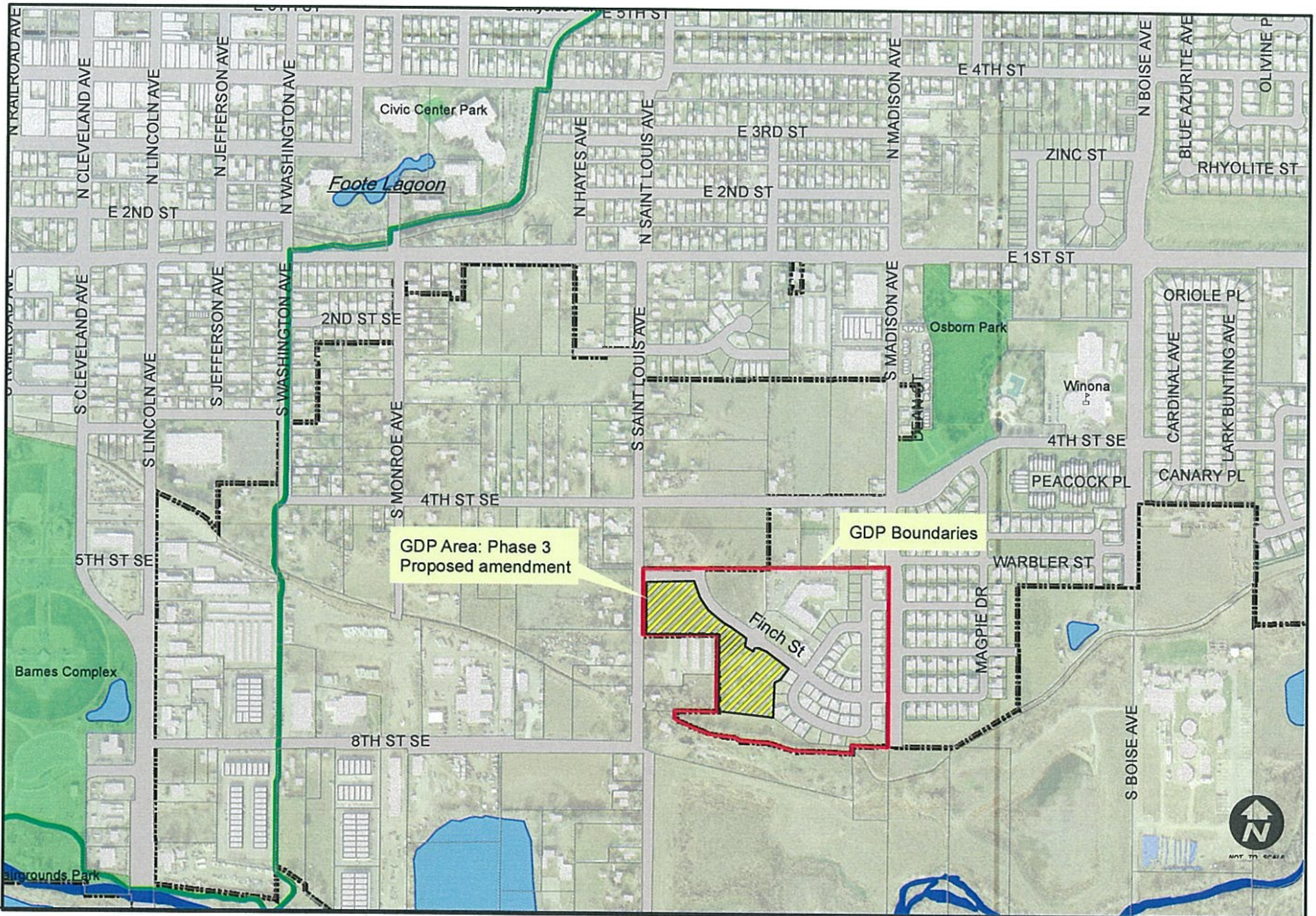
Table 1. GDP Amendment Comparison Summary

	Existing GDP Standard	Proposed GDP Standard
Density	9.1	9.3
Maximum Units	220	224
Parking	Independent living: 1 space per unit; assisted living/group homes: 1 space per unit plus 1 space per staff member	Group assisted living/greenhouse homes: 0.6 spaces per unit

II. ATTACHMENTS

1. Applicant's Narrative
2. Conceptual Rendering of Phase III
3. General Development Plan Amendment

III. VICINITY MAP



IV. SITE DATA

A. GENERAL DEVELOPMENT PLAN AMENDMENT

ACREAGE OF GDP-GROSS/NET.....	24.2 AC / 21 AC
MASTER PLAN DESIGNATION	MEDIUM DENSITY RESIDENTIAL
EXISTING ZONING.....	MIRASOL COMMUNITY PUD
EXISTING USE	MIXED USE RESIDENTIAL & VACANT
ACREAGE OF OPEN SPACE.....	4.84 AC (20% OF SITE)
NUMBER OF DWELLING UNITS APPROVED.....	220
NUMBER OF DWELLING UNITS PROPOSED.....	224
GROSS DENSITY (DU/A) APPROVED	9.1 DU/AC
GROSS DENSITY (DU/A) PROPOSED	9.3DU/AC
EXIST ADJ ZONING & USE - NORTH	COUNTY FA FARMING & DR DEVELOPING RESOURCE – RESIDENTIAL
EXIST ADJ ZONING & USE - SOUTH.....	COUNTY FA FARMING - VACANT
EXIST ADJ ZONING & USE - WEST	COUNTY FA FARMING – RES & MINI STORAGE
EXIST ADJ ZONING & USE - EAST	ARBOR MEADOWS PUD – SF RESIDENTIAL
UTILITY SERVICE – WATER, SEWER & ELECTRIC	CITY OF LOVELAND

V. KEY ISSUES

City staff believes that all key issues have been addressed in the development proposal. At the neighborhood meeting, no concerns were voiced regarding the increase in the number of units or requested modification to the parking ratio.

VI. BACKGROUND

The following represents a timeline for the background of the development:

- April 5, 2005 City Council approval of the annexation and zoning for the Mirasol Community PUD. The PUD established zoning for a maximum of 200 residential units. The GDP created development standards designed for a senior housing community for individuals 55 years of age or older and offered a variety of qualified affordable for-sale and for-rent single family, duplex and independent living apartments.

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

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

- August 9, 2010 Planning Commission approval of a Preliminary Development Plan for Phase II of the development, which permitted the construction of a 60 unit independent living apartment building.
- September 7, 2010 City Council approval of the first amendment to the GDP to increase the number of units, adjust parking ratios, modify building heights for Phase II of the development.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

- A. Notification:** An affidavit was received from Jeff Shera with Lantz-Boggio Architects certifying that written notice was mailed to all property owners within 1,000 feet of the property on August 23, 2012 and notices were posted in prominent locations on the perimeter of the site at least 15 days prior to the date of the Planning Commission hearing. In addition, a notice was published in the Reporter Herald on August 25, 2012.
- B. Neighborhood Response:** A neighborhood meeting was held at 4:00 p.m. on August 2, 2012 in the Mirasol Community Room. The meeting was attended by 18 residents of the development and neighbors along with City staff and consultants. There were no objections voiced to the GDP Amendment requests and overall the residents seemed excited about the prospect of the greenhouse development. Questions at the meeting primarily focused on the specifics of the greenhouse project including: anticipated traffic, construction traffic route, project timing, preference for Mirasol residents at the new facility, costs, level of care, availability for spouses to be in the rooms, and location for snow removal. As the project is still in the conceptual stage, some of the specific questions could not be answered at the meeting. The neighbors and residents were informed that there would be another neighborhood meeting for the actual development of the site in the future, at the preliminary development plan process.

VIII. FINDINGS AND ANALYSIS

The Chapters and sections cited below are from the Loveland Municipal Code pertaining to PUD General Development Plans.

A. Land Use

1. Loveland Municipal Code

a. Section 18.41.050.D.4: *Whether the general development plan confirms to the requirements of this Chapter 18.41, to the City's master plans and to any applicable area plan.*

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

- The density requested in the GDP amendment is consistent with the Comprehensive Master Plan, which designates the entire site as medium density residential (MDR). The MDR designation targets a gross density of 4 to 10 units per acre. The gross density in the GDP amendment proposes 9.3 units per acre.

- The GDP amendment is consistent with the intent of the master plan to promote a variety of housing types at a moderate density compatible with MDR character.

b. Section 18.41.050.D.4(c): *Whether development permitted under the GDP amendment will be complementary to and in harmony with existing development and future development plans for the area in which the GDP is located by:*

- (i) *Incorporating natural physical features into the GDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.*
- (ii) *Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.*
- (iii) *Incorporating physical design features that will provide a transition between the project and adjacent land uses through the provisions of an attractive entryway, edges along public streets, architectural design, and appropriate height and bulk restrictions on structures.*
- (iv) *Incorporating an overall plan for the design of the streetscape within the project, including landscaping, auto parking, bicycle and pedestrian circulation, architecture, placement of buildings and street furniture.*

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

- Passive open space is provided through-out the development, including walking trails connecting to a community gathering center. No changes to open space are proposed in the GDP amendment; and
- Site planning techniques have been incorporated into the approved GDP standards to target the senior community and promote safety for pedestrians. This includes traffic calming devices and neck-downs to lessen the amount of pavement that a pedestrian must cross at an intersection. These techniques promote the philosophies of the City's master plan;
- The streetscape design within the development has incorporated detached sidewalks, treelawns, landscaping and pedestrian lighting features in an overall comprehensive manner.

B. City Utilities and Services

1. Loveland Municipal Code

a. Section 18.41.050.D.4

(i) *Development permitted under the zoning established by the GDP will not have negative impacts on City utilities. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff to recommend either disapproval of the GDP or reasonable conditions designed to mitigate the negative impacts.*

(ii) *Whether development permitted under the GDP will be complementary to and in harmony with existing development and future development plans for the area in which the GDP is located by incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed development will not negatively impact the levels of service of the City's services and facilities.*

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

- The proposed GDP Amendment will result in a density of 30 senior living dwelling units each on Parcel D and Parcel E for a total of 60 dwelling units. The previously approved GDP densities of 14 units for Parcel D and 42 units for Parcel E result in a total of 56 dwelling units.
- Due to the lower trip generation rates associated with elderly housing, the total proposed increase of 4 senior dwelling units is negligible and it does not change the recommendations contained within the previously approved Master Traffic Impact Study for the GDP.
- A detailed Traffic Impact Study demonstrating ACF and LCUASS compliance will be required at time of the PDP submittal. Therefore the Transportation Development Review Division has no objections to the proposed GDP Amendment.

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

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 1).
- The amendment requests will not negatively impact fire protection for the subject development.

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

- This development is situated within the boundaries of and accommodated by the City's water and wastewater master plans. It is also within the City's current service area for both water and wastewater;
- The proposed GDP amendment request is consistent with the Department's Water and Wastewater master plan and will not negatively impact City water and wastewater facilities;
- A condition was added to require that prior to issuance of any building permits within Block 2, Lot 1 of the development, the Developer must install that portion of the 24-inch waterline located in South St. Louis Avenue.
- The proposed development is in harmony with existing and future development and incorporates public infrastructure designed so that the proposed development will not negatively impact the levels of service of the City utilities adjacent to the development; and

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

- Three-phase 200-amp underground vaults are located at the northeast corner of the roundabout of Finch Street and Finch Place and the southeast corner of South St. Louis Avenue and Bunting Place. Three-phase power can be extended through the proposed development at the developer's expense from these two vaults, per City Municipal Code.
- The existing use is a current customer of the City of Loveland electric system and the existing electric facilities are sufficient for the current use.

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

- Proposed stormwater facilities will adequately detain and release stormwater runoff in a manner that will eliminate off-site impacts.
- When designed and constructed, the development will not negatively affect City storm drainage utilities.

IX. RECOMMENDED CONDITIONS

The following conditions are recommended by City Staff.

Transportation Development Review

1. Prior to the issuance of any building permits within the GDP, pursuant to the provisions in Section 16.40.010.B of the Loveland Municipal Code, the Developer shall design and construct the ultimate adjacent improvements to Saint Louis Avenue, unless designed and constructed by others.
2. All public improvements shall comply with the Larimer County Urban Area Street Standards (LCUASS).

Water/Wastewater

3. St. Louis Avenue Improvements: Prior to issuance of any building permits within Block 2, Lot 1 of the Property, the Developer shall install that portion of the 24-inch waterline located in South St. Louis Avenue.

GDP AMENDMENT NARRATIVE
REVISED 8/10/2012

This request for an amendment to the current GDP for the Mirasol Senior Living Community is being made in support of the proposed use for the final phase of this housing development. That use is a skilled nursing project consisting of six separate one-story buildings containing 10 beds each. With each building sized at 7,894 s.f. the total area of this phase of the development will be 47,364 s.f.

This method of providing skilled nursing housing and services is known as the Green House model, which is a de-institutionalization effort that restores individuals to a home in the community. It combines small homes with the full range of personal care and clinical services expected in high-quality nursing homes. The Green House model of elder care is a total re-envisioning of a skilled nursing home – it cannot be overlaid on an existing large facility. The program creates an intentional community to support the most positive elder hood and work life possible. To achieve these goals, the model changes the philosophy of care, staffing assumptions, organizational configuration and architecture.

The Green House home is a self-contained residence, designed like a private home, housing 10 elders, each with his/her own bedroom and full bathroom. The physical space is not meant to be “homelike”, but to be a home. Specially trained certified nursing assistants called “Shahbazim” staff each residence and provide a wide range of assistance, including: personal care, activities, meal preparation and service, light housekeeping, and laundry. Through this close partnership between staff and elders, personal relationships are formed that become the basis for person-directed care, which is the key to creating the culture inherent in the Green House concept. Each Green House home is supported by a clinical support team that includes nurses, social workers, activities experts, therapists, nutritionists, a medical director and a pharmacist.

The request amendments to the GDP are as follows:

- 1) Density. The proposed Green House project will result in a density of 30 dwelling units each on Parcel D and Parcel E. This would be a change from the current GDP densities of 14 units for Parcel D and 42 Units for Parcel E.
- 2) Parking. Since residents of the Green House project will not drive, the actual parking demand will result from staff and visitors. In Green House projects in other parts of the country, the actual demand has shown to be .6 parking spaces per unit. This number of spaces is sufficient to accommodate the staff and visitors during the peak demand times of day.

This proposed GDP parking ratio is less than the current GDP ratio of one space per unit and one space per staff member for assisted living.

In support of this request, data has been obtained directly from existing Green House projects in other parts of the country. These projects are:

- The Village of Redford
Redford, MI
- Life Stream
Youngtown, AZ
- St. Martin's in the Pines
Birmingham, AL

Each of these Green House projects has a quantity of parking spaces approximately equal to .6 spaces per resident unit. Staff members at these communities report that there is adequate parking to meet the demand for visitors and staff.



SITE PLAN

0" = 1' 0"

ATTACHMENT 2

MIRASOL COMMUNITY

Loveland, Colorado



Lantz - Boggio Architects, P.C.



MIRASOL COMMUNITY GENERAL DEVELOPMENT PLAN
 LOVELAND, COLORADO

OWNER:
 CITY OF LOVELAND HOUSING AUTHORITY
 175 W. 5TH STREET
 LOVELAND, CO 80501
 PH: 970.971.3222
 FAX: 970.971.3223

ARCHITECT:
 LANTZ-BOGGIO ARCHITECTS, P.C.
 1000 W. 10TH STREET
 LOVELAND, CO 80501
 PH: 970.971.3222
 FAX: 970.971.3223

CIVIL ENGINEER:
 COTTELL ENGINEERING
 1000 W. 10TH STREET
 LOVELAND, CO 80501
 PH: 970.971.3222
 FAX: 970.971.3223

GENERAL DEVELOPMENT PLAN

OWNER:
 CITY OF LOVELAND HOUSING AUTHORITY
 175 W. 5TH STREET
 LOVELAND, CO 80501
 PH: 970.971.3222
 FAX: 970.971.3223

ARCHITECT:
 LANTZ-BOGGIO ARCHITECTS, P.C.
 1000 W. 10TH STREET
 LOVELAND, CO 80501
 PH: 970.971.3222
 FAX: 970.971.3223

CIVIL ENGINEER:
 COTTELL ENGINEERING
 1000 W. 10TH STREET
 LOVELAND, CO 80501
 PH: 970.971.3222
 FAX: 970.971.3223

SIGNATURE BLOCK

OWNERS CERTIFICATION
 I HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS GENERAL DEVELOPMENT PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

STATE OF COLORADO
 Samuel G. Bolea
 Executive Director

STATE OF COLORADO
 The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____.

Witness my hand and official seal.
 My commission expires: _____

Notary Public

1. PURPOSE OF THE PROJECT

THE FOLLOWING GOALS, CONCEPTS, AND DEVELOPMENT PURPOSES SHALL BE USED TO GUIDE THE DEVELOPMENT OF THE MIRASOL COMMUNITY PLANNED UNIT DEVELOPMENT. THE PURPOSE OF THE PROJECT IS TO PROVIDE A VARIETY OF HOUSING TYPES AND AMENITIES TO MEET THE NEEDS OF THE COMMUNITY. THIS DEVELOPMENT WILL PROVIDE A VARIETY OF HOUSING TYPES AND AMENITIES TO MEET THE NEEDS OF THE COMMUNITY. THIS DEVELOPMENT WILL PROVIDE A VARIETY OF HOUSING TYPES AND AMENITIES TO MEET THE NEEDS OF THE COMMUNITY.

2. LAND USE

a. OVERALL CONCEPT

THE DEVELOPMENT SHALL BE A MIXED-USE COMMUNITY COMPRISED OF SINGLE-FAMILY AND MULTIFAMILY HOUSING, COMMUNITY CENTERS, AND OPEN SPACES. THE DEVELOPMENT SHALL BE A MIXED-USE COMMUNITY COMPRISED OF SINGLE-FAMILY AND MULTIFAMILY HOUSING, COMMUNITY CENTERS, AND OPEN SPACES.

3. TRANSPORTATION ENGINEERING

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

4. UTILITIES

THE DEVELOPMENT SHALL BE SERVED BY WATER, SEWER, GAS, AND ELECTRIC UTILITIES. THE DEVELOPMENT SHALL BE SERVED BY WATER, SEWER, GAS, AND ELECTRIC UTILITIES.

5. WATER

THE DEVELOPMENT SHALL BE SERVED BY A WATER MAIN EXTENSION. THE DEVELOPMENT SHALL BE SERVED BY A WATER MAIN EXTENSION.

6. SEWER

THE DEVELOPMENT SHALL BE SERVED BY A SEWER MAIN EXTENSION. THE DEVELOPMENT SHALL BE SERVED BY A SEWER MAIN EXTENSION.

7. ELECTRICAL

THE DEVELOPMENT SHALL BE SERVED BY AN ELECTRICAL SYSTEM. THE DEVELOPMENT SHALL BE SERVED BY AN ELECTRICAL SYSTEM.

8. STORM DRAINAGE

THE DEVELOPMENT SHALL BE SERVED BY A STORM DRAINAGE SYSTEM. THE DEVELOPMENT SHALL BE SERVED BY A STORM DRAINAGE SYSTEM.

9. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

10. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

11. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

12. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

13. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

14. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

15. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

16. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

17. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

18. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.

19. ACCESSIBILITY

THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES. THE DEVELOPMENT SHALL BE ACCESSIBLE BY PUBLIC TRANSPORTATION AND BICYCLES.



Lentz-Boggio Architects, P.C.

MIRASOL COMMUNITY
LOVELAND, COLORADO

GENERAL DEVELOPMENT PLAN

OWNER:
CITY OF LOVELAND HOUSING AUTHORITY
1000 WEST 17TH STREET
LOVELAND, CO 80503
PH: 970.587.0222
FAX: 970.587.0224

ARCHITECT:
LAWRENCE ARCHITECTS, P.C.
1000 WEST 17TH STREET
LOVELAND, COLORADO 80503
PH: 970.587.0222
FAX: 970.587.0224

CIVIL ENGINEER:
LAWRENCE ARCHITECTS, P.C.
1000 WEST 17TH STREET
LOVELAND, COLORADO 80503
PH: 970.587.0222
FAX: 970.587.0224

No.	Date	Description
001	October 1, 2010	Final Design and Construction Documents
002	November 5, 2010	Final Design and Construction Documents
003	February 24, 2011	Final Design and Construction Documents
004	March 24, 2011	Final Design and Construction Documents
005	April 24, 2011	Final Design and Construction Documents

Sheet No.	Date	Description
1	01/26/2011	City of Loveland Public Comments
2	01/26/2011	Watermaster Comments 1/23/2011
3	04/17/2011	Permit Review

U.S. Sheet Number: 2047.00
Project Name: MIRASOL COMMUNITY - GENERAL DEVELOPMENT PLAN
Issue Date: MARCH 26, 2012
Sheet Title: GDP NARRATIVE - CONTINUED SHEET 3
Sheet Number: 3 OF 6

MIRASOL COMMUNITY GENERAL DEVELOPMENT PLAN SECOND AMENDMENT

ALL THAT PORTION OF THE SE 1/4 OF SECTION 24, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO

OVERALL GRADING WILL BE MAINLY AS THE NATURAL TERRAIN WITH MINOR GRADING TO ACCOMMODATE THE PLANNED DEVELOPMENT. MOST OVERLOT GRADING SHOULD BE MINIMAL AND WATERWAYS SHOULD BE MAINTAINED IN THEIR ORIGINAL CHANNELS TO THE EXTENT PRACTICABLE.

4. DRAINAGE CONCEPT

THE DESIGNING ENGINEER'S RESPONSIBILITIES SHALL APPLY TO ALL DEVELOPMENT WITHIN THE MIRASOL COMMUNITY PLANNED UNIT DEVELOPMENT, IN ACCORDANCE WITH CHAPTER 18.11 OF THE LOVELAND MUNICIPAL CODE. IT IS THE DESIGNING ENGINEER'S RESPONSIBILITY TO PROVIDE A FLEXIBLE AND INNOVATIVE DESIGN OF A RESIDENTIAL DEVELOPMENT THAT ENHANCES THE QUALITY OF LIFE AND PROVIDES FOR THE PROPER USE AND DEVELOPMENT REGULATIONS IN EFFECT AT THE TIME OF APPROVAL OF THIS PLAN.

5. COMMENTS

COVENANTS, RESTRICTIONS, AND DECLARATIONS WILL BE REQUIRED TO BE SUBMITTED WITH THE DEVELOPMENT PLAN AND ASSOCIATION AND DISBURSEMENTS FOR DEVELOPMENT AND MAINTENANCE. COVENANTS SHALL INCLUDE THE ASSOCIATION'S RESPONSIBILITY FOR OBTAINING AND MAINTAINING NECESSARY PERMITS AND DECLARATIONS SHALL BE SUBMITTED WITH THE PLAN.

6. FORMATION OF HOMEOWNERS ASSOCIATION/INTELECTUAL CONTROL BOARD

THE ENTIRE MIRASOL COMMUNITY SHALL BE GOVERNED BY A HOMEOWNERS ASSOCIATION (HOA) OR ASSOCIATION OF HOMEOWNERS (AOH). THE ASSOCIATION SHALL BE RESPONSIBLE FOR PROVIDING GENERAL MAINTENANCE AND REPAIRS TO THE COMMON AREAS AND FACILITIES OF THE APARTMENT COMPLEX AND THE SINGLE-FAMILY/TOWNHOUSE COMMUNITY.

7. MAINTENANCE OF COMMON AREAS

THE ASSOCIATION SHALL ALSO BE RESPONSIBLE FOR THE MAINTENANCE OF THE COMMON AREAS AND FACILITIES OF ALL EXTERIOR PORTIONS OF EACH COMMUNITY INCLUDING THE SINGLE-FAMILY HOMES, EXTERIOR MAINTENANCE WELL, COMMON AREAS, COMMON AREAS AND COMMON FACILITIES MAINTENANCE, AND THE EXTERIOR MAINTENANCE OF ALL COMMON AREAS AND FACILITIES INCLUDING WALKWAYS, DRIVEWAYS, AND THE RECREATION FACILITIES.

8. PROPOSED PHASING AND ESTIMATE BUILD-OUT TIME PERIOD

THE SEQUENCE OF CONSTRUCTION FOR THE INDIVIDUAL PHASES OF DEVELOPMENT SHALL BE DETERMINED BY THE DEVELOPER. THE PHASING SHALL BE SUBMITTED TO THE BOARD WITH AN ESTIMATE OF TWO (2) YEARS FOR PHASE 1, TWO (2) YEARS FOR PHASE 2, AND TWO (2) YEARS FOR PHASE 3.

9. REGULATORY PROCEDURES

A. ALL PROPOSED DEVELOPMENT OF ANY TYPE WITHIN THE PLANNED UNIT DEVELOPMENT SHALL BE PROCESSED IN ACCORDANCE WITH THE REGULATORY PROCEDURES SET FORTH IN CHAPTER 18.11 OF THE LOVELAND MUNICIPAL CODE, SECTION 18.11.02, PROCEDURES FOR APPROVAL OF A PLANNED UNIT DEVELOPMENT, AND SHALL REQUIRE A PLAN OF DEVELOPMENT AND SHALL REQUIRE A PLAN OF DEVELOPMENT IN ACCORDANCE WITH THE REQUIREMENTS THEREOF.

THE GENERAL DEVELOPMENT PLAN MAY BE LOCATED IN A MINOR WAY, SUBJECT TO THE RECOMMENDATION OF THE DEVELOPMENT REVIEW BOARD OR ALIGNMENT WITH THE DEVELOPMENT PLAN. THE DEVELOPMENT PLAN SHALL BE SUBMITTED WITH AN APPLICATION FOR DEVELOPMENT WITH AN APPLICATION IN ACCORDANCE WITH THE MUNICIPAL CODE.

26 March 2012

MIRASOL COMMUNITY - GENERAL DEVELOPMENT PLAN



**MIRASOL
COMMUNITY
LOVELAND, COLORADO**
GENERAL DEVELOPMENT PLAN

OWNER:
CITY OF LOVELAND HOUSING AUTHORITY
335 W. 37th STREET
LOVELAND, CO 80501
TEL: 970.331.2222
FAX: 970.331.9924

ARCHITECT:
LANTZ-BOGGIO ARCHITECTS, P.C.
1000 W. 10th STREET
BOULDER, COLORADO 80502
TEL: 970.331.2222
FAX: 970.331.9924

CIVIL ENGINEER:
CITY ENGINEERING
300 W. 10th STREET
LOVELAND, CO 80501
TEL: 970.331.2222
FAX: 970.331.9924

NO.	DATE	DESCRIPTION
1	08/14/2012	Conceptual Elevation and Floor Plans
2	08/28/2012	Revised Conceptual Elevation and Floor Plans
3	09/11/2012	Final Conceptual Elevation and Floor Plans

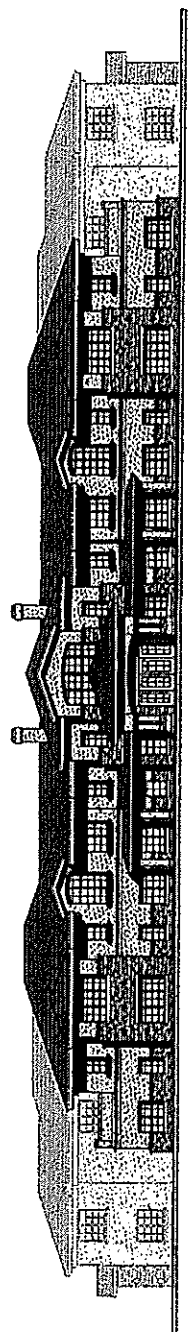
NO.	DATE	DESCRIPTION
1	08/14/2012	City of Loveland Historic District
2	08/28/2012	Historic District Survey of 01/25/2012
3	09/11/2012	Planning Meeting

USA Project Number:
2257.00

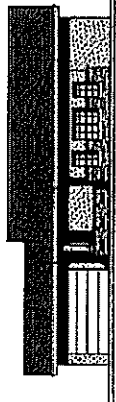
Date:
MARCH 28, 2012

Sheet Title:
GDP ELEVATIONS &
DETAILS

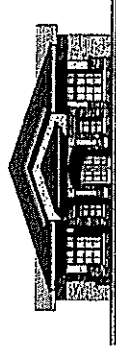
Sheet Number:
5 OF 6



CONCEPTUAL ELEVATION
INDEPENDENT LIVING APARTMENT BUILDING
SCALE: 1/4" = 1'-0"



CONCEPTUAL ELEVATION
MAINTENANCE BUILDING
SCALE: 1/4" = 1'-0"



CONCEPTUAL ELEVATION
COMMUNITY CENTER
SCALE: 1/4" = 1'-0"



CONCEPTUAL ELEVATION
DUPLIX UNIT
SCALE: 1/4" = 1'-0"



TYPE A

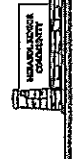


TYPE B

CONCEPTUAL ELEVATION
SINGLE FAMILY DETACHED HOMES
SCALE: 1/4" = 1'-0"



CONCEPTUAL ELEVATION
SINGLE FAMILY DETACHED HOME W/2 CAR GARAGE
SCALE: 1/4" = 1'-0"



CONCEPTUAL ELEVATION
SITE SIGNAGE
SCALE: 1/4" = 1'-0"

28 March 2012
MIRASOL COMMUNITY - GENERAL DEVELOPMENT PLAN



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: 18
MEETING DATE: 11/6/2012
TO: City Council
FROM: Larry Howard, Water & Power
PRESENTER: Larry Howard, Water & Power

TITLE:

A Resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado and the City of Greeley, Colorado for High Park fire reclamation work on Buckhorn Creek

RECOMMENDED CITY COUNCIL ACTION:

Adopt the Resolution

OPTIONS:

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

DESCRIPTION:

This is an administrative action to adopt a resolution approving an intergovernmental agreement with Greeley to share in the cost of reclamation work along Buckhorn Creek, which is tributary to the Big Thompson River, necessitated by damage resulting from the High Park Fire this summer. This work benefits Loveland's residents by protecting river flows and reservoirs within the city from potentially high levels of ash filled "black water" pollution as a result of runoff and erosion in the burn area. The work does not serve to protect the city's sources of drinking water from the Big Thompson River, which fortunately were not affected by the High Park Fire.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

Funds exist in the Raw Water Source of Supply budget for 2012 to cover this expense.

SUMMARY:

The City of Greeley requests that the City of Loveland enter into an Intergovernmental Agreement to share the costs for wildfire mitigation on approximately 494 acres of identified burned areas in the Stove Prairie, Red Stone Creek, and Paradise Park areas within the Buckhorn Creek drainage, which is tributary to the Big Thompson River downstream from the Chasteen's Grove Water Treatment Plant. The map, which is attached, was provided by Greeley's staff, showing the various basins affected by the fires.

The Loveland Utilities Commission considered this request at its meeting on September 19, 2012. Although the members did not recommend a specific contribution, they agreed that participation was appropriate, even though the burned areas are not located above Loveland's water treatment plant intakes. Amounts from \$40,000 to \$100,000 were mentioned during the discussion.

Buckhorn Creek joins the Big Thompson River about two miles downstream from Chasteen's Grove Water Treatment Plant, so any potential effect on water quality in the Big Thompson River will be downstream of Loveland's raw water sources to the plant. Water & Power staff monitored the southern advancement of the fire as it burned, and were relieved that the fire did not cross Buckhorn Creek. As a consequence the fire did not burn into the main stem of the Big Thompson basin upstream of the Buckhorn Creek confluence. Potential negative impacts to the waters of the Big Thompson River from Buckhorn Creek will occur below their confluence and would be visible as the river flows through Loveland.

The fires created extensive critical burn areas resulting in hydrophobic soils which require aerial treatment to prevent erosion and pollution of the water supply. Areas with slopes greater than 60% were not treated because experience has shown the mulch will not remain in place. Areas needing treatment in the Poudre River and Buckhorn Creek basins totaled about 5,500 acres in the national forest, for which the USFS is responsible, and 5,600 acres on private and non-forest lands, which Greeley and others have been working on, with treatment costs running about \$1,255/acre. Larimer County is not participating financially, but has provided critical staff assistance in locating owners and obtaining necessary permissions for treatment.

Benefit for Loveland: During snowpack and rainfall runoff events these areas will experience significant erosion next year if left untreated, resulting in ash filled "black water" flows. Diversions from the river will inevitably enter lakes and ditches in the Loveland area, including Lake Loveland, Horseshoe Lake, Boyd Lake, Rist Benson Reservoir, George Rist Reservoir, and Boedecker Lake, all of which have Loveland homes around them and are used for recreational purposes, particularly the swim beaches at Lake Loveland and Boyd Lake. The mitigation measures will help reduce or eliminate some of the movement of exposed silts and ash, thus helping protect the river's flows and the reservoirs filled from the river.

Additional Information: The City of Greeley contracted with Western States Reclamation of Frederick, Colorado following the Hewlett Gulch fire early this summer, and continued to work with them through a series of change orders as their needs expanded this season due to the subsequent High Park fire. The city was concerned with losing momentum with the contractor if it didn't move ahead rapidly. Western States Reclamation had sources of certified weed free

straw which is difficult to obtain in sufficient quantity, and the company would very likely have moved on to other work in California and the Northwest if their work on the affected areas in Northern Colorado was interrupted. Alternative contractors are limited, and the opportunity for efficient mitigation treatment would have likely ended for the remainder of this year had the City of Greeley not moved ahead with the change orders.

The original contract for the Hewlett Gulch fire in the Poudre Basin was for \$700,000, which the City of Greeley paid. About \$500,000 was eventually reimbursed by the Natural Resources Conservation Service (NRCS). Treatment in the High Park burn areas was done under change orders to the original contract, to standards acceptable to the NRCS, and reimbursements have been made. Applications to the NRCS for reimbursement were made by Greeley for each stage of the work, which took the lead in working with Fort Collins and the Tri-Districts. Since the Buckhorn Creek basin is not part of the Poudre River drainage, Fort Collins and the Tri-Districts did not participate in this portion of the work.

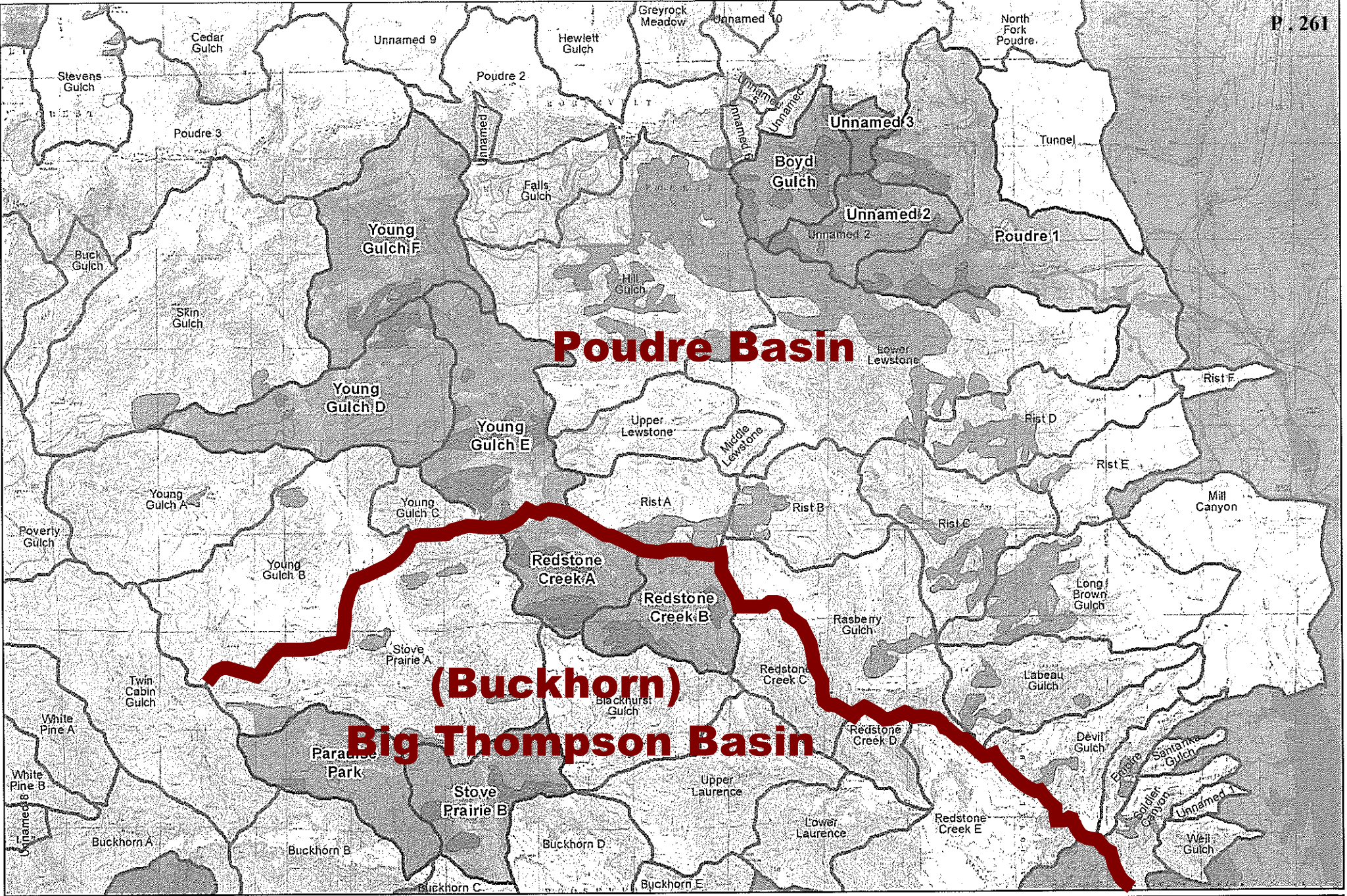
The City of Greeley's costs to this point for mitigation of damage resulting from the High Park fire total \$1,971,921.26, of which \$619,593.50 was spent on mitigation in the Buckhorn basin. Greeley has been reimbursed by the NRCS a total of \$576,950, of which \$170,000 was for work in the Buckhorn basin. Greeley's net cost for work in the Buckhorn Basin is currently \$443,593.50. Any contribution made by the City of Loveland would help offset that amount.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:



- Map of affected area
- Resolution
- Intergovernmental Agreement (attached to the Resolution as Exhibit A)
- City of Greeley presentation slides (City of Greeley staff will make a presentation at the City Council meeting regarding the wildfire mitigation project)



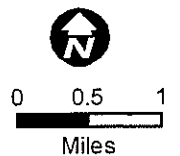
High Park Fire Mitigation Areas

Watersheds with Areas to Bid

-  Priority 1
-  Priority 2

-  NRCS Mitigation Treatment Areas
-  USFS Mitigation Treatment Areas

Date: 9/6/2012
 By: Greeley GIS, coxs
 File: HighPark_Treatment_Sept6Bid.mxd



RESOLUTION #R-77-2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE CITY OF GREELEY, COLORADO FOR HIGH PARK FIRE RECLAMATION WORK ON BUCKHORN CREEK

WHEREAS, the City of Greeley entered into a contract with Western States Reclamation for reclamation work along areas of Buckhorn Creek affected by the High Park Fire; and

WHEREAS, the reclamation work performed by Western States Reclamation was necessary to protect Greeley's water sources from pollution caused by the fire and fire-related runoff, and to protect the Big Thompson River from ash-filled "black water" flows; and

WHEREAS, although Loveland's water source on the Big Thompson River is not affected by the High Park Fire because Loveland's diversion point is above the Big Thompson River's confluence with Buckhorn Creek, Loveland nevertheless benefited from the reclamation work because Greeley stores some of its water diverted from this area in reservoirs located within Loveland, and the Big Thompson River flows through Loveland; and

WHEREAS, Loveland desires to acknowledge this benefit by reimbursing Greeley a portion of the total cost of the reclamation work; and

WHEREAS, as governmental entities in Colorado, Loveland and Greeley 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 Intergovernmental Agreement, attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

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

Section 3. That the Mayor, the City Manager, and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.

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

ADOPTED this 6th day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



October 23, 2012

Cecil Gutierrez, Mayor
William D. Cahill, City Manager
City of Loveland
500 E. Third Street
Loveland, CO 80537

RE: Agreement Regarding Payment for Change Order: High Park Fire Mitigation (Change Order #4 to Agreement between City of Greeley and Western States Reclamation)

Dear Mayor Gutierrez and Mr. Cahill:

The City of Greeley ("Greeley") has requested that the City of Loveland ("Loveland") provide funding to partially support Change Order #4 to the existing agreement between Greeley and Western States Reclamation. That Change Order covered reclamation work on 494 acres of the Buckhorn Creek portion of the of High Park Fire treatment area, which was identified by the Natural Resource Conservation Service ("NRCS") damage assessment as a highly critical area.

Western States Reclamation submitted a change order request for \$619,593.00 that reflected the proposed NRCS work scope for the Buckhorn Creek Treatment. The work was completed consistent with the recommendations and requirements of the NRCS. Greeley and NRCS personnel inspected the work as it was performed. Greeley has accepted the work and has paid Western States Reclamation for Change Order #4. In consideration of its interests in the mitigation of the Buckhorn Creek area, Loveland agrees to reimburse Greeley \$100,000.

The maximum amount pledged by Loveland for work performed under Change Order #4 is \$100,000. This agreement does not obligate Loveland to cover any additional costs incurred by Greeley under Greeley's agreement with Western States Reclamation.

If this letter meets your approval, please execute, in the space indicated below, each of the two originals of this letter that have been provided to you. Please return one original to Eric Reckentine and keep one copy for your files.

Cecil Gutierrez, Mayor
William D. Cahill, City Manager
October 23, 2012
Page 2

Agreed to this ____ day of _____, 2012.

City of Greeley

City of Loveland

Mayor

Mayor

City Clerk

City Clerk

City Manager

City Manager

Director of Finance

City Attorney

City Attorney

Water and Sewer Board Chairman

Wildfire Mitigation Response

City of Greeley

Request for Financial Assistance

Loveland City Council

November 6, 2012

High Park Wildfire

Buckhorn Creek Burned Areas

Issue: Wildfires and Water

- Runoff from the High Park and Hewlett Gulch Fires in Larimer Co. are threatening reservoirs, diversion structures, & water supplies serving > 300,000 people
- At this time, the quality of the drinking water supply is not affected
- Water treatment staff are working hard to maintain high water quality



Effects of Wildfires on Supplies

- Municipalities have taken little water off the Poudre since the first week of June 2012 due to ash-filled “black water”
- Runoff creates high “Total Organic Carbon” loading
 - Creates taste and odor problems
 - Increases chemical costs
 - Increases disposal costs
- Erosion causes sediment which can...
 - Plug diversion structures
 - Fill reservoirs – cleaning out costs 10 times more than building new

Hewlett Gulch Fire
7,685 acres

Tri-Districts'
Diversion

Milton Seaman
Reservoir

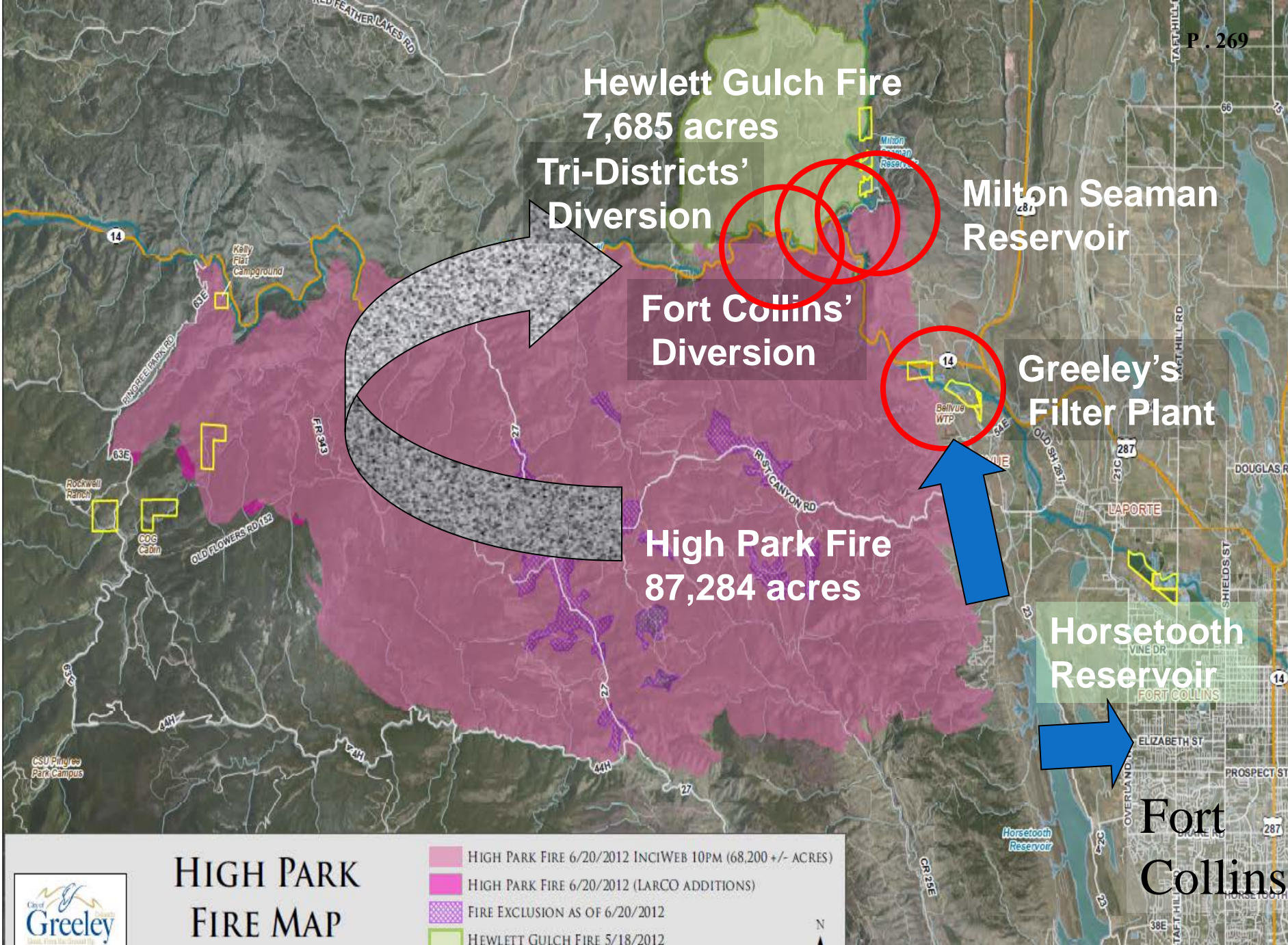
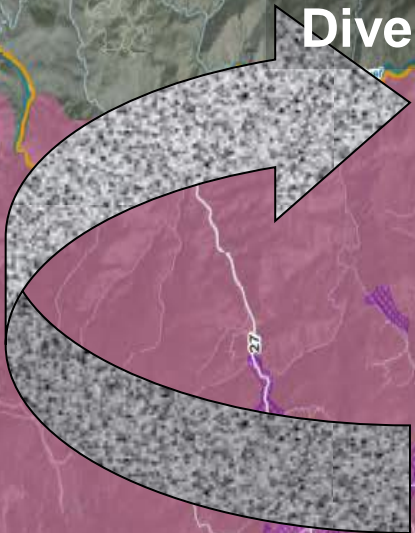
Fort Collins'
Diversion

Greeley's
Filter Plant





High Park Fire
87,284 acres

Horsetooth
Reservoir

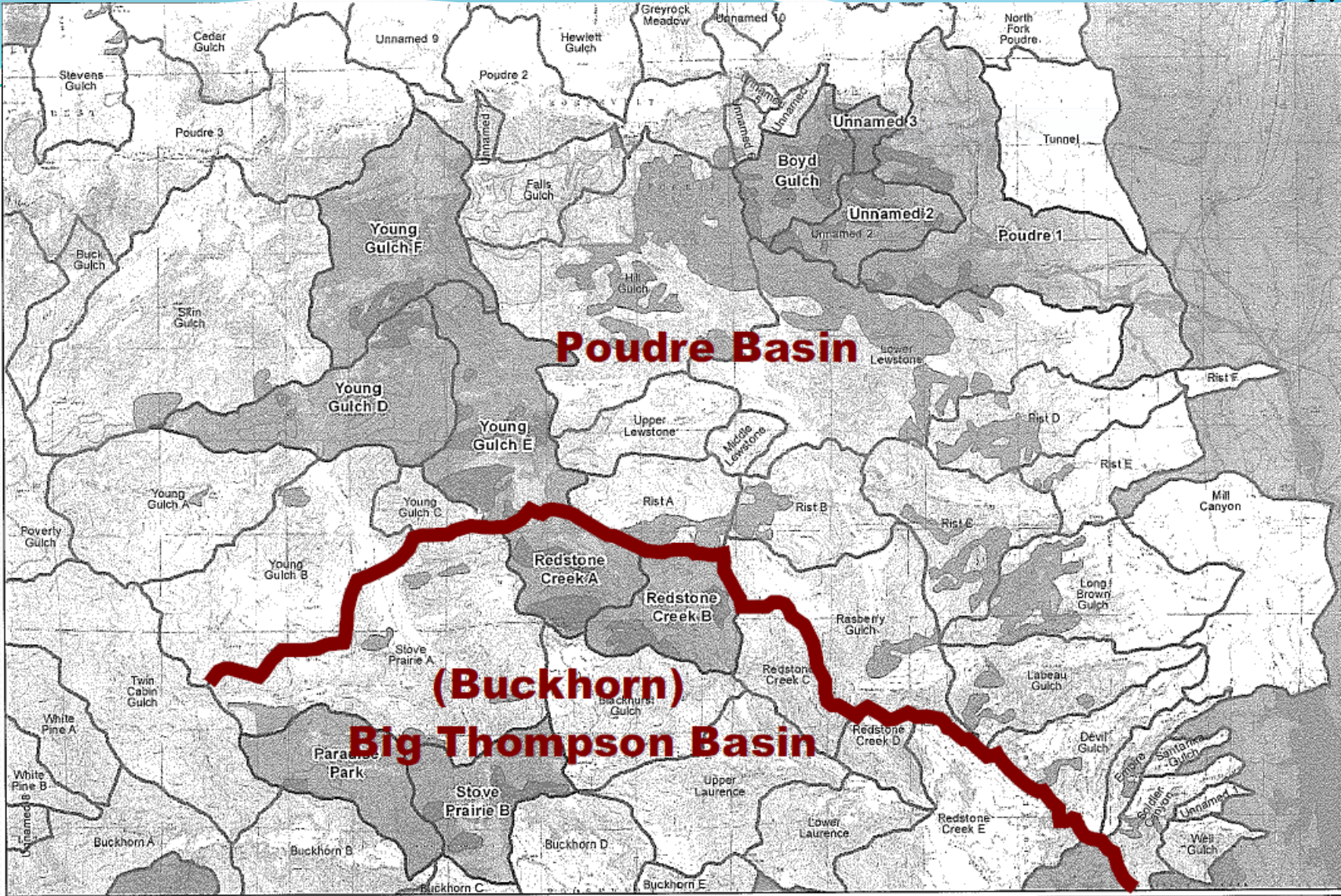
Fort
Collins



HIGH PARK FIRE MAP

-  HIGH PARK FIRE 6/20/2012 INCIWEB 10PM (68,200 +/- ACRES)
-  HIGH PARK FIRE 6/20/2012 (LARCO ADDITIONS)
-  FIRE EXCLUSION AS OF 6/20/2012
-  HEWLETT GULCH FIRE 5/18/2012





High Park Fire Mitigation Areas

Watersheds with Areas to Bid

-  Priority 1
-  Priority 2

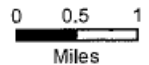


NRCS Mitigation Treatment Areas



USFS Mitigation Treatment Areas

Date: 9/6/2012
 By: Greeley GIS, caxs
 File: HighPark_Treatment_Sept6Bid.mxd



Hewlett Gulch Fire (the small one)

- Fire affected 7,685 acres, 30% moderate or severe burn
- Forest Service mitigated Federal lands
 - Forest Service mitigated 650 acres most critical
 - Greeley wanted more area mitigated and paid for it
- Greeley was “Lead Sponsor” for private land – 556 acres
 - Greeley selected helicopter company: \$710,000
 - Needed agreements with 4 private landowners
 - Actual treatment could not begin until High Park fire was contained the following month

Funding Hewlett Fire Mitigation

- Majority of Hewlett fire damage drains into Greeley's Milton Seaman Reservoir, so Greeley took the lead
- National Resource Conservation Service (NRCS) signed a reimbursement agreement with Greeley for the 556 acres
 - 75% reimbursable = \$500,000
 - Actual bid was \$710,000
 - Greeley's cost = \$210,000
 - Northern Water change order = \$91,000

High Park Fire – 10 times as large Some of it in a Big Thompson River Tributary

- Four lead sponsors
 - Greeley -- only one with NRCS contract
 - Ft. Collins
 - Larimer County
 - Tri-Districts (ELCO, North Weld, FCLWD)
- Joint EWP/BAER report identified 5,600 acres of non-federal land requiring treatment
- Obtaining land owner permission is critical: Larimer Co. is taking the lead – 250 land owners on non-federal lands
- Federal land managed by Forest Service – similar acreage

Funding High Park Fire Mitigation

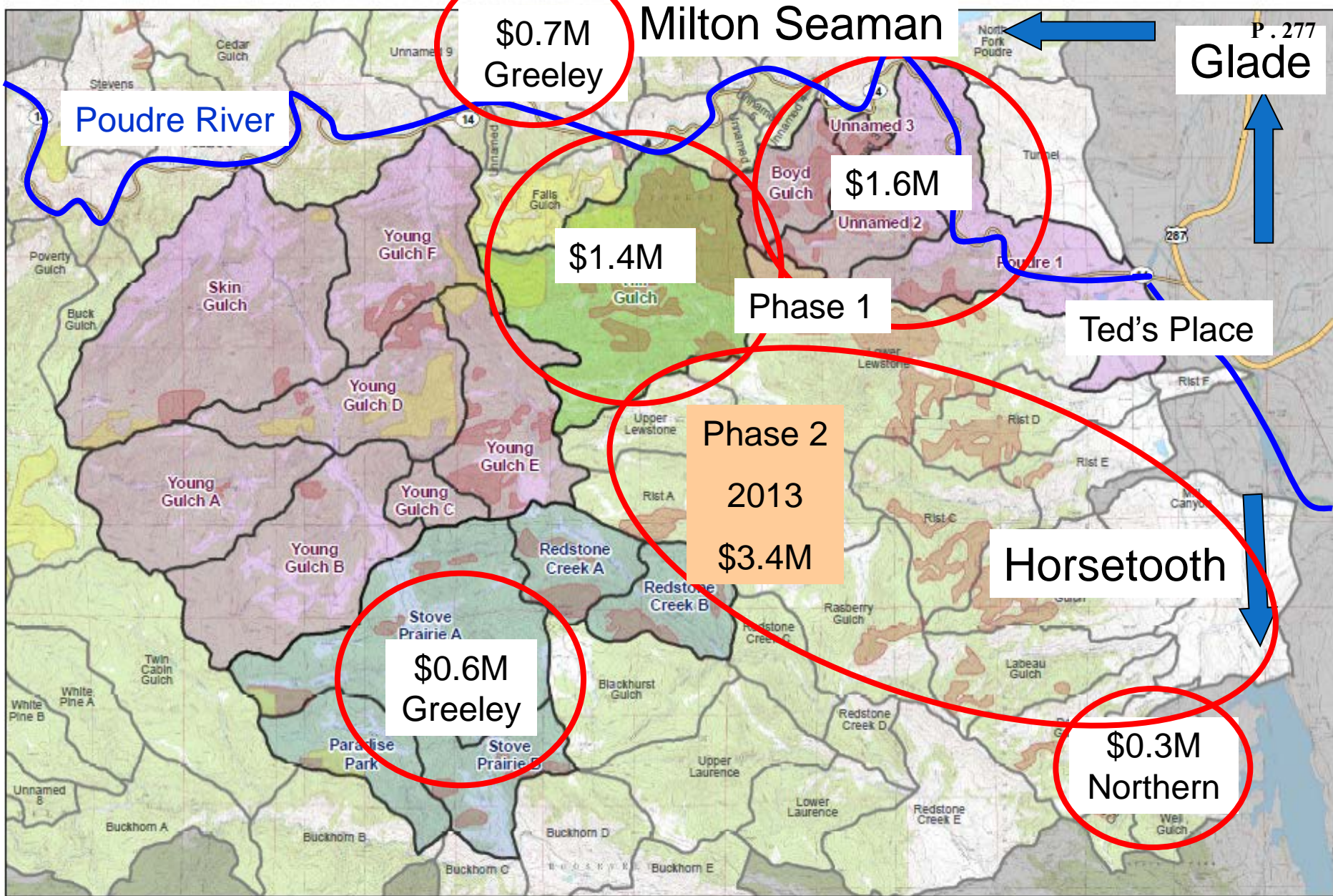
- Greeley, Fort Collins, Tri-Districts are cooperating for mitigation of 5,600 acres of private land
 - \$9.9 million dollars per NRCS damage survey
 - \$7.4 million soil treatment + \$2.5 million structures
 - Agreements among parties define cost share
 - 45% Greeley -- 44% Ft.Collins -- 11% Tri-Districts
 - Northern Water is mitigating above Horsetooth
- Limited (\$1.1 M) federal money is available in 2012
- Greeley could not delay

High Park Mitigation in 2 Phases

- Phase I in 2012: 3,200 acres ~ \$3.6 million
 - Greeley managed contracts
 - Fort Collins assessed water treatment options
 - Larimer Co. acquired land owner access
 - Using the same contractor as for Hewlett Gulch
 - 70% paid by water providers (\$1.1M from NRCS)
- Phase II in 2013: 2,600 acres ~ \$3.4 million
 - Asking NRCS to manage the vendor, acquire access, and provide 75% federal share
 - Plus \$2.5 million for erosion control structures

High Park Mitigation Phase 1

- First bite - Phase Ia.
 - Hill Gulch – **\$1.4 million** mulching – 1,152 acres – only 12 landowners - **Completed September 10**
- Second bite - Phase Ib. – Poudre & Big Thompson
 - Boyd Gulch and 11 other Drainages - **\$1.6 million** mulching – 1,400 acres – over 25 landowners – Start Sept. 13 – **completed October 5**
 - Big Thompson - Buckhorn Creek – 5 drainages - \$620,000 mulching – 650 acres – 55 landowners
- Northern Water doing Empire Gulch - \$200,000



\$0.7M
Greeley

Milton Seaman

P. 277
Glade

Poudre River

\$1.6M

\$1.4M

Phase 1

Ted's Place

Phase 2

2013

\$3.4M

Horsetooth

\$0.6M
Greeley

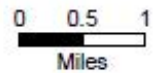
\$0.3M
Northern



High Park Fire Mitigation Areas

Watersheds with Areas to Bid

- First High Park Mitigation Phase
- Big Thompson Basin
- Poudre Basin
- NRCS Mitigation Treatment Areas
- USFS Mitigation Treatment Areas



Date: 9/13/2012
By: Greeley GIS, coxs
File: HighPark_Treatment_Sent13Bid.mxd

Funding High Park Mitigation

- The Poudre and the Big Thompson are vital to water supplies in all Northern Colorado
- The rivers supply over 300,000 with drinking water and irrigate over 640,000 acres
- Sediment transport from burned areas threatens roads, water supplies, diversion structures, and property along the rivers
- Rate payers of Greeley, Ft. Collins, and Northern Colorado are paying through water rates.

Questions?



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: 19
MEETING DATE: 11/6/2012
TO: City Council
FROM: Brent Worthington, Finance
PRESENTER: Brent Worthington

TITLE:

September 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 year to date, ending September 30, 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 as of September 30, 2012. Citywide Revenue (excluding internal transfers) of \$164,137,047 is 103.9% of year to date (YTD) budget or \$6,234,396 over the budget. Sales Tax collections are 103.5% of the YTD budget or \$870,272 over budget. Building Material Use Tax is 139.4% of YTD budget, or \$291,713 over budget. Sales and Use Tax collections combined were 105.7% of YTD budget or \$1,545,544 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 7.7% or \$2,026,350.

Citywide total expenditures of \$142,233,626 (excluding internal transfers) are 80.6% of the YTD budget or \$34,301,470 under the budget.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

Snapshot report for September 2012

Presentation Slides



SnapShot

Monthly Financial Report
September 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, \$164.1 million (3.9% above budget projections)
- Sales & Use Tax Collection, \$28.5 million (5.7% above budget projections)
- Citywide Expenditures, excluding transfers between funds, \$142.2 million (19.4% below budget projections)
- Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$21.9 million
- General Fund Revenue, excluding transfers between funds, \$54.0 million (9.3% above budget projections)
- General Fund Expenditures, excluding transfers between funds, \$42.9 million, (8.3 % below budget projections)
- General Fund Revenues exceed Expenditures by \$10.2 million
- Cash & Reserves Year-To-Date Balance, \$211.0 million, \$145.6 million or 69.0% of these funds are restricted or reserved primarily for future capital projects

Inside This Edition

Citywide Revenues & Expenditures	2
General Fund Revenues & Expenditures	4
Tax Totals & Comparison	6-9
Sales Tax SIC & Geo Codes	10-12
Health Care Claims	13
Activity Measures	14
Capital Projects	15

The Sales Tax Basics

September 2012	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2012	\$ 24,726,680	\$ 1,487,670	\$ 740,880	\$ 26,955,230
Actual 2012	\$ 25,596,953	\$ 1,871,230	\$ 1,032,593	\$ 28,500,776
% of Budget	103.5%	125.8%	139.4%	105.7%
Actual 2011	\$ 24,124,132	\$ 1,563,378	\$ 786,916	\$ 26,474,426
Change from prior year	6.1%	19.7%	31.2%	7.7%

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.

Although sales and use tax revenue is greater in 2012 than in 2007, inflation adjustment of the revenue shows that collections in 2012 are still close to 2007 when inflation is taken into account. Since May, 2012 collections in real dollar terms have trended above 2007 collections, but only slightly, emphasizing the importance of continuing the strategy implementation.

Citywide Revenues & Expenditures

September 2012

Combined Statement of Revenues and Expenditures				
September 2012				
REVENUE	Current Month	YTD Actual	YTD Revised Budget	% of Budget
General Governmental				
1 General Fund	\$ 5,424,792	\$ 54,010,545	\$ 49,434,413	109.3%
2 Special Revenue	91,690	777,929	875,794	88.8%
3 Other Entities	1,069,676	20,057,901	22,406,240	89.5%
4 Internal Service	1,296,562	12,231,062	12,126,268	100.9%
5 <i>Subtotal General Govt Operations</i>	\$ 7,882,720	\$ 87,077,437	\$ 84,842,715	102.6%
6 Capital Projects	771,961	7,987,093	8,542,472	93.5%
Enterprise Fund				
7 Water & Power	7,354,910	57,734,159	53,245,610	108.4%
8 Stormwater	354,813	3,195,034	3,320,667	96.2%
9 Golf	396,597	3,415,239	3,296,030	103.6%
10 Solid Waste	530,754	4,728,085	4,655,157	101.6%
11 <i>Subtotal Enterprise</i>	\$ 8,637,074	\$ 69,072,517	\$ 64,517,464	107.1%
12 Total Revenue	\$ 17,291,756	\$164,137,047	\$ 157,902,651	103.9%
		<i>Prior Year External Revenue</i>		
		154,938,305		
		<i>Increase From Prior Year</i>		
		5.9%		
13 Internal Transfers	167,241	6,392,219	18,435,080	34.7%
14 Grand Total Revenues	\$ 17,458,997	\$170,529,267	\$ 176,337,731	96.7%
EXPENDITURES				
General Governmental				
15 General Fund	\$ 4,353,566	\$ 42,404,837	\$ 46,256,576	91.7%
16 Special Revenue	127,233	599,082	731,856	81.9%
17 Other Entities	871,430	18,855,920	19,815,741	95.2%
18 Internal Services	1,303,794	9,974,753	12,674,866	78.7%
19 <i>Subtotal General Gov't Operations</i>	\$ 6,656,022	\$ 71,834,592	\$ 79,479,040	90.4%
20 Capital	2,088,751	21,104,669	48,128,629	43.9%
Enterprise Fund				
21 Water & Power	4,512,650	42,700,156	41,394,870	103.2%
22 Stormwater	161,089	1,397,687	2,094,739	66.7%
23 Golf	213,582	1,991,304	2,077,984	95.8%
24 Solid Waste	318,082	3,205,219	3,359,834	95.4%
25 <i>Subtotal Enterprise</i>	\$ 5,205,403	\$ 49,294,365	\$ 48,927,427	100.7%
26 Total Expenditures	\$ 13,950,176	\$142,233,626	\$ 176,535,096	80.6%
		<i>Prior Year External Expenditures</i>		
		149,567,707		
		<i>Increase (-Decrease) From Prior Year</i>		
		-4.9%		
27 Internal Transfers	167,241	6,392,219	18,436,124	34.7%
28 Grand Total Expenditures	\$ 14,117,417	\$148,625,845	\$ 194,971,220	76.2%
<i>** Based on seasonality of receipts and expenditures since 1995.</i>				

Special Revenue Funds: Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures.

General Government Capital Projects Fund: Capital Expansion Fee Funds, Park Improvement, Conservation Trust, Open Space, Art In Public Places.

Other Entities Fund: Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority, Loveland Fire and Rescue Authority.

Internal Service Funds: Risk/Insurance, Fleet, Employee Benefits.

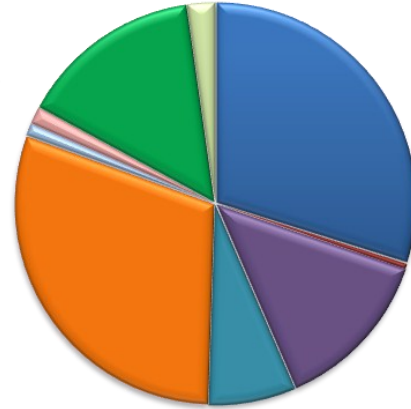
YTD Operating Revenues of \$164.1 Million

- General Fund
- Special Revenue
- Capital Projects
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Solid Waste



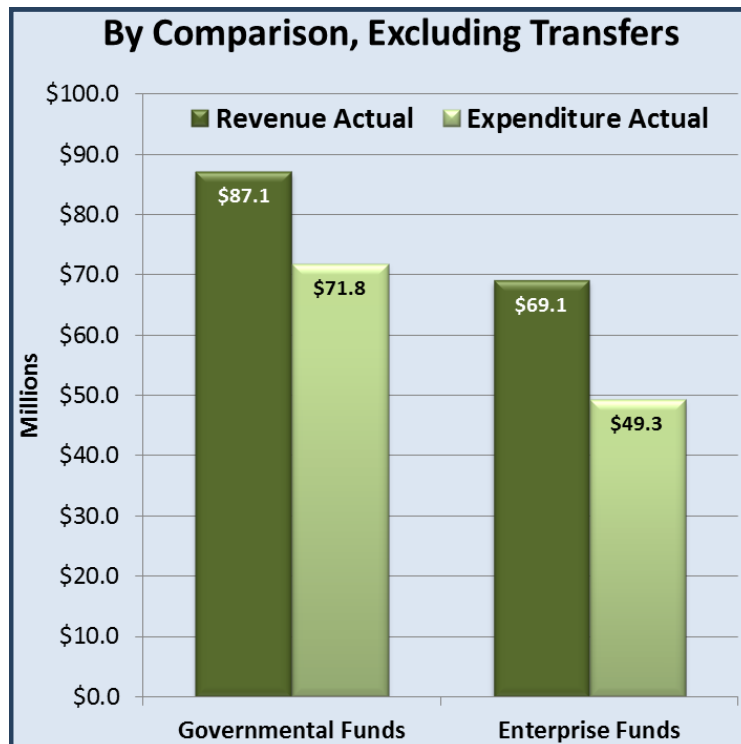
YTD Operating Expenditures of \$142.2 Million

- General Fund
- Special Revenue
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Capital Projects
- Solid Waste



- ⇒ Revenues exceed expenditures YTD by \$21,903,422 (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)
- ⇒ Other Entities (line 3) revenue is below budget due to the timing of Federal grant expenditures at the Airport and Loveland Fire Rescue Authority
- ⇒ Water & Power revenues are above budget (line 7) due to higher than expected revenue from plant investment fees from higher than planned building activity
- ⇒ Internal transfers (line 13 & 27) are under budget due to the timing of related expenditures
- ⇒ The General Fund (line 15) is under budget due to lower than planned spending for economic incentives and snow/ice removal chemicals and the timing of human services grant payments
- ⇒ Special Revenue funds (line 16) are below budget due to the timing of grant payments from the CDBG Fund
- ⇒ Internal services (line 18) is 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
- ⇒ Stormwater (line 22) is under budget due to lower than expected repair and maintenance costs

By Comparison, Excluding Transfers

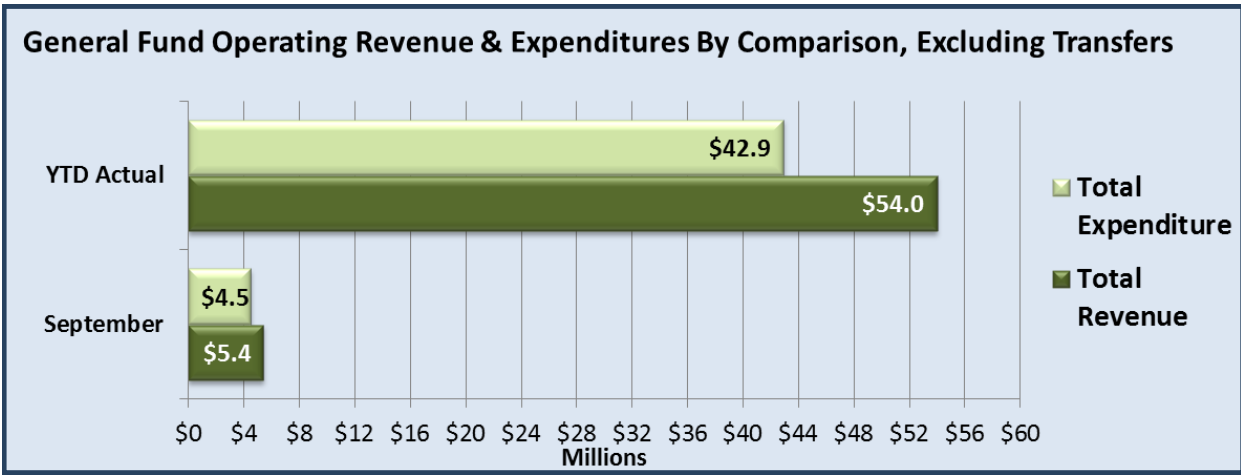


General Fund Revenues & Expenditures

September 2012

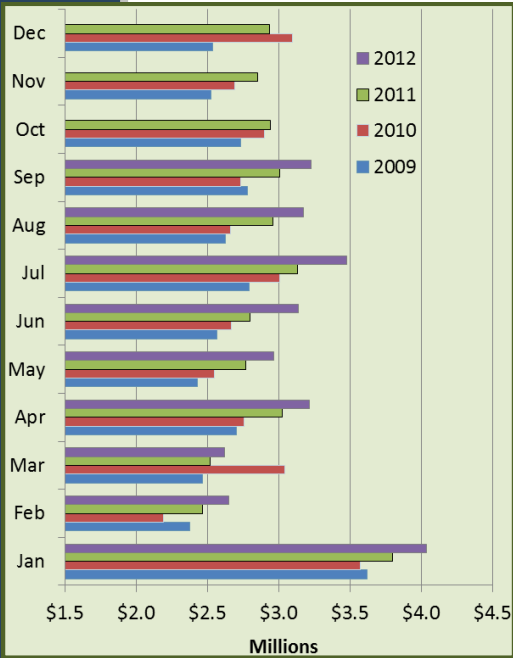
General Fund Revenue & Expenditures September 2012				
REVENUES	September 2012	YTD Actual	YTD Revised Budget	% of Budget
1 Taxes				
2 Property tax	\$ 76,312	\$ 7,326,601	\$ 7,159,980	102.3%
3 Sales tax	2,909,008	25,596,952	24,726,680	103.5%
4 Building use tax	92,415	1,032,593	740,880	139.4%
5 Auto use tax	223,732	1,871,229	1,487,670	125.8%
6 Other taxes	154,124	2,479,802	1,864,040	133.0%
7 Intergovernmental	837,501	5,122,085	4,426,836	115.7%
8 License & permits				
9 Building permits	150,746	1,181,871	594,990	198.6%
10 Other permits	23,508	281,218	209,565	134.2%
11 Charges for services	257,091	3,080,909	2,796,313	110.2%
12 Fines & forfeitures	66,619	755,838	753,957	100.2%
13 Interest income	27,112	332,516	303,800	109.5%
14 Miscellaneous	606,624	4,948,930	4,369,702	113.3%
15 Subtotal	\$ 5,424,792	\$ 54,010,545	\$ 49,434,413	109.3%
16 Interfund transfers	147,369	1,499,212	3,063,350	48.9%
17 Total Revenue	\$ 5,572,161	\$ 55,509,757	\$ 52,497,763	105.7%
EXPENDITURES				
Operating Expenditures				
18 Legislative	\$ 6,317	\$ 70,067	\$ 97,990	71.5%
19 Executive & Legal	161,034	1,559,599	1,770,173	88.1%
20 Economic Development	100,221	1,002,707	1,692,139	59.3%
21 Cultural Services	80,588	975,073	1,048,467	93.0%
22 Development Services	177,778	1,648,906	2,009,459	82.1%
23 Finance	352,813	2,600,415	2,912,845	89.3%
24 Fire & Rescue	(6,357)	611,127	637,510	95.9%
25 Human Resources	61,200	637,242	679,231	93.8%
26 Information Technology	204,679	2,336,106	2,661,024	87.8%
27 Library	170,818	1,663,237	1,744,953	95.3%
28 Parks & Recreation	562,359	5,312,673	5,515,286	96.3%
29 Police	1,304,039	11,177,480	11,905,954	93.9%
30 Public Works	748,632	8,175,510	8,664,801	94.4%
31 Non-Departmental	587,066	5,165,156	5,488,875	94.1%
32 Subtotal Operating	\$ 4,511,187	\$ 42,935,298	\$ 46,828,706	91.7%
33 Internal Transfers	3,342	2,359,182	5,280,630	44.7%
34 Total Expenditures	\$ 4,514,529	\$ 45,294,480	\$ 52,109,336	86.9%

- ⇒ Sales Tax revenue is above budgeted levels by 3.5%
- ⇒ Building use tax and permit revenue (lines 5, 9) exceed budget due to higher than expected building activity
- ⇒ Intergovernmental revenue (line 7) is above budget due to the timing of State Severance Tax and Federal grant receipts
- ⇒ Other permit revenue (line 10) is above budget due to the timing of revenue passed through to the school district
- ⇒ Charges for service (line 11) is above budget due to greater than planned recreation 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
- ⇒ 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 under budget due to lower than expected incentive payments
- ⇒ 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, audit expenses, and withdrawals of supplies from the warehouse (line 23)
- ⇒ Information Technology (line 26) is under budget due to the timing of computer and service maintenance expenses
- ⇒ Revenues exceed expenditures by \$10,215,277 (line 17 less line 34)



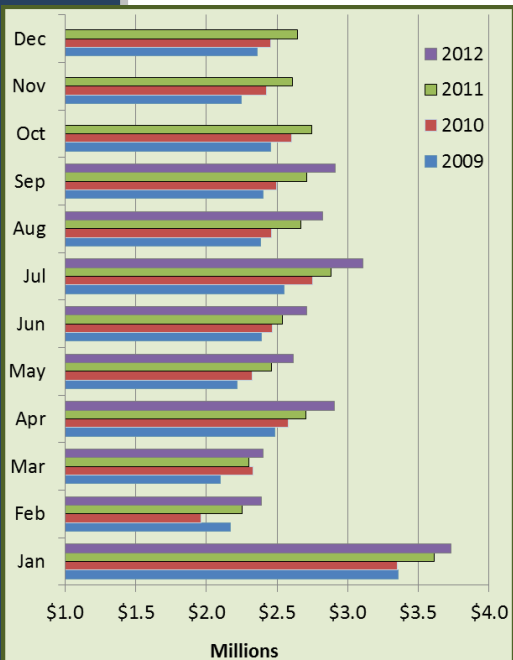
Tax Totals & Comparisons

Sales & Use Tax



	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 3,622,251	3,573,972	\$ 3,799,760	\$ 4,039,679	\$ 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	2,618,052	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	3,136,014	2,904,600	8.0%
Jul	2,794,222	3,004,324	3,129,254	3,480,123	3,254,770	6.9%
Aug	2,628,842	2,662,932	2,961,686	3,171,055	2,930,740	8.2%
Sep	2,782,768	2,732,087	3,008,637	3,225,155	2,992,510	7.8%
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	\$28,500,776	\$35,868,020	
YTD	\$24,370,507	\$25,181,405	\$26,474,426	\$28,500,776	\$26,955,230	5.7%

Retail Sales Tax

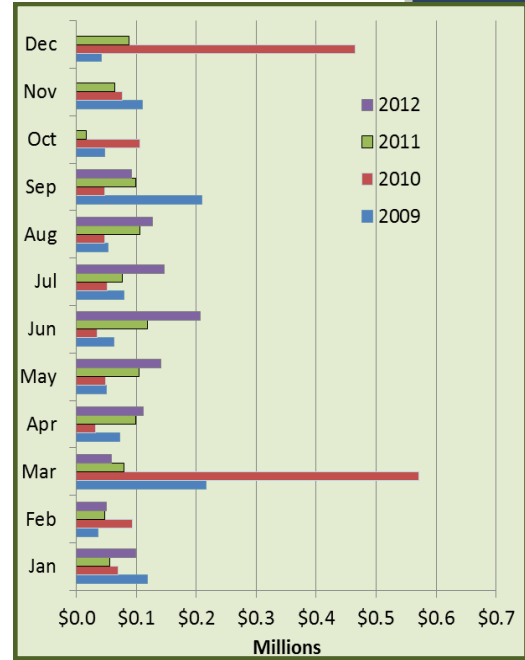


	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 3,354,704	\$ 3,352,821	\$ 3,613,881	\$ 3,733,310	\$ 3,648,890	2.3%
Feb	2,170,562	1,959,729	2,249,749	2,390,409	2,132,780	12.1%
Mar	2,100,216	2,328,701	2,299,237	2,403,380	2,534,340	-5.2%
Apr	2,482,752	2,579,918	2,702,024	2,905,558	2,807,740	3.5%
May	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	2,711,906	2,686,160	1.0%
Jul	2,552,195	2,752,870	2,882,075	3,105,564	2,995,960	3.7%
Aug	2,383,119	2,458,382	2,667,674	2,823,319	2,675,470	5.5%
Sep	2,401,596	2,495,338	2,710,738	2,909,008	2,715,690	7.1%
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	\$25,596,953	\$32,868,020	
YTD	\$22,054,163	\$22,720,361	\$24,124,132	\$25,596,953	\$24,726,680	3.5%

SnapShot

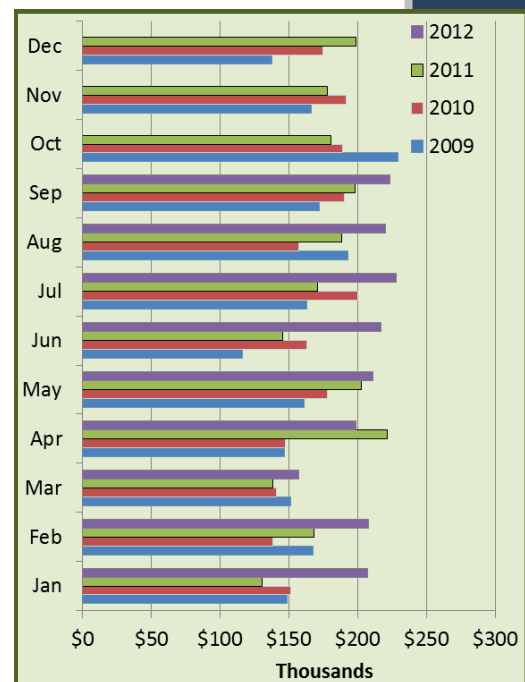
Building Materials Use Tax

	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	207,024	66,460	211.5%
Jul	79,061	51,657	76,488	146,570	76,580	91.4%
Aug	52,578	47,716	105,871	127,261	70,510	80.5%
Sep	209,338	46,646	99,544	92,415	93,610	-1.3%
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	\$1,032,593	\$1,000,000	
YTD	\$896,858	\$996,417	\$786,916	\$1,032,593	\$740,880	39.4%



Motor Vehicle Use Tax

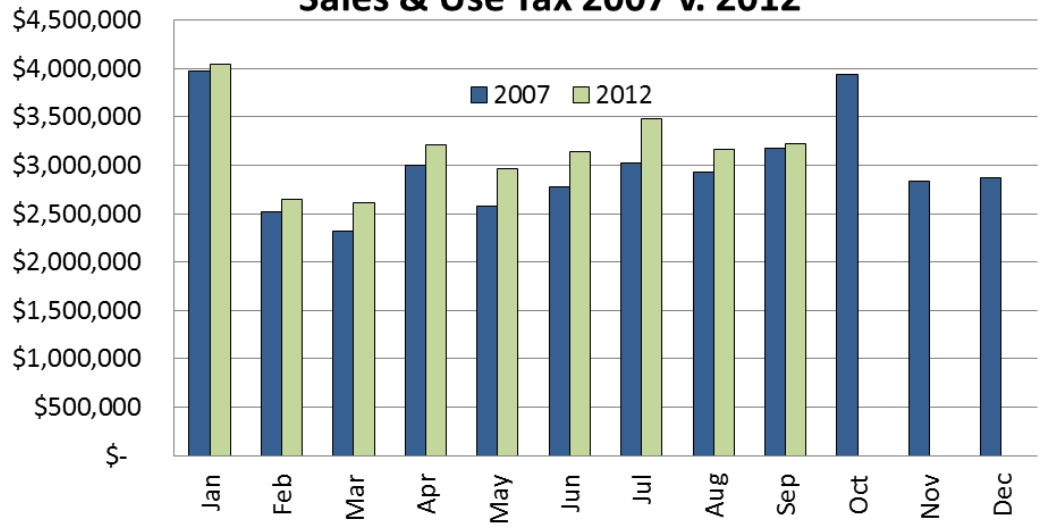
	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 148,828	\$ 151,034	\$ 130,337	\$ 207,261	\$ 147,380	40.6%
Feb	167,793	137,951	168,077	208,117	156,400	33.1%
Mar	151,378	140,768	138,335	156,828	156,480	0.2%
Apr	146,734	147,378	221,177	198,682	153,530	29.4%
May	160,943	177,687	202,940	211,062	171,700	22.9%
Jun	115,867	163,076	145,325	217,084	151,980	42.8%
Jul	162,966	199,797	170,691	227,989	182,230	25.1%
Aug	193,144	156,834	188,141	220,475	184,760	19.3%
Sep	171,833	190,102	198,355	223,732	183,210	22.1%
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	\$1,871,230	\$2,000,000	
YTD	\$1,419,487	\$1,464,627	\$1,563,378	\$1,871,230	\$1,487,670	25.8%



2007 vs 2012 Tax Comparisons

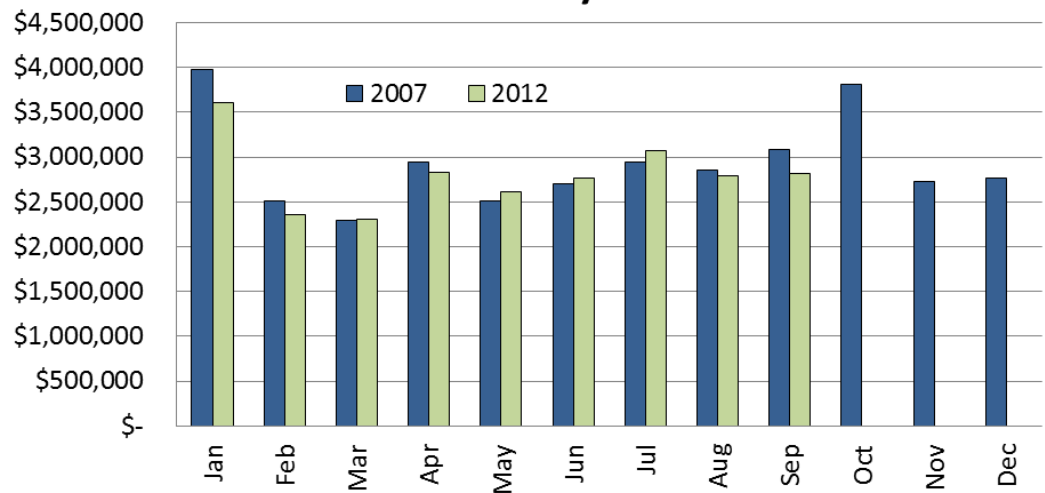
	2007	2012
Jan	\$3,972,513	\$4,039,678
Feb	2,520,486	2,649,229
Mar	2,319,579	2,618,053
Apr	3,003,780	3,215,437
May	2,581,830	2,966,032
Jun	2,781,786	3,136,014
Jul	3,022,815	3,480,123
Aug	2,931,667	3,171,054
Sep	3,176,883	3,225,155
Oct	3,936,330	
Nov	2,835,420	
Dec	2,869,916	
	\$35,953,006	\$28,500,775

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	2,766,189
Jul	2,937,441	3,074,729
Aug	2,854,102	2,786,157
Sep	3,084,330	2,821,103
Oct	3,813,494	
Nov	2,730,719	
Dec	2,765,797	
	\$35,109,275	\$25,162,477

Sales & Use Tax 2007 v. 2012 in Constant January 2007 Dollars



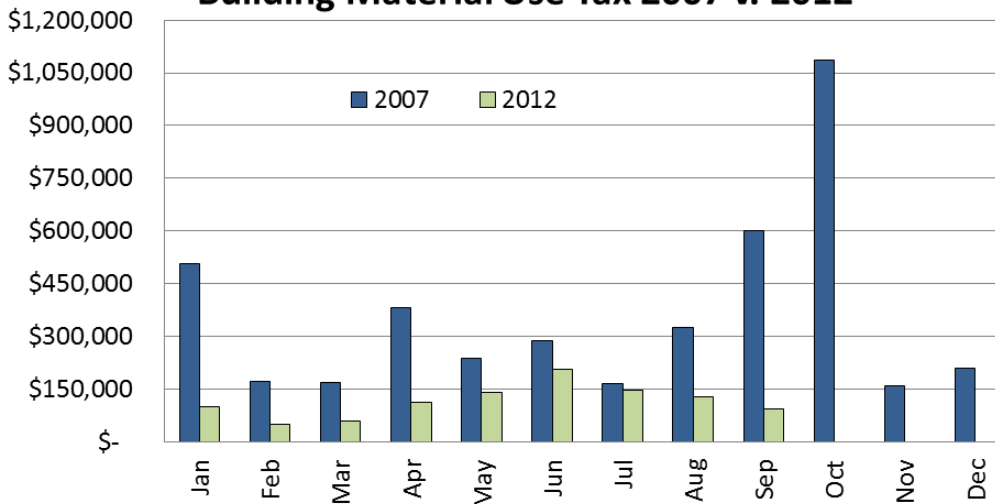
SnapShot

Retail Sales Tax 2007 v. 2012



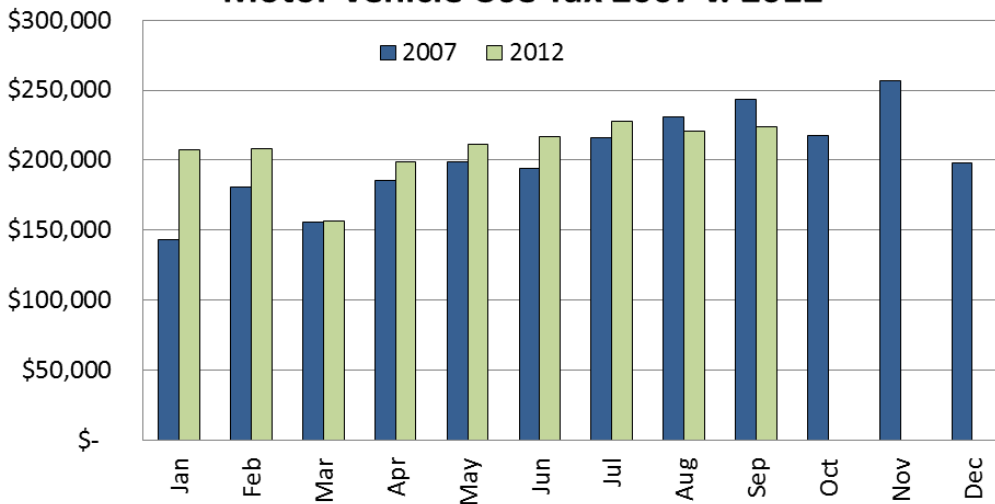
	2007	2012
Jan	\$3,324,067	\$3,733,309
Feb	2,167,873	2,390,409
Mar	1,994,635	2,403,380
Apr	2,437,958	2,905,558
May	2,146,685	2,614,500
Jun	2,300,533	2,711,906
Jul	2,640,223	3,105,564
Aug	2,376,534	2,823,319
Sep	2,332,844	2,909,008
Oct	2,632,667	
Nov	2,419,051	
Dec	2,464,559	
Total	\$29,237,629	\$25,596,953

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	207,024
Jul	166,446	146,570
Aug	324,125	127,261
Sep	600,704	92,415
Oct	1,086,325	
Nov	159,382	
Dec	207,723	
Total	\$4,295,285	\$1,032,593

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	217,084
Jul	216,146	227,989
Aug	231,008	220,475
Sep	243,336	223,732
Oct	217,338	
Nov	256,987	
Dec	197,634	
Total	\$2,420,092	\$1,871,230

Sales Tax Collections

September 2012

Description	YTD 2012	YTD 2011	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	\$ 5,786,160	\$ 5,563,335	\$ 222,825	4.0%	22.6%	22.6%
Restaurants & Bars	3,262,402	2,917,204	345,198	11.8%	12.7%	35.4%
Grocery Stores & Specialty Foods	2,531,316	2,441,689	89,627	3.7%	9.9%	45.2%
Clothing & Clothing Accessories Stores	1,881,925	1,771,838	110,088	6.2%	7.4%	52.6%
Building Material & Lawn & Garden Supplies	1,729,766	1,592,804	136,962	8.6%	6.8%	59.3%
Motor Vehicle Dealers, Auto Parts & Leasing	1,672,899	1,467,878	205,022	14.0%	6.5%	65.9%
Utilities	1,340,271	1,306,093	34,177	2.6%	5.2%	71.1%
Sporting Goods, Hobby, Book & Music Stores	1,258,230	1,162,844	95,386	8.2%	4.9%	76.0%
Broadcasting & Telecommunications	1,007,266	994,980	12,286	1.2%	3.9%	80.0%
Used Merchandise Stores	772,481	658,187	114,294	17.4%	3.0%	83.0%
Beer, Wine & Liquor Stores	615,102	539,238	75,864	14.1%	2.4%	85.4%
Hotels, Motels & Other Accommodations	576,738	528,983	47,755	9.0%	2.3%	87.6%
Consumer Goods & Commercial Equipment Rental	446,181	382,089	64,092	16.8%	1.7%	89.4%
Health & Personal Care Stores	431,340	412,137	19,203	4.7%	1.7%	91.1%
Electronics & Appliance Stores	368,674	503,482	(134,808)	-26.8%	1.4%	92.5%
Electronic Shopping & Mail-Order Houses	336,988	334,023	2,964	0.9%	1.3%	93.8%
Furniture & Home Furnishing Stores	324,672	324,734	(62)	0.0%	1.3%	95.1%
Office Supplies, Stationery & Gift Stores	236,631	249,677	(13,046)	-5.2%	0.9%	96.0%
Gasoline Stations with Convenience Stores	202,882	186,879	16,003	8.6%	0.8%	96.8%
All Other Categories	815,031	786,039	28,992	3.7%	3.2%	100.0%
Total	\$25,596,953	\$24,124,132	\$1,472,821	6.1%	100.0%	

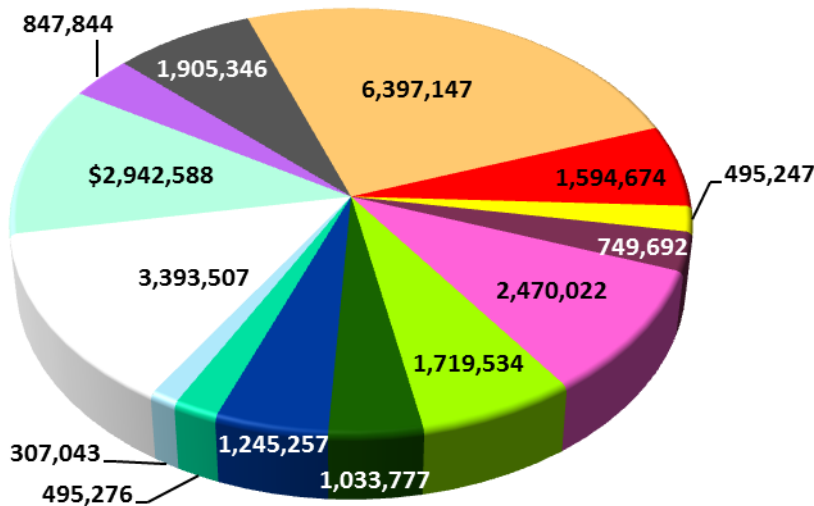
⇒ By business category, Used Merchandise Stores had a great September and jumped into the top spot with 17.4% year-to-date increase over 2011, showing new signs that the used merchandise market slowdown may be reversing course. Consumer Goods & Commercial Equipment Rentals stumbled in September, bringing the year-to-date percentage down to 16.8% over last year. Restaurants & Bars continue their consistently strong growth with an 11.8% increase and continue to lead all categories for total dollar increases from the same period last year. The “Beer, Wine & Liquor Stores” category posted a 14.1% increase through September, and the Motor Vehicle Dealers, Auto Parts & Leasing category has climbed into the top five with year-to-date increases of 14.0%.

⇒ 2012 sales tax revenue is 6.1% above the 2011 level year-to-date. The North East Loveland area continues to show the strongest growth with a 19.6% increase over this time last year. North East Loveland’s performance through September is due to the continued strong performance of new and existing restaurants in the area. Three areas continue to trail their 2011 pace. The Downtown area started 2012 showing 9% to 10% declines in sales over 2011. As new retail stores have opened for business in the downtown area, the year-to-date deficit has decreased to 3.6% below the same time in 2011. This positive trend should carry into 2013 providing there are no major store closings in the downtown area’s future. Through audit, it was discovered that a major retailer in the Promenade Shops had been over-reporting sales. This error has been corrected; as a result, sales show a 3.3% negative trend. However, after adjusting for this reporting issue, the remaining Promenade Shops show a 6.0% positive trend so far in 2012. We will continue to track the adjusted sales trend throughout the year for the Promenade Shops.

⇒ Lodging Tax Revenue received in 2012 is at \$506,447 year-to-date.

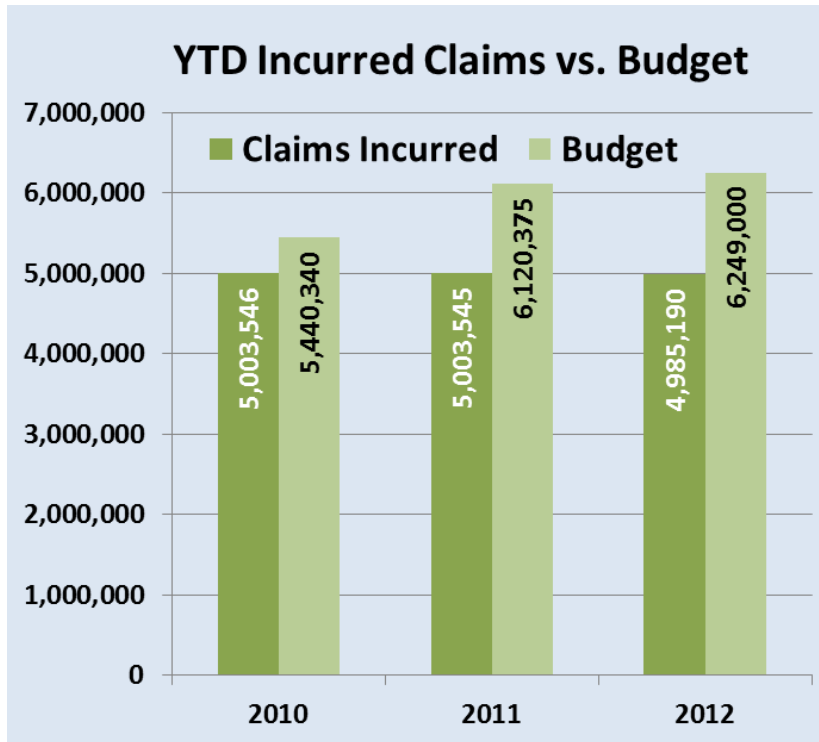
Geographical Area	YTD 2012	YTD 2011	Change
North West Loveland	\$2,942,588	\$2,800,480	5.1%
South West Loveland	847,844	811,919	4.4%
North East Loveland	1,905,346	1,592,886	19.6%
South East Loveland	6,397,147	5,942,247	7.7%
Orchards Shopping Center	1,594,674	1,517,069	5.1%
Columbine Shopping Center	495,247	457,352	8.3%
Downtown	749,692	777,601	-3.6%
Centerra	2,470,022	2,233,394	10.6%
Promenade Shops	1,719,534	1,777,773	-3.3%
Outlet Mall	1,033,777	971,622	6.4%
Thompson Valley Shopping Center	1,245,257	1,168,669	6.6%
The Ranch	495,276	509,509	-2.8%
Airport	307,043	288,483	6.4%
All Other Areas	3,393,507	3,275,128	3.6%
Total	\$25,596,953	\$24,124,132	6.1%

- North West Loveland
- Thompson Valley Shopping Center
- Centerra
- North East Loveland
- Airport
- Outlet Mall
- Orchards Shopping Center
- South West Loveland
- The Ranch
- Downtown
- South East Loveland
- All Other Areas
- Promenade Shops
- Columbine Shopping Center



Cash Basis of Claims Paid					\$ Over / (Under) Budget	% Over / (Under) Budget
		OAP	HRA	Total	Budget	
2012	September	297,985	155,034	453,019	694,333	(241,314) -34.8%
	YTD	3,854,262	1,130,928	4,985,190	6,249,000	(1,263,810) -20.2%
2011	September	450,099	93,493	543,592	680,042	(136,450) -20.1%
	YTD	4,164,138	839,407	5,003,545	6,120,375	(1,116,830) -18.2%
Change	September	(152,114)	61,541	(90,573)		
	% September	-33.8%	65.8%	-16.7%		
	YTD	(309,876)	291,521	(18,355)		
	% YTD	-7.4%	34.7%	-0.4%		

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



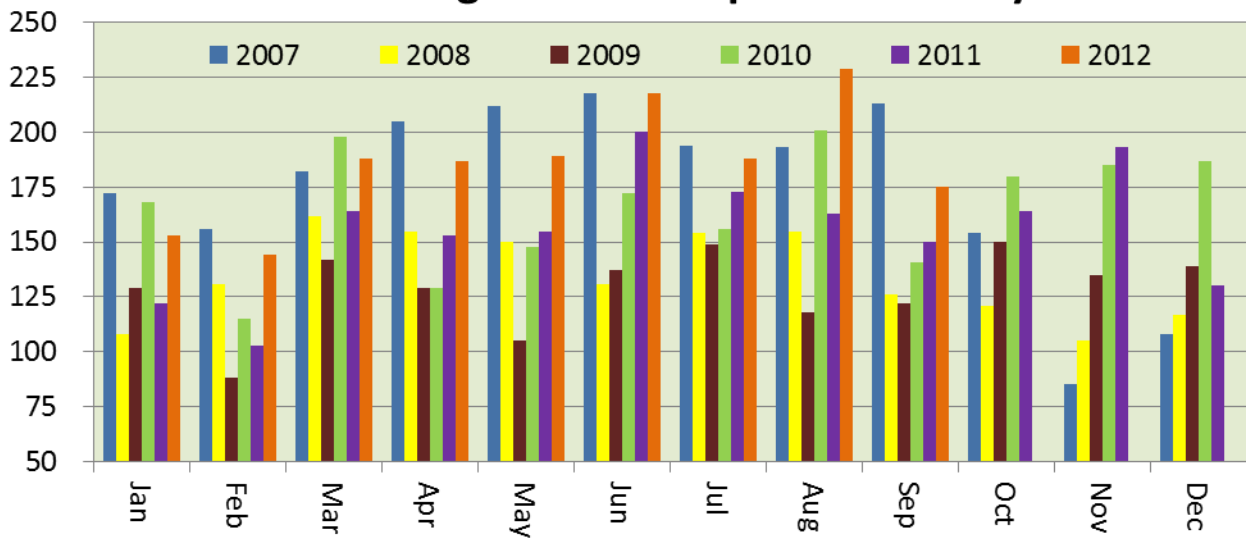
YTD Claims Over \$25k				
Comparison (2009-2012)				
	2009	2010	2011	2012
September				
# of claims	34	36	44	37
Cost of claims	\$1,971,916	\$2,929,144	\$2,266,796	\$2,055,116
2012 # of stoploss claims:	1			

Activity Measures

Measures	September '10	September '11	September '12	2010 YTD	2011 YTD	2012 YTD
# of Building Permits	141	150	175	1,428	1,383	1,671
Building Permit Valuations	\$8,642,011	\$6,693,147	\$15,424,833	\$96,497,412	\$ 68,625,163	\$100,107,277
# of Certified Occupancies	8	26	31	131	186	254
Net # of Sales Tax Licenses	25	(36)	13	96	131	(102)
New Residential Electric Meter Sets	15	38	27	134	289	172
# of Utility Bills Sent	35,059	35,718	36,266	314,961	319,764	324,706
Rounds of Golf	14,733	14,016	13,590	102,402	104,627	108,562
Health Claim Costs/Emp.	\$894.98	\$869.75	\$ 703.45	\$8,377.51	\$8,855.43	\$7,822.89
# of Vacant Positions	10	26	32	83	125	296
# of Frozen Vacant Positions	14	9	9	115	110	81
# of Eliminated Positions	40	46	47	351	396	420
KWH Demand (kH)	108,624	127,069	123,680	952,559	986,062	1,015,066
KWH Purchased (kwh)	57,071,518	58,964,037	58,453,591	527,252,807	551,211,729	565,237,747
Gallons of Water Sold	585,681,964	606,626,412	620,840,014	2,759,683,480	2,896,348,177	3,473,224,224
# of Workers' Comp Claims	3	11	8	100	93	80
\$ of Workers' Comp Claims Paid	\$158,564	\$21,912	\$22,735	\$445,470	\$125,843	\$344,204
# of Open Claims Current Year	10	19	11	82	121	91
# of Total Open Claims	10	22	14	122	149	144
\$ of Total Open Claims	\$178,817	\$222,484	\$227,325	\$1,969,672	\$964,220	\$2,288,281
\$ of Lodging Tax Collected	\$64,057	\$69,447	\$79,379	\$367,070	\$419,007	\$516,499

September 2012

Building Permit Comparison History



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"	\$ 1,924,700	\$ 109,076	\$ 1,815,624	5.67%
Filter Plant 2 Improvements	853,860	581,721	272,139	68.13%
29th St Waterline Replacement	581,370	485,222	96,148	83.46%
Raw Water Capital				
Windy Gap Firming Project	1,205,060	82,107	1,122,953	6.81%
Purchase of Colorado-Big Thompson Project (CBT) Water	2,606,600	2,118,615	487,985	81.28%
Wastewater Utility Capital				
Carlisle Phase IV from Taft to Railroad	738,320	539,580	198,740	73.08%
South Horseshoe Lift Station	1,216,210	60,097	1,156,113	4.94%
Fairgrounds/Namaqua Interceptor	733,600	670,034	63,566	91.34%
Power Capital				
East Sub to Crossroads Sub on Railroad	1,894,640	65,001	1,829,639	3.43%
Horseshoe Sub along Hwy 287 to 29th St.	1,338,910	274	1,338,636	0.02%
Stormwater Capital				
Washington Ave Outfall Phase 4	1,249,208	656,708	592,500	52.57%
MeHaffey Park Regional Detention Pond	580,074	6,285	573,789	1.08%
Streets Transportation Program				
2012 Street Rehabilitation	3,644,900	2,760,143	884,757	75.73%
Fiber network to signals and other facilities	1,084,000	5,801	1,078,199	0.54%
US 287 - Garfield Traffic Signal	668,420	21,197	647,223	3.17%
All Other				
Fire Station 6 Remodel and Expansion	929,970	341,114	588,856	36.68%
Rialto Theater Center	1,114,000	926,649	187,351	83.18%
Library Expansion	857,520	686,814	170,706	80.09%
Police Dispatch Console Replacement	1,200,000	291,307	908,693	24.28%
Facilities Maintenance Capital Projects	655,440	266,536	388,904	40.67%
Mehaffey Park Development	8,550,000	879,945	7,670,055	10.29%
Open Lands Acquisition	3,036,170	232,577	2,803,593	7.66%
Leslie the Cleaner Demolition and Remediation	\$ 500,000	\$ 25,584	\$ 474,416	5.12%

**City Of Loveland
500 East 3rd Street
Loveland, CO 80537**

For more information regarding this report contact:

Brent Worthington, Finance Director

970.962.2300 or brent.worthington@cityofloveland.org





Snapshot

September 2012

Brent Worthington
Finance Director

Presented
November 6, 2012

September 2012 Snapshot

- Citywide Revenue
 - \$164.1 million, excluding transfers
 - 3.9% above budget projections

- Citywide Expenditures
 - \$142.2 million, excluding transfers
 - 19.4% below budget projections

- Citywide revenues exceed expenditures by \$21.9 million.

September 2012 Snapshot

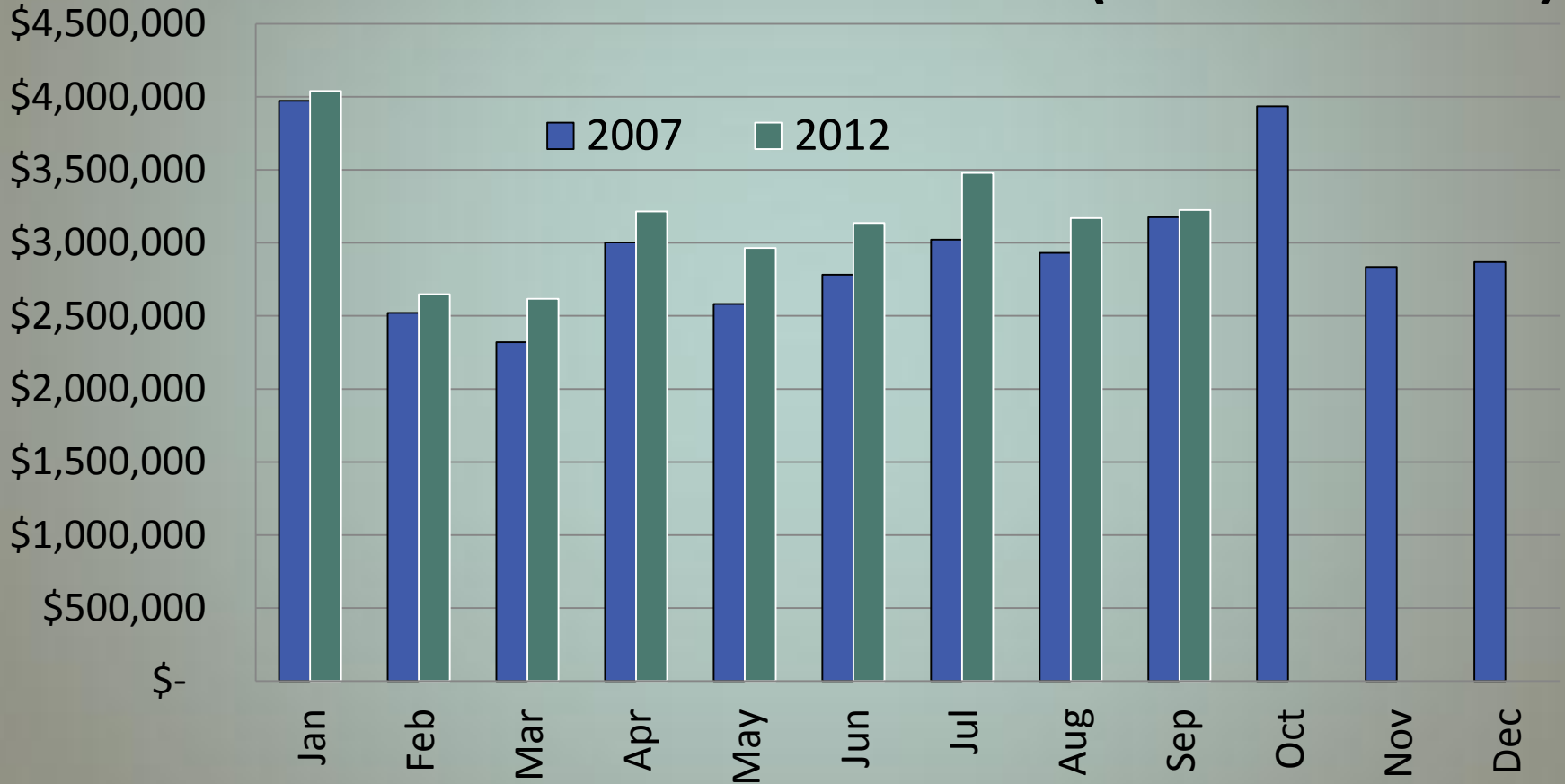
- General Fund Revenue: \$54.0 million YTD
 - 9.3% above 2012 YTD Budget
 - 6.7% above same period last year

- Sales and Use Tax Revenue: \$28.5 million
 - 5.7% above budget projections
 - 7.7% above same period as last year

- Sales Tax only: \$25.6 million YTD
 - 3.5% above the YTD Budget
 - 6.1% above same period last year

September 2012 Snapshot

Sales & Use Tax 2007 v. 2012 (nominal dollars)



September 2012 Snapshot

Sales & Use Tax 2007 v. 2012 in Constant January 2007 Dollars



September 2012 Snapshot

- General Fund Expenditures
 - \$42.9 million YTD, excluding transfers
 - 8.3% below budget projections

- General Fund Revenues Exceed Expenditures by \$10.2 million

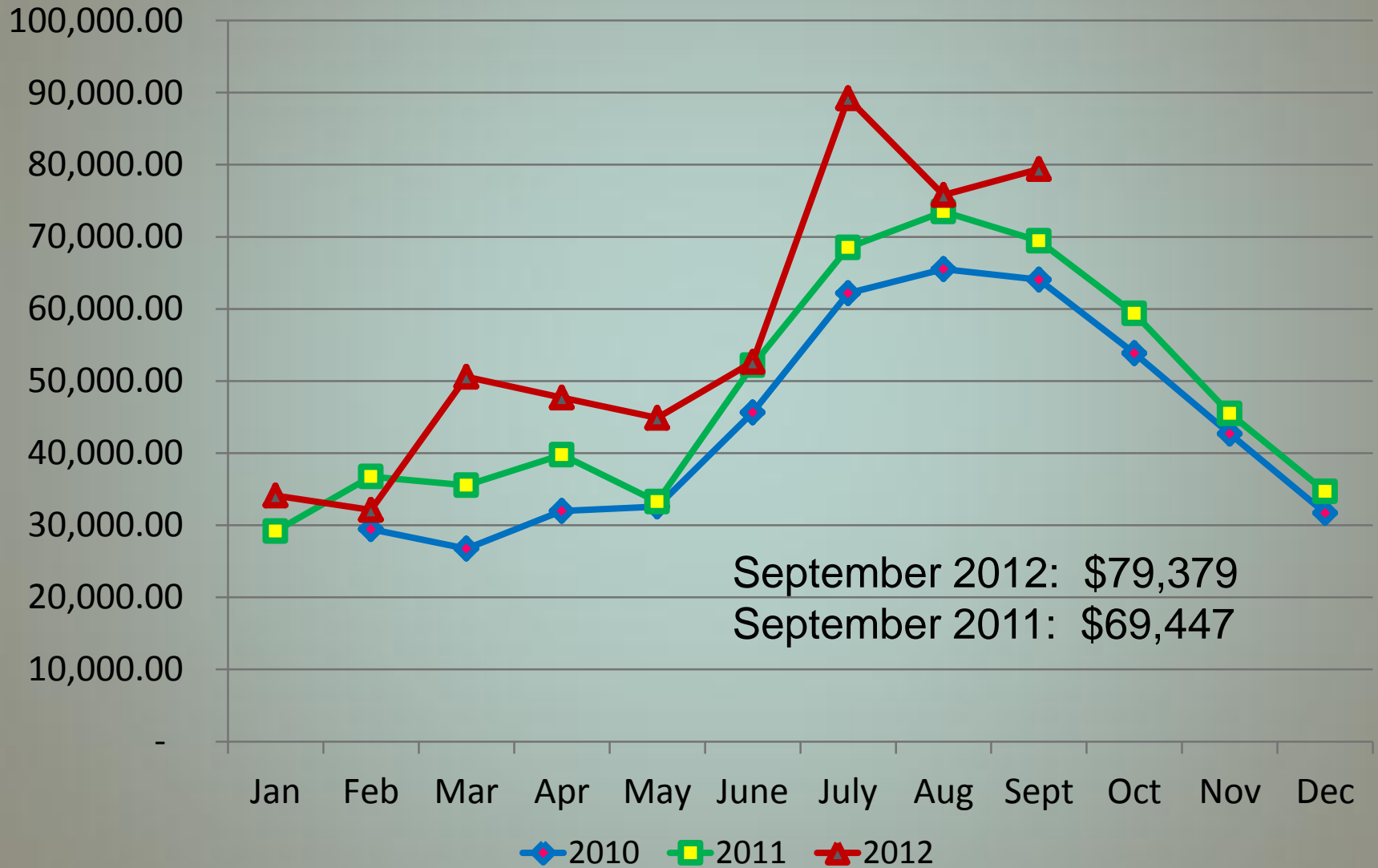
- Health Claims
 - September Claims \$453,019
 - 34.8% below September budget projections
 - 2012 YTD decreased from \$5.0 million to \$4.9 million from same time as last year (.4%)

September 2012 Snapshot

- Cash and Reserves
 - \$211.0 million
 - \$145.6 million (69.0%) reserved primarily for capital projects

- Other highlights
 - Lodging tax YTD is \$506,447 (15.6% higher than 2011 YTD).

Lodging Tax Comparison



September 2012 Snapshot



Questions?

Brent Worthington
Finance Director

Presented
November 6, 2012



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: 20
MEETING DATE: 11/6/2012
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE: Investment Report for September 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 September 2012, the amount posted to the investment account is \$2,087,650 including realized gains. Actual year-to-date earnings are *higher* than the year-to-date projection by \$36,838. Based on the August monthly statement, the estimated annualized yield on the U.S. agencies and corporates was to 1.27%, well under the annual target rate of 1.7% for 2012. Reinvestment rates are still near record low levels, much lower than the budget projection.

SUMMARY: At the end of September, the City's portfolio had an estimated market value of \$211.6 million, about \$1.5 million more than a month ago. Of this amount, USBank held (including accrued interest) \$185.9 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 about \$2.1 million annually.

REVIEWED BY CITY MANAGER: *William D. Cahill*

LIST OF ATTACHMENTS:

Investment Focus September 2012



Loveland Municipal Building

Investment Focus

Monthly Investment Report

September 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 = **\$2,087,650 – 1.8% over target**. This includes realized gains on security sales of **\$234,267**.**
- * **Each 1% of the total portfolio amounts to about \$2.1 million.**
- * **The month end market value shows the unrealized loss increased slightly, up to **\$157,590** at the end of September.**

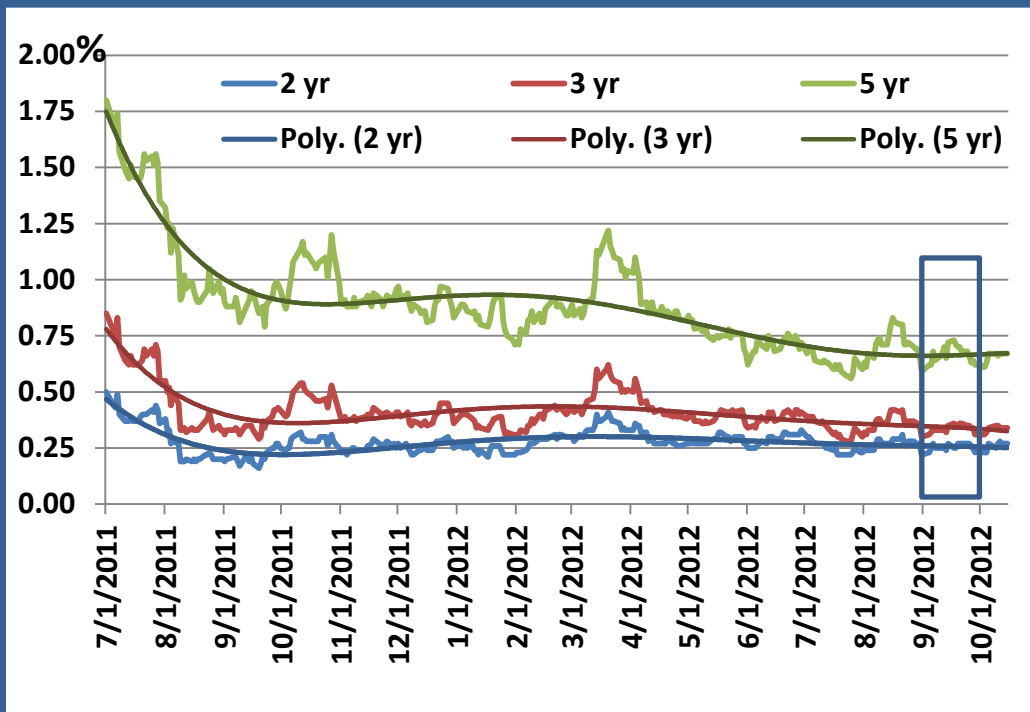
Homeless Trend

Economic downturns, like the Great Recession, result in a higher number of homeless persons and higher costs to health and support systems. The most recent count for homeless persons in Loveland was completed early in 2012. There were 685 people “literally homeless” and another 516 at “imminent risk of homelessness.” Compared to similar counting methods used across the state, the proportion of homeless in Loveland is more than twice the statewide proportion.

Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 10,060,541	\$10,060,541	--
Investment Pools	15,607,565	15,607,565	--
Money Markets	<u>11,422,955</u>	<u>11,422,955</u>	--
Subtotal	\$ 37,091,060	\$ 37,091,060	--
Notes and Bonds	<u>174,697,284</u>	<u>174,539,694</u>	\$ (157,590)
Total Portfolio	\$ 211,788,344	\$ 211,630,754	\$ (157,590)
Data Sources	(Morgan Stanley)	(US Bank)	

Due to rounding, column and row totals may not add exactly.

Treasury rate trends / Great Depression









Interest rates on US treasuries finished the month of September nearly flat when compared to the end of August. Based on the 2-year treasury, the September month-end rate was 1 basis point higher. The 3-year was also 1 point higher. The 5-year finished 3 basis points higher.

With the small shift in rates, the portfolio market value was stable. Rates on new investments will be low for many months.

Comparing the Great Depression with the recent "Great Recession"

"It's now clear the Great Recession was the worst downturn of our lifetime – the worst since the Great Depression. But in terms of human suffering, it pales in magnitude with the 1930s. The Great Depression was painful in ways we can scarcely imagine now. . ."

Source: Mark Vaughan, quoted by NPR, July 11, 2012.

Category	Great Depression	Great Recession
 Length of Contraction	43 months (August 1929 to March 1933)	18 months (December 2007 to June 2009)
 Drop in Industrial Production	51.7 percent	14.9 percent
 Rise in Unemployment	19.3 percentage points	5.7 percentage points
 Change in Consumer Prices	Down 27.2 percent	Up 1.5 percent
 Number of Bank Failures	9,000	443
 Drop in the Dow Jones Industrial Average	89.2 percent	53.8 percent

Credit: Angela Wong / NPR: Source Mark Vaughan – Weidenbaum Center fellow

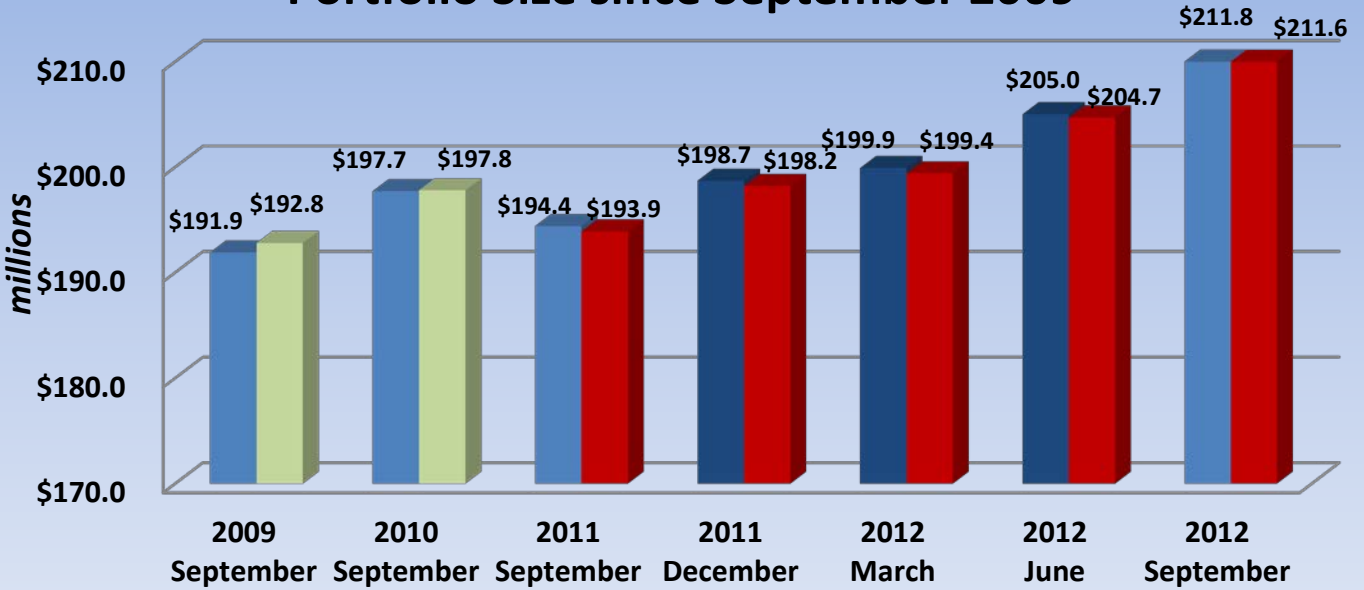
Cash Position Summary

Cash & Reserves (unaudited)

	2012 Beginning	YTD Activity	Month End Total
Restricted Reserves	Due to rounding, column and row totals may not add exactly.		
1 Capital Expansion Fees	\$ 33,634,541	\$ 1,254,098	\$ 34,888,638
2 Water System Impact Fees	7,351,374	1,208,850	8,560,224
3 Raw Water Revenue – Windy Gap	22,362,750	(1,581,632)	20,781,118
4 Wastewater System Imp. Fees	4,509,816	428,847	4,938,663
5 Storm Drain System Imp. Fees	1,344,721	156,099	1,500,820
6 Power Plant Investment Fees	6,866,635	1,027,321	7,893,956
7 Cemetery Perpetual Care	2,971,970	(2,089,269)	882,701
8 Other Restricted	28,771,419	2,575,202	31,346,621
9 Total Restricted	\$ 107,813,225	\$ 2,979,515	\$ 110,792,741
Reserve Balance Amounts			
10 General Fund	\$ 11,622,515	\$ (1,600,117)	\$ 10,022,398
11 Enterprise Funds	5,098,358	51,906	5,150,246
12 Internal Service Funds	17,970,582	1,665,605	19,636,187
13 Total Reserves	\$ 34,691,455	\$ 117,393	\$ 34,808,849
14 Total Restricted and Reserved	\$ 142,504,680	\$ 3,096,909	\$ 145,601,589
Unrestricted			
15 General Fund	\$ 17,142,212	\$ 8,970,208	\$ 26,112,420
16 Airport	897,343	413,224	1,310,568
17 Internal Service – Vehicle Maint	142,091	121,408	263,499
18 Enterprise Funds	36,427,968	1,249,178	37,677,147
19 Total Unrestricted	\$ 54,609,615	\$ 10,754,018	\$ 65,363,634
20 TOTAL CASH	\$ 197,114,296	\$ 13,850,927	\$ 210,965,223

Portfolio Size / Types of Investments

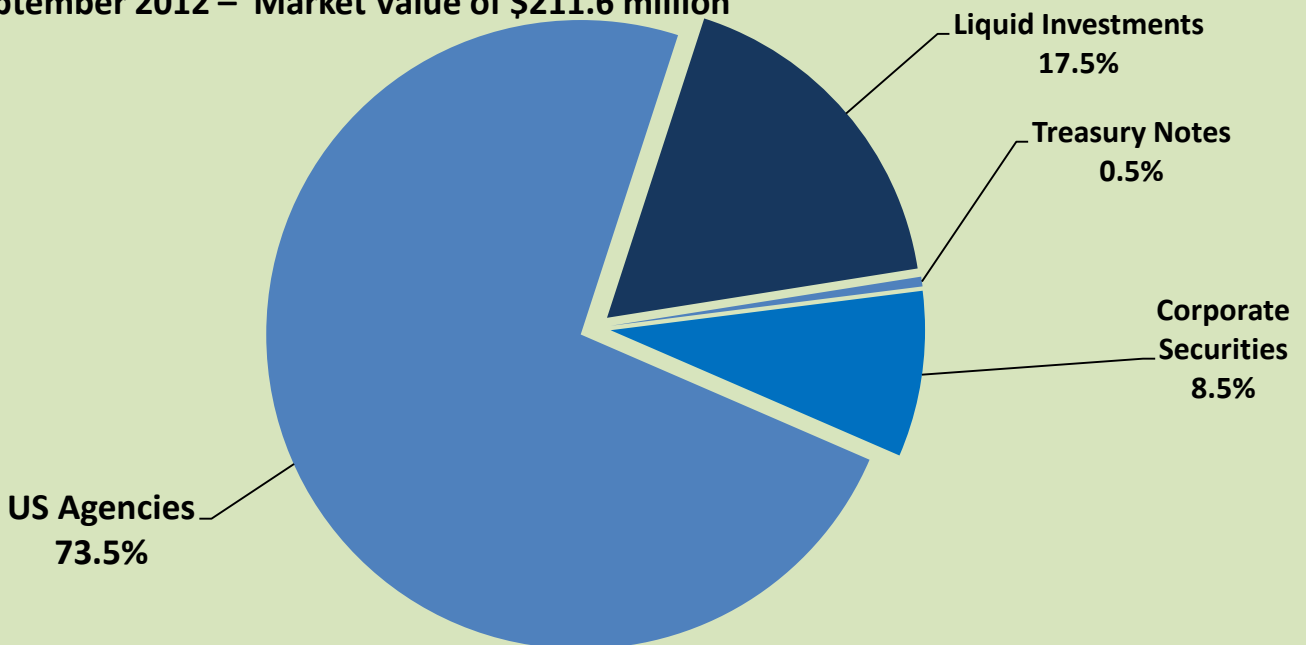
Portfolio Size since September 2009



Blue bars show Purchase value, red and green bars show market value, red = loss and green = gain

Portfolio by Type of Investment

September 2012 – Market Value of \$211.6 million



Transactions / Portfolio by Maturity

Maturity Date Face Value Purchase \$ Stated Rate

Purchases

Federal Farm Credit Bank	09/05/2017	\$ 5,000,000	\$ 5,000,000.00	0.990%
Federal Farm Credit Bank	09/17/2017	5,000,000	5,000,000.00	1.020%
Federal Home Loan Bank	09/11/2017	5,000,000	5,000,000.00	0.980%
Fed. Home Loan Mort. Corp.	09/12/2017	5,000,000	5,000,000.00	1.000%
Federal Nat'l Mort. Assn.	09/27/2017	<u>5,000,000</u>	<u>5,000,000.00</u>	1.070%
		\$ 25,000,000	\$ 25,000,000.00	

Matured

None this month

Called

			<u>Call Value \$</u>	
Federal Farm Credit Bank	06/05/2017	\$ 5,000,000	\$ 5,000,000.00	1.160%
Fed. Home Loan Mort. Corp.	08/21/2017	5,000,000	5,000,000.00	1.250%
Federal Nat'l Mort. Assn.	09/14/2015	<u>5,000,000</u>	<u>5,000,000.00</u>	1.750%
		\$ 15,000,000	\$ 15,000,000.00	

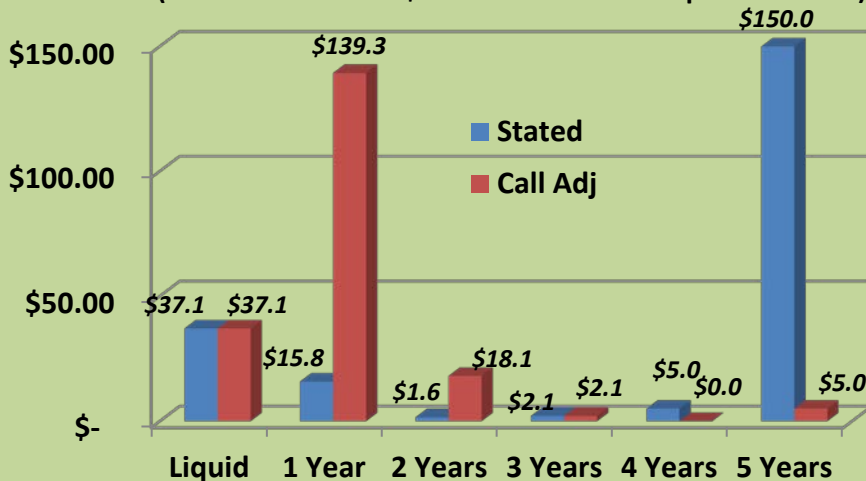
Sales

None this month

Gain \$

Portfolio by Estimated Maturity Term

(in millions - Total = \$211.6 at the end of September 2012)



The target rate for 2012 is 1.7%. Rates are now up slightly ahead of near record lows. Through September, the portfolio proceeds are still above the earnings target level for 2012.

To support earnings or to reposition the portfolio, bonds may be sold. Gains on sales total \$234,267 to date.

The blue bars show the stated term. Red bars show the calls. The five year bonds will be called early.



Future Scan: Fed and others express more concern over cliff

- ❖ **The Federal Open Market Committee** (“FOMC” or “Fed” or “Committee”) met on September 12th & 13th. After several months of hinting that serious action would be taken to lower interest rates, the Fed announced its new program to buy \$40 billion in agency mortgage back securities until the economy makes “substantial improvement”. The materials provided from the meeting show that most of the data regarding the economy has been revised downward. The Committee’s next meeting is scheduled for October 23-24. No major changes in policy are expected.
- ❖ **Morgan Stanley Smith Barney: Financial Outlook “Debatable”**
 So far this year, “Fighting the Fed is a losing battle. Generally, weak domestic economic data, negative headlines out of Europe and a looming election/fiscal cliff have not deterred investors’ enthusiasm for credit.”
 - . . . “several catalysts that might test the market’s fortitude. Third quarter earnings season is just beginning and based on bottoms-up earnings expectations it may be the weakest quarter of the year and the first quarter with negative year-on-year earnings growth since the third quarter of 2009. The guidance we get in this current earnings season may be the first indication the market gets of the negative ripple effect the fiscal cliff and the related uncertainty are having on the economy.”
 - “On the European front, Spain’s pending bailout needs to be resolved, as the longer it drags on the greater the level of market restlessness. The Troika needs to finish its current review of Greece’s fiscal progress and disburse funds from the current bailout tranche. This would keep Greece in the Euro for at least another quarter. Finally, European policymakers need to make progress on a single supervisory mechanism for the Euro Area banks. All of these issues have the potential to trigger a market sell-off, to varying degrees, in our view.”
 (Source: *Basis Points Fixed Income Strategy*, Kevin Flanagan and John Mackay, October 10, 2012.)
- ❖ The September 2012 Colorado Employment Situation was released on October 19, 2012. Using non-seasonally adjusted employment data, **Colorado’s unemployment rate** for September was estimated to be 7.4% compared to the national unemployment rate of 7.8%. Larimer County fell to 5.8%. Boulder County was reported at 5.7% and Weld County at 7.9%. Data for cities showed more shifts lower. Loveland’s unemployment rate is estimated to be down to 6.7%, from 7.1% in August and down from 7.7% one year ago. Fort Collins was 5.7%, Boulder 5.2%, and Greeley 7.9%.
- ❖ **Recession Outlook: 'Fiscal cliff' may be bigger threat than investors think** “Wall Street is worried that the impact could be much worse than anyone thought -- while investors remain nearly oblivious to the danger.” Looming tax increases and spending cuts would send the economy into a deeper recession than many have predicted, according to economists at Bank of America Merrill Lynch. Surveyed fund managers believe investors are far too optimistic that warring Washington factions can get together to prevent the economy from going over the cliff. (Source: Jeff Cox, CNBC.com senior writer October 19, 2012)

[For more information regarding this report, please contact:](#)

Alan Krcmarik, Executive Fiscal Advisor 970.962.2625 or Alan.Krcmarik@cityofloveland.org

Updated for Colorado Labor data for September

- ❑ Loveland’s workforce **expanded** in **September**, up **716** jobs from August 2012.
- ❑ Compared to one year ago in September, there are **649 more** jobs.

