

**AGENDA**  
**LOVELAND CITY COUNCIL MEETING**  
**TUESDAY, NOVEMBER 4, 2014**  
**CITY COUNCIL CHAMBERS**  
**500 EAST THIRD STREET**  
**LOVELAND, COLORADO**

The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, age, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act. For more information, please contact the City's ADA Coordinator at [bettie.greenberg@cityofloveland.org](mailto:bettie.greenberg@cityofloveland.org) or 970-962-3319.

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

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**PROCLAMATION DECLARING NOVEMBER 2014 AS AMERICAN MUSIC MONTH  
(RUTH HALE)**

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

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

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

**CONSENT AGENDA**

1. **CITY CLERK** (presenter: Terry Andrews)  
    **APPROVAL OF MEETING MINUTES**
  1. **A Motion to Approve the City Council Meeting Minutes for the October 7, 2014 Regular Meeting**

This is an administrative action to approve the City Council meeting minutes for the October 7, 2014 Regular Meeting.
  2. **A Motion to Approve the City Council Special Meeting Minutes for the October 14, 2014 Special Meeting.**

This is an administrative action to approve the City Council Special Meeting minutes for the October 14, 2014 Special Meeting.

2. **CITY MANAGER** (presenter: Bill Cahill)  
**APPOINTMENT OF MEMBER TO THE VISUAL ARTS COMMISSION**  
**A Motion to Appoint Abbie Powers to the Visual Arts Commission for a Partial Term Effective until December 31, 2016**  
 This is administrative action recommending the appointment of a member to the Visual Arts Commission.
3. **CITY MANAGER** (presenter: Bill Cahill)  
**SUPPLEMENTAL APPROPRIATION FOR REGIONAL TAX INCREMENT FINANCING STUDY**  
**A Motion to Approve and Order Published on Second Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the City of Loveland’s Share of a Regional Tax Increment Financing Study**  
 This is an administrative action. The ordinance on second reading appropriates funding for the City’s share of the costs of a regional study on the use of tax increment financing with the County in the future. The study will be managed by Larimer County, with funding contributions from the county and all the cities. This ordinance was approved unanimously on first reading by Council at the October 21, 2014 regular meeting.
4. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)  
**VALUE PLASTICS, INC. INCENTIVE AGREEMENT AND SUPPLEMENTAL APPROPRIATION**  
**A Motion to Approve and Order Published on Second Reading an Ordinance on Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for an Incentive Agreement with Nordson Corporation/Value Plastics**  
 This is an administrative action. The appropriation, for \$255,330 from the Economic Incentive Fund, would be used to cover the additional cost of water and sewer line infrastructure and additional water and sewer tap fees. The original agreement was approved by Council on October 1, 2013. The amended incentive package will cost \$255,330. The funds will be appropriated from the Economic Incentive Fund which has a current balance of \$985,120. The amendment agreement and the first reading of the appropriation ordinance was unanimously approved by City Council at the October 21, 2014 regular meeting.
5. **CITY CLERK** (presenter: Terry Andrews)  
**PUBLIC HEARING**  
**DOWNTOWN DEVELOPMENT AUTHORITY ELECTION PROCEDURES**  
**A Motion to Approve and Order Published on First Reading an Ordinance Authorizing Election Procedures in Connection with Downtown Development Authority Elections Conducted by the City Clerk**  
 This is a legislative action. This ordinance will amend the term “eligible elector” to mean the same as “qualified elector” for purposes of conducting elections relative to a Downtown Development Authority (“DDA”). “Qualified electors” for a DDA include residents, landowners, and lessees of property located within the proposed DDA boundaries, and include designated representatives of landowners or lessees which are not natural persons. This ordinance will allow the City Clerk to provide ballots to all qualified electors, when conducting DDA elections.

6. **FINANCE** (presenter: Brent Worthington)  
**PUBLIC HEARING**  
**WRAP-UP SUPPLEMENTAL APPROPRIATION FOR 2014 BUDGET**  
**A Motion to Approve and Order Published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget**  
 This is an administrative action. The ordinance appropriates funding for police overtime and equipment costs funded by Federal and State grants and re-budgets items previously approved by Council for accounting and audit purposes in the amount of \$1,248,760. The ordinance is funded by Federal and State revenues not anticipated in the 2014 Budget adoption and by available reserves in the Fleet Fund, which reduces the flexibility to fund other Fleet projects. The items re-budgeted is movement of costs between funds and does not affect the overall budget.
7. **PUBLIC WORKS** (presenter: Dave Klockeman)  
**PUBLIC HEARING**  
**SAFE ROUTES GRANT PROJECT- GARFIELD ELEMENTARY SCHOOL SIDEWALKS**  
 1. **A Motion to Adopt Resolution #R-77-2014 Approving an Intergovernmental Agreement between the City of Loveland, Colorado and the State of Colorado, Acting by and through, the Colorado Department of Transportation for Garfield Elementary School Sidewalk Improvements**  
 2. **A Motion to Approve and Order Published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for Garfield Elementary School Sidewalk Improvements**  
 These are administrative actions. The City has received a CDOT grant through the Safe Routes to School (SRTS) Program for the construction of sidewalk improvements in the vicinity of Garfield Elementary School at 8<sup>th</sup> and Colorado. The resolution authorizes the Loveland City Manager to execute the Grant Agreement. The Ordinance appropriates the Grant funds in the amount of \$113,000.
8. **WATER & POWER** (presenter: Garth Silvernale)  
**IGA FOR POWER OPERATIONS MUTUAL AID**  
**A Motion to Adopt Resolution #R-78-2014 Approving an Intergovernmental Agreement Among the Town of Estes Park, the City of Fort Collins, the City of Longmont, the City of Loveland and Platte River Power Authority for Power Operations Mutual Aid**  
 This is an administrative action to approve an Intergovernmental Agreement (IGA) for mutual aid in the area of power operations between the Town of Estes Park, the Cities of Longmont, Fort Collins and Loveland and Platte River Power Authority.
9. **PARKS & RECREATION** (presenter: Keven Aggers)  
**FIELD LIGHT CONTRACT AWARD TO MUSCO SPORTS LIGHTING LLC**  
**A Motion to Award a Contract to Musco Sports Lighting LLC for Barnes Field Light Replacement in the Amount Not to Exceed \$610,000 and Authorize the City Manager to Execute the Contract**  
 This is an administrative action to approve a contract with Musco Lighting LLC for \$610,000 for the replacement of sports field lighting at Barnes Fields 1-4. Budget dollars were allocated in the 2014 Budget for this project.
10. **FINANCE** (presenter: Brent Worthington)  
**FINANCIAL REPORT FOR SEPTEMBER 2014**  
 This is an information only item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending September 30, 2014.

**11. CITY MANAGER (presenter: Alan Krcmarik)  
INVESTMENT REPORT FOR SEPTEMBER 2014**

This is an information only item. The 2014 budget projection for investment earnings for 2014 is \$2,025,920 which equates to an annual interest rate of 0.94%. For September, the amount posted to the investment account is \$119,609. For the year-to-date, the amount posted is \$1,435,319. Actual earnings are below the year-to-date budget projection by \$114,884. Based on the monthly statement, the estimated annualized yield in September on the securities held by US Bank was up to 1.02% compared to 0.98% in August. Due to the demands for draws from the fund balances to pay for the cost of flood response and project repair, and slow reimbursement, the portfolio is about \$12 million lower than September 2013.

**END OF CONSENT AGENDA**

**CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA**

**PUBLIC COMMENT**

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

**PROCEDURAL INFORMATION**

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

**REGULAR AGENDA**

**CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA**

**12. ECONOMIC DEVELOPMENT (presenters: Marcie Erion & Karen Bogren)  
PUBLIC HEARING**

**HACH INCENTIVE AND CITY USE TAX WAIVER AGREEMENT**

**A Motion to Adopt Resolution #R-79-2014 Approving an Incentive Package including Building Permit Fee and City Use Tax Waiver and Business Personal Property Tax Rebate Agreement with Hach Company**

This is an administrative action. Hach Co. has requested an incentive package from the City that totals \$1 million for their new 86,000 square foot, \$25 million facility. The package includes a waiver of building permit fees and city use taxes along with a rebate of Business Personal Property Tax. The Loveland Development Fund and Larimer County, are contributing to the package as well. In addition, the Colorado Office of Economic Development and International Trade (OEDIT) may provide some incentives. Consistent with the approved Economic Development Incentive Policy, the item was brought before Council at the September 16, 2014 regular meeting as an informational item. At that time, City Council provided direction to staff to bring the incentive agreement for Hach Co. to Council for formal consideration. This action would result in foregone revenue to the City of Loveland through the waiver of Building Permit Fees and City Use Taxes as well as rebates of Business Personal Property taxes.

13. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)  
**PUBLIC HEARING**  
**EVERGREEN INCENTIVE**
1. **A Motion to Approve Resolution #R-80-2014 Authorizing the City Manager to Sign an Economic Incentive Agreement with Evergreen Development Based on the Attached Term Sheet**
  2. **A Motion to Approve and Order Published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for an Incentive Agreement with Evergreen Development Company**  
 These are administrative actions. The resolution would authorize the City Manager to sign an agreement based on the approved term sheet included in the packet. The 2nd reading of the appropriation will occur only after the agreement has been finalized, signed and shared with Council. Evergreen Development Company, a large regional developer (<http://evgre.com/>) with successful projects in six different states, has asked the City for assistance with the \$9.7 million infill development project at the corner of 34 and 287 (see attached map). Evergreen has the parcels under control and they expect to close contingent on the incentive agreement being approved and the ability to complete design review without major issues. Our design review team has worked proactively with Evergreen over the last three months and the review process has moved forward smoothly. Evergreen is seeking a \$2.2 development grant from the City that would be repaid with interest through the normal collection of sales tax from their anchor tenant, Sprouts. Based on the projections provided by the tenant, the loan would be repaid within six years. They have also requested a waiver of the Construction Materials Use Tax not to exceed \$97,000. To address any potential shortfall, Evergreen has agreed to provide a completion guarantee and guarantee a minimum loan payment to the City until the debt is repaid. The development grant would be from existing capital funds and repaid through the collection of sales tax at three percent interest. The City will also forgo \$97,000 in revenue from the Materials Use Tax.

14. **ECONOMIC DEVELOPMENT** (presenter: Betsey Hale)  
**APPOINTMENT TO THE LOVELAND DOWNTOWN PARTNERSHIP BOARD & MOTION TO DISBAND THE LOVELAND DOWNTOWN TEAM**
1. **A Motion to Appoint a City Representative to the Loveland Downtown Partnership Board**
  2. **A Motion to Disband the Loveland Downtown Team, an Ad Hoc Working Group Created by the Loveland City Council, in Recognition of the Formation of the Loveland Downtown Partnership to Champion Redevelopment of Downtown Loveland**  
 These are both administrative actions. The first action designates a City representative to the Loveland Downtown Partnership Board of Directors (LDP). The representative may be a member of the Loveland City Council or an employee of the City designated by the City Council to represent the City. The second action disbands the Loveland Downtown Team (LDT) which is an ad hoc group focused on downtown revitalization. The Loveland Downtown Partnership will continue these efforts.

**BUSINESS FROM CITY COUNCIL** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*

**CITY MANAGER REPORT**

**CITY ATTORNEY REPORT**

**ADJOURN**



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## 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, 2014 as

## AMERICAN MUSIC MONTH

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

Signed this 4th day of November, 2014

Cecil A. Gutierrez, Mayor



**MINUTES**  
**LOVELAND CITY COUNCIL MEETING**  
**LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS**  
**LOVELAND GID BOARD OF DIRECTORS**  
**LOVELAND SID BOARD OF DIRECTORS**  
**TUESDAY, OCTOBER 7, 2014**  
**CITY COUNCIL CHAMBERS**  
**500 EAST THIRD STREET**  
**LOVELAND, COLORADO**

**6:30 P.M.                    REGULAR MEETING - City Council Chambers**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

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

**PROCLAMATION OF OCTOBER 2014 AS DOMESTIC VIOLENCE AWARENESS MONTH** was read by Mayor Pro Tem Clark and received by Glenda Shayne.

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

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

**Mayor Gutierrez** asked if anyone in the Public, Council or Staff would like to address anything on the Consent Agenda. Councilor Shaffer moved to approve the Consent Agenda as submitted. The motion, seconded by Mayor Pro Tem Clark, carried with all Councilors present voting in favor thereof.

**CONSENT AGENDA**

1. **CITY CLERK** (presenter: Terry Andrews)  
**APPROVAL OF MEETING MINUTES**
  1. **A Motion to Approve the City Council Meeting Minutes for the September 2, 2014 Regular Meeting was approved.**  
This is an administrative action to approve the City Council meeting minutes for the September 2, 2014 Regular Meeting.
  2. **A Motion to Approve the City Council Study Session Minutes for the September 9, 2014 Study Session was approved.**

This is an administrative action to approve the City Council Study Session minutes for the September 9, 2014 Study Session.

**3. A Motion to Approve the City Council Meeting Minutes on September 10, 2014 was approved.**

This is an administrative action to approve the minutes for the September 10, 2014 Special Meeting.

**4. A Motion to Approve the City Council Meeting Minutes on September 15, 2014 was approved.**

This is an administrative action to approve the minutes for the September 15, 2014 Special Meeting.

**5. A Motion to Approve the City Council Meeting Minutes on September 18, 2014 was approved.**

This is an administrative action to approve the minutes for the September 18, 2014 Special Meeting.

**2. CITY MANAGER (presenter: Bill Cahill)  
APPOINTMENTS TO CONSTRUCTION ADVISORY BOARD**

**1. A Motion to Appoint Roger Lewis to the Construction Advisory Board for a Partial Term Effective until June 30, 2015 was approved.**

**2. A Motion to Appoint Scott Hager to the Construction Advisory Board for a Term Effective Until June 30, 2017 was approved.**

**3. A Motion to Appoint Adam Trainor to the Construction Advisory Board for a Term Effective Until June 30, 2017 was approved.**

**4. A Motion to Reappoint Jason Baker to the Construction Advisory Board for A Term Effective until June 30, 2017 was approved.**

**5. A Motion to Reappoint Blane Rappe to the Construction Advisory Board for A Term Effective until June 30, 2017 was approved.**

These are administrative actions recommending the appointment of members to the Construction Advisory Board.

**3. ECONOMIC DEVELOPMENT (presenter: Cindy Mackin)  
SUPPLEMENTAL APPROPRIATION FOR PARTNERSHIP OF OTHER AGENCY  
TOURISM**

**A Motion to Approve and Order Published on Second Reading an Ordinance #5885 Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for a Marketing Partnership and Support and Education of Other Agency Tourism Programs was approved.**

This is an administrative action. The ordinance funds a \$10,000 marketing partnership with Thunder Mountain Harley Davidson, \$10,000 support for the Estes Park Convention and Visitors Bureau (CVB) to match a federal grant and a \$5000 Familiarization Tour with the Colorado Tourism Office (CTO). The ordinance is funded by available fund balance reducing the flexibility to fund other projects. The current balance of the Lodging Tax Reserves is \$797,780. This ordinance was unanimously approved on first reading by Council at the September 16, 2014 regular meeting.

**4. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)  
SUPPLEMENTAL APPROPRIATION FOR ORIGINS LOVELAND**

**A Motion to Approve and Order Published on Second Reading an Ordinance #5886 Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for an Incentive Agreement with Origins Loveland was approved.**

This is an administrative action appropriating funding for an incentive with Jeff Noffsinger, owner of Origins Pizza, a proposed new pizza and wine bar to be located at 500 N. Lincoln, in the corner unit of Lincoln Place. The incentive agreement provides \$17,000 for the



tenant improvements, plus a waiver of materials use tax not to exceed \$3,000. The ordinance is funded with fund balance within the Economic Incentive Fund and reduces the flexibility to fund other projects. The current balance in the Economic Development Incentive Fund is \$1,110,120. This ordinance was approved unanimously on first reading by Council at the September 16, 2014 regular meeting.

**5. PUBLIC WORKS and PARKS & RECREATION (presenters: Jeff Bailey, Janet Meisel-Burns)**

**SUPPLEMENTAL APPROPRIATION FOR MADISON BRIDGE REPLACEMENT**

**A Motion to Approve and Order Published on Second Reading an Ordinance #5887 Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Madison Avenue Bridge Replacement and Trail Underpass Project was approved.**

This is an administrative action. The ordinance approves funding for the replacement of the bridge on Madison Avenue at the Chubbuck ditch and construction of an underpass for the recreational trail to eliminate an at-grade crossing on Madison Avenue. The ordinance is primarily funded by a Federal Grant at 80% of the project cost in the amount of \$848,000. The majority of the 20% local match is currently appropriated within the Transportation Fund and the Trails Capital Expansion Fund (CEF). A match amount of \$50,000 is required for the Trail underpass and is available in the Trail CEF undesignated fund balance. The total supplement amount is \$898,000. This ordinance was unanimously approved on first reading by Council at the September 16, 2014 regular meeting.

**6. PUBLIC WORKS (presenters: Keven Aggers & Jeff Bailey)**

**MADISON AVENUE AND CHUBBUCK DITCH CONTRACT AWARD**

**A Motion to Award a Contract to Mountain Constructors, Inc. in the Amount of \$1,206,694.50 to Replace the Bridge on Madison Avenue over the Greeley-Loveland Irrigation Canal, Located ½ Mile South of US 34 (Eisenhower Blvd.) and Construct a New Underpass to Route the Recreation Trail Under Madison Avenue, and to Authorize the City Manager to Execute the Contract was approved.**

This is an administrative action to approve and award the contract for the construction of the new bridge and recreation trail underpass at Madison Avenue. This project will replace and widen the existing bridge and provide a new underpass for the recreation trail at Madison Avenue. These improvements will provide for a safer pedestrian crossing of the recreation Trail and provide new sidewalk along the bridge while improving the geometry of the bridge and roadway in this section of Madison Avenue. The underpass will eliminate the existing uncontrolled trail crossing on Madison Avenue south of the bridge. Based on historical data, the Engineer's Estimate for this project was \$ 1,141,105.50. However, due to the currently changing construction climate, the low bid came in at \$ 65,589.00 higher than that estimate. The four main areas of contribution to this difference were higher than anticipated costs for structure removal, earthwork, asphalt paving, and pedestrian tunnel lighting.

**7. DEVELOPMENT SERVICES (presenter: Brian Burson)**

**MOUNTAIN PACIFIC GDP REZONING TO ALLOW MIXED USE**

**A Public Hearing was held and a Motion to Approve and Order Published on First Reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Related to Zoning Regulations for Certain Property Located in the Mountain Pacific Addition, City of Loveland, Larimer County, Colorado was approved.**

This is a quasi-judicial action to consider an ordinance rezoning portions of the Mountain Pacific Addition as "Mountain Pacific Business Park PUD", and approving the General Development Plan for development of the property. The property was originally developed

under Larimer County jurisdiction for enclosed storage. The property is located at the southeast corner of North Garfield Avenue (Highway 287) and East 71<sup>st</sup> Street, consisting of approximately 20.09 acres. The proposal would allow additional development for such uses as retail, office, banks, personal service, institutional, educational, assembly/light industrial uses, and enclosed storage.

**8. DEVELOPMENT SERVICES (presenter: Noreen Smyth)**  
**MILLENNIUM NORTHWEST FOURTH SUBDIVISION UTILITY EASEMENT VACATION**

**A Public Hearing was held and a Motion to Approve and Order Published on First Reading an Ordinance Vacating a Portion of a Utility Easement within Tract B and Outlot E of the Millennium Northwest Fourth Subdivision, City of Loveland, County of Larimer, State of Colorado was approved.**

This is a legislative action to consider adoption of an ordinance on first reading vacating a portion of a utility easement within the recently approved Millennium Northwest Fourth Subdivision (the "Fourth Plat") also known as The Lakes. The easement, which was created by separate document in 2006, was replaced with a new utility easement with the recordation of the Fourth Plat. The vacation of a portion of the older easement that does not align with the new easement is now requested in advance of the approval of the Millennium Northwest Fifth Subdivision (the "Fifth Plat"). The Fifth Plat will establish single family residential lots where the unused easement is currently located. The applicant is McWhinney Enterprises.

**9. PUBLIC WORKS (presenter: Ken Cooper)**  
**SUPPLEMENTAL APPROPRIATION FOR DESIGN SERVICES FOR MOC REMODEL**  
**A Public Hearing was held and a Motion to Approve and Order Published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for Design Services for the Remodel of the Maintenance Operations Center Building was approved.**

This is an administrative action to fund design for a remodel to the Maintenance Operations Center (MOC) that will occur after Public Works employees relocate to the expanded Service Center Campus. The estimated design and engineering cost for the project is \$60,000. The ordinance is funded by General Fund unassigned fund balance and reduces the flexibility to fund other projects. The current balance in the General Fund Reserves is \$10,593,673. The new balance, pending approval of this supplemental appropriation request, will be \$10,533,673.

**10. PUBLIC WORKS (presenter: Dave Klockeman)**  
**TRANSPORTATION ADVISORY BOARD MEETING LOCATION CHANGE**  
**A Motion to Adopt Resolution #R-65-2014 Amending the Scheduled Meeting Location of the City of Loveland Transportation Advisory Board was approved.**

This is an administrative action to change the meeting location of the City of Loveland Transportation Advisory Board from the Emergency Operations Center (EOC) at the Fire Administration Building to the new Public Works Facility at the Service Center.

**11. LOVELAND FIRE RESCUE AUTHORITY (presenter: Randy Mirowski)**  
**CITY OF LOVELAND IGA MUTUAL AID AGREEMENT FOR DISASTER-EMERGENCY MUTUAL AID AND FUNDING WITH LARIMER COUNTY AND OTHER ENTITIES**  
**A Motion to Adopt Resolution #R-66-2014 Approving an Intergovernmental Mutual Aid Agreement between the City of Loveland, Larimer County (Emergency Management), and Other Northern Colorado Governmental Entities for Disaster-Emergency Mutual Aid and Funding was approved.**

This is an administrative action to approve a resolution for an intergovernmental mutual

agreement between the City of Loveland, Larimer County (Emergency Management), and other Northern Colorado governmental entities for disaster-emergency mutual aid and funding assistance.

**12. LOVELAND FIRE RESCUE AUTHORITY (presenter: Randy Mirowski)  
LFRA IGA MUTUAL AID AGREEMENT FOR DISASTER-EMERGENCY MUTUAL AID  
AND FUNDING IN LARIMER COUNTY**

**A Motion to Adopt Resolution #R-67-2014 Approving an Intergovernmental Mutual Aid Agreement for Disaster-Emergency Management and Funding in Larimer County was approved.**

This is an administrative action to approve a resolution for an intergovernmental mutual agreement between the Loveland Fire Rescue Authority, Larimer County (Emergency Management), and other Northern Colorado governmental entities for disaster-emergency mutual aid and funding assistance, approved by the Loveland Fire Rescue Authority (LFRA) Board by LFRA Resolution R-037 on September 11, 2014.

**13. FINANCE (presenter: Brent Worthington)  
FINANCIAL REPORT AUGUST 2014**

This is an information only item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending August 31, 2014.

**14. CITY MANAGER (presenter: Alan Krcmarik)  
INVESTMENT REPORT AUGUST 2014**

This is an information only item. The 2014 budget projection for investment earnings for 2014 is \$2,025,920 which equates to an annual interest rate of 0.94%. For August, the amount posted to the investment account is \$95,811. For the year-to-date, the amount posted is \$1,315,711. Actual earnings are below the year-to-date budget projection by \$69,811. Based on the monthly statement, the estimated annualized yield in August on the securities held by US Bank was 0.98%, the same as July. Due to the demands for draws from the fund balances to pay for the cost of flood response and project repair and slow reimbursement, the portfolio has a significantly lower fund balance than it would otherwise.

**END OF CONSENT AGENDA**

**CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA**

**PUBLIC COMMENT**

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

*Dave Campbell, 1937 Pikes Peak, Represented 287 residents of the Seven Lakes Subdivision regarding the extension of Boise Avenue to 37th Ave. Consensus of Council was to have a study session to discuss transportation in neighborhood projects and their priority.*

*Kathy Hartman, announced a lecture series at Mountain View High School. October 11, 2014 9am – 12:00*

*Leo Haverty, 3305 N. Franklin, expressed concern regarding Council's support of Sprouts.*

**PROCEDURAL INFORMATION**

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*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

#### 15. DEVELOPMENT SERVICES (presenter: Troy Bliss)

##### **REZONING IN THE TURNEY-BRIGGS ADDITION**

City Planner II, Troy Bliss introduced this item to Council. This is a quasi-judicial action to adopt an ordinance on second reading to rezone the Turney-Briggs Addition, or more particularly the northeast intersection of North Lincoln Avenue (Highway 287) and East Eisenhower Boulevard (Highway 34). The applicant's request is to rezone 5 residential properties on the west side of North Jefferson Avenue from residential (R3e – Established High Density Residential) to commercial (B – Developing Business). The Turney-Briggs Addition includes both residential and commercial properties. The properties fronting North Lincoln Avenue and those fronting East Eisenhower Boulevard are currently zoned B – Developing Business. The properties currently zoned Established High Density Residential are located northeast of the commercially zoned property and have access from local streets. This ordinance was approved on first reading by Council with a vote of 5-1 at the September 16, 2014 regular meeting. Mayor Gutierrez asked for public comment at 7:53 pm and hearing no comment the public hearing was closed.

**Councilor Shaffer moved to Approve and Order Published on Second Reading an Ordinance #5888 Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for Certain Property Located in the Turney-Briggs Addition, City of Loveland, Larimer County, Colorado. Councilors Shaffer and Taylor were not present at the first reading of the ordinance and recused themselves from the consideration. Mayor Pro Tem Clark was not at the first reading of the ordinance, however reviewed the video of the original consideration of the ordinance. The motion, seconded by Councilor Trenary, carried with five Councilors voting in favor and Councilors McKean and Clark voting against.**

#### 16. FINANCE (presenter: John Hartman)

##### **2015 CITY OF LOVELAND BUDGET**

Budget Officer, John Hartman introduced this item to Council. These are administrative actions to adopt the fee resolutions and ordinances, except for the mill levy ordinance, to approve the 2015 Budget on First Reading. The adoption of the 2014 mill levy is a legislative action. Included are all the Fee Resolutions and Ordinances necessary to adopt and implement the 2015 Budget. Discussion ensued. **Councilor Shaffer moved to call a Special meeting on October 14, 2014 and October 28, 2014 at 6:30 p.m. in the City Council Chambers, 500 E. 3<sup>rd</sup> St, Loveland, to discuss and consider the Budget and on October 14, 2014 The Loveland Downtown Partnership will be discussed as well. Council waived the Charter requirement to deliver notice to their home. The motion, seconded by Councilor Farley, carried with all councilors present voting in favor thereof.**

**Councilor Shaffer moved to open and continue the public hearing and Council items #16 – 21 to the Special meeting on October 14, 2014, called for that purpose.**

**THESE ITEMS WERE CONTINUED TO THE SPECIAL MEETING ON OCTOBER 14, 2014**

#### 17. FINANCE (presenter: John Hartman)

##### **2015 SCHEDULE OF RATES, CHARGES & FEES AND 2015 AIRPORT BUDGET CONTINUED TO THE SPECIAL MEETING ON OCTOBER 14, 2014**

18. **FINANCE** (presenter: John Hartman)  
**LOVELAND FIRE RESCUE AUTHORITY 2015 SCHEDULE OF RATES, CHARGES & FEES; AND 2015 BUDGET**  
**CONTINUED TO THE SPECIAL MEETING ON OCTOBER 14, 2014**
19. **FINANCE** (presenter: John Hartman)  
**2015 BUDGET FOR THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 (SID)**  
**CONTINUED TO THE SPECIAL MEETING ON OCTOBER 14, 2014**
20. **FINANCE** (presenter: John Hartman)  
**2015 BUDGET FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)**  
**An Ordinance on First Reading of the Board of Commissioners of the Loveland Urban Renewal Authority Adopting the 2015 Budget for the Loveland Urban Renewal Authority**  
**CONTINUED TO THE SPECIAL MEETING ON OCTOBER 14, 2014**
21. **FINANCE** (presenter: John Hartman)  
**2015 BUDGET FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 (GID)**  
**CONTINUED TO THE SPECIAL MEETING ON OCTOBER 14, 2014**
22. **CITY MANAGER** (presenter: Bill Cahill)  
**LARIMER HUMANE SOCIETY PROPOSITION 200 BALLOT ISSUE**  
City Manager, Bill Cahill introduced this item to Council. This is an administrative item to approve a resolution supporting the passage of Larimer County Proposition 200 and urging the citizens of the city of Loveland to vote "yes" on the proposition supporting Larimer Humane Society and the construction of a new animal shelter for Larimer County. Holly Terry spoke regarding this item. The Mayor opened the public hearing at 10:33 p.m. and with no further public comment the hearing was closed.  
**Councilor Shaffer moved to Approve Resolution #R-73-2014 of the Loveland City Council Supporting the Passage of Larimer County Proposition 200 and Urging the Citizens of the City of Loveland to Vote "Yes" on the Proposition Supporting Larimer Humane Society and the Construction of a New Animal Shelter for Larimer County. Councilor Farley seconded the motion, which carried with eight Councilors voting in favor and Mayor Pro Tem Clark voting against.**
23. **ECONOMIC DEVELOPMENT** (presenter: Marcie Erion)  
**EDISON WELDING INSTITUTE PROPOSED PARTNERSHIP**  
Business Development Specialist, Marcie Erion, introduced this item to Council. This is an information only item. The City is proposing to enter into a contract for services with EWI for an Applied Manufacturing Research and Development Program at RMCIT for \$300,000. This is the next phase of the City's successful Tech Transfer program which is in its third year. This new program will identify underserved innovation needs of regional manufacturers; identify technical capabilities needed to address those needs; and then begin to align the necessary resources to establish EWI Colorado in the Rocky Mountain Center for Innovation and Technology. This model has been used successfully by EWI in other communities. As per City policy for Economic Development packages that exceed \$20,000, the items is being reviewed by Council at an information session prior to full consideration. The \$300,000 would come out of the Economic Development Incentive Fund in 2015. The current balance in the incentive fund is \$985,120.  
**Consensus of Council was to bring to Council at a future meeting a proposal for consideration.**

**24. WATER AND POWER (presenter: Larry Howard)  
MOTION TO AMEND AGREEMENT WITH HOME SUPPLY**

Senior Civil Engineer, Larry Howard introduced this item to Council. Gary Gerard from Home Supply was present and spoke. This is an administrative action. The Home Supply's stone diversion dam structure (Big Dam) on the Big Thompson River sustained extensive damage in the September, 2013 Flood. Since 1887, the City has used the structure under an agreement with Home Supply to divert water through a City-owned pipeline into its water treatment facilities. Since the Flood, the City has participated with Home Supply under the terms of a January 15, 2014 Agreement (Attachment A) on a 50:50 cost share basis, up to a "not to exceed" cap of \$400,000 to make necessary repairs to the structure. Because of the importance of this diversion structure to both parties, the Home Supply is requesting additional financial assistance from the City, also on a 50:50 basis, to complete the flood related repairs, add a gated spillway to provide mitigation from future flood damages, and complete non-flood related O&M repairs. The current estimated cost for all shared expenses on the dam for Phases I and II is almost \$3,000,000, so the City's portion at 50% is anticipated to be nearly \$1,500,000, if no federal or state reimbursements are received. Design work is still occurring so these values remain subject to change. The current requested amount is for \$800,000 to complete Phase I, because FEMA reimbursements are expected during the performance of the work. This is expected to be enough to keep the project moving smoothly until the reimbursements are received.

**Councilor Shaffer moved to approve A Motion Directing the City Manager in Consultation with the City Attorney and on Terms Favorable to the City, to Negotiate and Enter into Both: An Amendment to the January 15, 2014 Agreement between the City and Consolidated Home Supply Irrigating & Reservoir Company (Home Supply) to Complete Additional Flood Related Repairs on the Home Supply's Diversion Structure on the Big Thompson River Including Addition of a Gated Spillway to Provide Mitigation Against Future Flood Damage: and, A Phase II Agreement with Home Supply for Critical O&M Work. Councilor McKean seconded the motion, which carried with all councilors present voting in favor.**

**Councilor Shaffer moved to direct staff to engage the services of Jo Mattoon as the Human Resources consultant who assists Council in the City Attorney search. Councilor McKean seconded the motion which carried with eight councilors voting in favor and Councilor Shaffer voting against.**

**Councilor Shaffer moved to call a special meeting of the City Council on Monday October 13, 2014 beginning at 9 am in the City Manager's Conference Room, 500 E 3<sup>rd</sup> Street, Loveland CO. The subject matter of the special meeting is the City Attorney position. It is anticipated this meeting will include an Executive Session to conduct interviews for the City Attorney. Council members waive the City Charter requirement to receive notice of this meeting at their home. Councilor McKean seconded the motion which carried with all councilors present voting in favor.**

**25. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)  
DOWNTOWN PROPERTY ACQUISITION DISCUSSION**

An executive session may be held for the purpose of considering the acquisition of real property, including the terms and conditions thereof, as authorized by CRS §24-60-402(4)(a) and City Charter §4-4(c)(2) and to receive reports on negotiation progress and status with respect to such property, determine positions relative to and strategy for such negotiations, and instruct negotiators as authorized by CRS §24-60-402(4)(e) and City Charter §4-4(c)(1).

**Councilor Shaffer moved that the City Council go into executive session for the**

purpose of considering the City’s acquisition of real property in Downtown Loveland as authorized by the following section of the Colorado Open Meetings Law and The City Charter:

The purchase of real property as authorized by CRS § 24-6-402(4)(a) and by Charter §4-4(c)(2) since, in the judgment of Council, premature disclosure of information might give any person an unfair competitive or bargaining advantage; and Since the purchase of such real property is a matter that is subject to negotiation, to receive reports concerning negotiations, to develop the City’s negotiation positions and strategies, and to instruct the City’s negotiators concerning those positions and strategies as authorized by CRS §24-6-402(4)(e) and Charter §4-4(c)(1); and

As needed, to receive legal advice from the City Attorney’s Office as authorized in CRS § 24-6-402(4)(b) and Charter § 4-4(c)(3).

Council reconvened at 1:20 a.m.

**BUSINESS FROM CITY COUNCIL** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*

- Shaffer Farley North I-25 MPO Update-A counter proposal will be made for I-25. Paint our Town Rotary Club was a success; Martin Luther Day Committee sponsoring a performance at the Museum, Sunday October 15<sup>th</sup>; Invitation from Allison Hade for Loveland Connect on October 24, 2014 at Truscett Elementary from 8 am to 12 pm.
- Trenary Attended Rocky Mountain Center Innovative Technology Accelerate Colorado Trade Show Maker Fair hosted by Economic Development.
- Gutierrez Report of Sculpture in the Park reached \$1.2 million in sales for 2014.

**CITY MANAGER REPORT** Thanked staff and reminded Council they were invited to the City Employee Awards at the Rialto Wednesday over the lunch hour.

**CITY ATTORNEY REPORT**

**ADJOURNMENT**

Having no further business to come before Council, the October 7, 2014, Regular Meeting was adjourned on October 8, 2014 at 1:35 a.m.

Respectfully Submitted,

\_\_\_\_\_  
Teresa G. Andrews, City Clerk

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

**MINUTES**  
**LOVELAND CITY COUNCIL SPECIAL MEETING**  
**LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS**  
**LOVELAND GID BOARD OF DIRECTORS**  
**LOVELAND SID BOARD OF DIRECTORS**  
**TUESDAY, OCTOBER 14, 2014**  
**CITY COUNCIL CHAMBERS**  
**500 EAST THIRD STREET**  
**LOVELAND, COLORADO**

Mayor called the special meeting to order at 6:30 p.m.

**Roll Call:** Roll was called and Councilors Farley, McKean, Krenning, Trenary, Shaffer, Fogle, Gutierrez and Clark responded. Councilor Taylor was absent.

**1. ECONOMIC DEVELOPMENT (presenters: Betsey Hale, Alan Krcmarik, Terry Andrews, LDP Board Members and Lucia Liley)**  
**LOVELAND DOWNTOWN PARTNERSHIP (LDP) UPDATE**

This is an information only item. In January 2014, City Council directed staff to begin the process of assisting the private sector with the development of a downtown organization that is robust and durable. This organization could be a one-stop shop for all downtown related real estate projects, beautification, leadership and events. This is the second update on the progress of the private sector working group. This group is now officially called the Loveland Downtown Partnership (LDP). This report will include a presentation on the LDP Budget, a funding request, a presentation of a map of the downtown area, a discussion on the election to form a Downtown Development Authority (DDA) and a brief presentation on the key components of a services agreement. Consensus of Council was to move forward with the Loveland Downtown Partnership and for Staff to take the necessary steps for the creation of the Downtown Development Authority (DDA) to the voters in February.

**2. FINANCE (presenter: John Hartman)**  
**The Public Hearing for Agenda items 2 - 5, was Continued from the October 7, 2014 Regular Meeting. This item commenced at 8:40 p.m.**  
**2015 BUDGET, AND RATES AND FEES SCHEDULES FOR: CITY OF LOVELAND; LOVELAND-FT. COLLINS AIRPORT; AND THE LOVELAND FIRE RESCUE AUTHORITY**

These are administrative actions to adopt the fee resolutions and ordinances, except for the mill levy ordinances, to approve the 2015 Budget on First Reading. The adoption of the 2014 mill levies are legislative actions. Included are all the Fee Resolutions and Ordinances necessary to adopt and implement the 2015 Budget. The City of Loveland provides staff support to the Airport through the Intergovernmental agreement with the City of Ft. Collins. As a part of this function the City Council approves the Airport budget, which includes the City's share of the Airport Budget. These items set a schedule of fees, establish a budget and appropriate funds for Airport expenses in 2015. Resolution #R-72-2014 provides for Council approval of the Loveland Fire Rescue Authority Budget and fees schedule for 2015. Council approval of the budget is required for the Authority's budget to be in effect. The resolution provides approval of the budget and fees and charges included within the budget for 2015. The City's contribution is included in the City of Loveland 2015 Budget. Council discussed four outstanding items related to the budget. Mayor Gutierrez asked for public comment. Hearing none, Mayor Gutierrez closed the public hearing.

**Councilor Shaffer moved to approve Resolutions #R-68-2014, #R-69-2014, #R-70-**

The password to the public access wireless network (colguest) is accesswifi



2014, #R-71-2014 and #R-72-2014; and approve and order published on First Reading an Ordinance Adopting the 2014 Mill Levy for the General Fund of the City of Loveland, Colorado; an Ordinance Adopting the 2015 Budget for the City of Loveland, Colorado, with the following amendments: 1) Use Police CEF funds for new position one time capital costs, including new vehicles; 2) Reduce the IT Disaster Recovery and Business continuity Plan Funding to \$35,000; 3) Increase the annual contribution to the Economic Incentive Fund by \$100,000 to a total of \$450,000; and 4) to remove the funding for a Victim Witness Coordinator Position, requested by the Police Department; an Ordinance Making an Appropriation for the Fiscal Year Beginning January 1, 2015 and Ending December 31, 2015 for the City of Loveland, Colorado; and An Ordinance Adopting the 2015 Budget for the Fort Collins-Loveland Municipal Airport. The motion, seconded by Councilor Farley, carried with all councilors present voting in favor thereof.

1. Resolution #R-68-2014 Adopting the 2015 Schedule of Rates, Charges, and Fees for Services Provided by the City of Loveland, Other than Services Provided by the Water and Power Department and the Stormwater Enterprise, and Superseding All Prior Resolutions Establishing Such Rates, Charges and Fees
2. Resolution #R-69-2014 on First Reading Adopting the 2015 Schedule for 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
3. Resolution #R-70-2014 on First Reading Adopting the 2015 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
4. Resolution #R-71-2014 adopting the 2015 Schedule of Rates, Charges and Fees for the Fort Collins-Loveland Municipal Airport and Superseding All Prior Resolutions Establishing Such Rates, Charges and Fees, Effective January 1, 2015,
5. Resolution #R-72-2014 Approving the Loveland Fire Rescue Authority 2015 Schedule of Rates, Charges, and Fees for Services and 2015 Budget.

**CITY COUNCIL ADJOURNED AND CONVENED AS THE BOARD OF DIRECTORS OF THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 (SID) AT 9:51 P.M.**

3. **FINANCE** (presenter: John Hartman)  
**2015 BUDGET FOR THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 (SID)**  
 This is an administrative action. The City serves as the sponsoring agency for the Special Improvement District (SID) and the ex officio Board of Directors. The SID #1 was established to allow for the collection of assessments from property owners in the District to back bonded debt used to construct infrastructure improvements in the district. The City does not have any legal obligation towards this debt. By State law, all special districts with a connection to the City must adopt a budget. The City of Loveland serves as staff for the District. **Councilor Shaffer moved to Approve and Order Published on First Reading an Ordinance Adopting the 2015 Budget for the Loveland Special Improvement District #1. The motion seconded by Councilor Farley, carried with all councilors present voting in favor thereof.**

**THE BOARD OF DIRECTORS OF THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 (SID) ADJOURNED AND CONVENED AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA) AT 9:55 P.M.**

4. **FINANCE** (presenter: John Hartman)  
**2015 BUDGET FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)**  
**A Motion to Approve and Order Published on First Reading an Ordinance Adopting the 2015 Budget for the Loveland Urban Renewal Authority**  
 This is an administrative action. City Council serves as the Board of Commissioners for the Loveland Urban Renewal Authority. By State budget law, the Board must approve an annual budget for the Authority. The City of Loveland serves as staff for the District. The Authority is funded by tax increment revenues from property and sales taxes. This action adopts the budget and appropriates funds for the 2015 expenditures of the Authority.

**THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA) ADJOURNED AND CONVENED AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 (GID) 10:00 P.M.**

5. **FINANCE** (presenter: John Hartman)  
**2015 GET FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 (GID)**  
 The ordinance setting the mill levy is a legislative action. The ordinance adopting the budget is an administrative action. City Council serves as the ex-officio Board of Directors for the District. The Board must approve a budget and set the mill levy for the District. The City of Loveland serves as staff for the District. These items establish a budget and appropriate funds for District expenses in 2015, and set the mill levy rate for the property tax collections. **Council Shaffer moved to A Motion to Approve and Order Published on First Reading an Ordinance Setting the 2014 Mill Levy for the Loveland General Improvement District #1, and an Ordinance Adopting the 2015 Budget for the Loveland General Improvement District #1. The motion, seconded by Councilor Farley, carried with all councilors present voting in favor thereof.**

**THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 (GID) ADJOURNED AND RECONVENED AS CITY COUNCIL AT 10:02 P.M.**

Council was reminded that out-going Fire Chief, Randy Mirowski would be having a farewell classic car show Saturday at the Ranch at 1:30 p.m.

**ADJOURN**

Having no further matters to consider, Mayor Gutierrez adjourned the October 14, 2014 meeting at 10:05 P.M.

Respectfully Submitted,

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Teresa G. Andrews, City Clerk

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Cecil A. Gutierrez, Mayor



**CITY OF LOVELAND**  
CITY MANAGER'S OFFICE

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(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 2  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** City Manager's Office  
**PRESENTER:** Bill Cahill, City Manager

**TITLE:**

Appointment of Member to the Visual Arts Commission

**RECOMMENDED CITY COUNCIL ACTION:**

1. A motion to appoint Abbie Powers to the Visual Arts Commission for a partial term effective until December 31, 2016.

**OPTIONS:**

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

**SUMMARY:**

This is administrative action recommending the appointment of a member to the Visual Arts Commission.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

The Expectations Boards and Commissions Handbook notes:

Members shall be required to attend a minimum of 70% of the meetings each calendar year. If a member is unable to attend a meeting, he or she should contact the chairperson or staff liaison at least 24 hours in advance of the meeting, when possible. If a member has three unexcused absences in a row, the member shall automatically lose his or her position on the board or commission.

The Chair of the **Visual Arts Commission** informed Charles Johnson that his membership on the commission has been terminated due to Mr. Johnson not meeting the attendance expectations. Abbie Powers has been serving as an alternate member since her appointment on February 4, 2014. The interview committee recommends the appointment of Abbie Powers as a regular member on the Visual Arts Commission for a partial term effective until December 31, 2016.

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**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

None



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**AGENDA ITEM:** 3  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Bill Cahill, City Manager  
**PRESENTER:** Bill Cahill, City Manager

**TITLE:**

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the City of Loveland's Share of a Regional Tax Increment Financing Study

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the ordinance on second reading.

**OPTIONS:**

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

**SUMMARY:**

This is an administrative action. The ordinance on second reading appropriates funding for the City's share of the costs of a regional study on the use of tax increment financing with the County in the future. The study will be managed by Larimer County, with funding contributions from the county and all the cities. This ordinance was approved unanimously on first reading by Council at the October 21, 2014 regular meeting.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The ordinance is funded with unassigned fund balance within the General Fund reducing the flexibility to fund other projects. If the ordinance is approved there will be \$10,443,670 remaining fund balance.

**BACKGROUND:**

A URA/TIF study is being worked on by Larimer County, Loveland, Fort Collins, and other taxing jurisdictions in Larimer County. The purpose of the study is to establish a trustworthy model for measuring the effects (both negative and positive) of Urban Renewal Authorities (URAs) and their use of tax increment financing (TIF).

With all of the controversy about URAs and TIF, both at the local level and in the legislature, there is little agreement on facts about the financial effects of URAs and TIF. There is not a generally accepted economic model of what the effects really are.

Over the last several months, Loveland has been part of a discussion aimed toward generating an acceptable comprehensive model of the effects of URAs and TIF. This has been developed in combination with a group of all property taxing jurisdictions in Larimer County. A joint statement of purpose and principles has been developed and agreed upon. It provides the basis of a Request for Proposals to fiscal consultants who would be retained to build the model, which will be adaptable to various kinds of URAs. RFP results are now being evaluated.

The participants are requested to share in funding the study, with Larimer County handling the contract and administration. The three largest participants (Larimer, Loveland and Fort Collins) are asked to contribute \$30,000 each for the work, with the smaller jurisdictions contributing less.

This work will provide a foundation for future URA work by area jurisdictions.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance

FIRST READING October 21, 2014

SECOND READING November 4, 2014

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET FOR THE CITY OF LOVELAND’S SHARE OF A REGIONAL TAX INCREMENT FINANCING STUDY**

**WHEREAS**, the City has received and/or reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2014; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2014, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That reserves in the amount of \$30,000 from fund balance in the General Fund 100 are available for appropriation. Revenues in the total amount of \$30,000 are hereby appropriated for the City of Loveland’s share of a regional tax increment financing study. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 100**

<b>Revenues</b>	
Fund Balance	30,000
<b>Total Revenue</b>	<b>30,000</b>
<b>Appropriations</b>	
100-91-902-0000-43714	30,000
<b>Total Appropriations</b>	<b>30,000</b>

**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, 2014.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney





## CITY OF LOVELAND

### ECONOMIC DEVELOPMENT OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
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**AGENDA ITEM:** 4  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Economic Development Department  
**PRESENTER:** Mike Scholl, Economic Development Manager

#### TITLE:

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for an Incentive Agreement with Nordson Corporation/Value Plastics

#### RECOMMENDED CITY COUNCIL ACTION:

Approve second reading of the appropriation ordinance.

#### OPTIONS:

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

#### SUMMARY:

This is an administrative action. The appropriation, for \$255,330 from the Economic Incentive Fund, would be used to cover the additional cost of water and sewer line infrastructure and additional water and sewer tap fees. The original agreement was approved by Council on October 1, 2013. The amendment agreement and the first reading of the appropriation ordinance was unanimously approved by City Council at the October 21, 2014 regular meeting.

#### BUDGET IMPACT:

- Positive  
 Negative  
 Neutral or negligible

The amended incentive package will cost \$255,330. The funds will be appropriated from the Economic Incentive Fund which has a current balance of \$985,120.

**BACKGROUND:**

On *October 1, 2013*, City Council approved an economic incentive agreement for Nordson Corporation/Value Plastics for the construction of a medical plastics facility at the Longview/Midway business park. The agreement contained the following items:

- Reimbursement for the cost of the water, sewer and electrical utilities to the site estimated at \$257,000, which included the cost of water and sewer tap fees.
- Expedited review of site plan and building permit applications (*NOTE: Design Review Team met or exceeded all deadlines for the site plan and building permit review process.*)
- The City will work with applicant's design team to set clear deadlines and reasonable assumptions for submittals and review periods
- City's review team will work directly with the applicant's design team to ensure timely review and approvals
- Waiver of construction materials use tax and building permit fees \$250,000
- Waiver of Capital Expansion Fees (with backfill from Incentive fund) \$230,000
- Rebate of business personal property tax at 100 percent for five years

At the *September 24, 2013* Study Session, where the item was discussed, staff advised Council that the estimate for the cost of the water, sewer and electric utilities were subject to bid and the possibility of additional funding was possible. The estimates were prepared prior to the flood and the recent uptick in the economy. As a result, the bids came back significantly higher than anticipated. (*See the attached chart*)

The cost increase was not unique to the City. It was also shared by Nordson Corp/Value Plastics whose cost rose by 18 percent or \$3.2 million from December of 2013 to March of 2014. As the construction has progressed, the costs have risen by an additional \$1 million. The total investment is now roughly \$18 million, when the process began they had budgeted just under \$14 million. Nordson Corp/Value Plastics is spending an additional \$6 million on owner equipment.

With regard to the tap fees, when Nordson Corp/Value Plastics went through the site plan and permitting process, it became clear that a 2" tap would be required. While a 1.5" would be sufficient based on volume, given that the site is at the top of a hill, they could not achieve adequate pressure due to gravity loss, which prompted the need for the 2" tap.

Staff worked with Nordson Corp/Value Plastics to bring the cost down. The City bid the project first and only received two bids, which both exceeded the project budget. In further conversation, the contractors indicated that the project was too small and that additional work had become available due to the recent flood. Staff worked with the general contractor for Nordson Corp/Value Plastics to rebid the work within the larger plan but the prices were no better.

Further, a revised financial model is included with the attached briefing memorandum. Based on the increased contribution by the City along with the increased value to the project, staff anticipates recapturing the public investment within 10 years, barring any possible expansion.

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**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

1. Ordinance
2. Staff Memo

**.FIRST READING**            October 21, 2014

**SECOND READING**        November 4, 2014

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET FOR AN INCENTIVE AGREEMENT WITH VALUE PLASTICS, INC. AND NORDSON CORPORATION**

**WHEREAS**, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2014; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2014, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That reserves in the amount of \$255,330 from fund balance in the Economic Incentive Fund 106 are available for appropriation. Revenues in the total amount of \$255,330 are hereby appropriated for an incentive agreement with Value Plastics, Inc. and Nordson Corporation. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Economic Incentive Fund 106**

<b>Revenues</b>		
Fund Balance		255,330
<b>Total Revenue</b>		<b>255,330</b>
<b>Appropriations</b>		
106-18-180-1500-43155	Economic Incentives	255,330
<b>Total Appropriations</b>		<b>255,330</b>

**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, 2014.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney



**CITY OF LOVELAND**  
ECONOMIC DEVELOPMENT OFFICE  
Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

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## Memorandum

**To:** Loveland City Council

**Through:** Bill Cahill, City Manager

**From:** Mike Scholl, Economic Development Manager

**Date:** August 29, 2014

**RE:** Value Plastics/Incentive Amendment

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### Purpose:

The City Council is tentatively scheduled to consider an amendment to the approved incentive agreement with Nordson Corp/Value Plastics at the *October 7, 2014* regular Council meeting. Staff is seeking consideration of the amendment and appropriation for \$255,325 from the economic incentive fund to cover the additional cost of water and sewer line infrastructure and additional water and sewer tap fees.

The memorandum provides additional information on the amendment. If you have further questions, please let me know.

### Background:

On *October 1, 2013*, City Council approved an economic incentive agreement for Nordson Corporation/Value Plastics for the construction of a medical plastics facility at the Longview/Midway business park. The agreement contained the following items:

- Reimbursement for the cost of the water, sewer and electrical utilities to the site estimated at \$257,000, which included the cost of water and sewer tap fees.
- Expedited review of site plan and building permit applications (*NOTE: Design Review Team met or exceeded all deadlines for the site plan and building permit review process.*)
  - The City will work with applicant's design team to set clear deadlines and reasonable assumptions for submittals and review periods
  - City's review team will work directly with the applicant's design team to ensure timely review and approvals
- Waiver of construction materials use tax and building permit fees \$250,000
- Waiver of Capital Expansion Fees (with backfill from Incentive fund) \$230,000
- Rebate of business personal property tax at 100 percent for five years

At the *September 24, 2013* Study Session, where the item was discussed, staff advised Council that the estimate for the cost of the water, sewer and electric utilities were subject to bid and the possibility of additional funding was possible. The estimates were prepared prior to the flood and the recent uptick in the economy. As a result, the bids came back significantly higher than anticipated. (*See the attached chart*)

In addition, when Nordson Corp/Value Plastics went through the site plan and permitting process, it became clear that a 2" tap would be required. While a 1.5" would be sufficient based on volume, given that the site is at the top of a hill, they could not achieve adequate pressure due to gravity loss, which prompted the need for the 2" tap.

Staff worked with Nordson Corp/Value Plastics to bring the cost down. The City bid the project first and only received two bids, which both exceeded the project budget. In further conversation, the contractors indicated that the project was too small and that additional work had become available due to the recent flood. Staff worked with the general contractor for Nordson Corp/Value Plastics to rebid the work within the larger plan but the prices were no better.

Further, a revised financial model is included in the packet. Based on the increased contribution by the City along with the increased value to the project, we anticipate recapturing the public investment within 10 years, barring any possible expansion.

**Opportunity for Expansion:**

Nordson Corp/Value Plastics purchased the property with the knowledge that two to three additional facilities could be built on the property. Since the approval of the incentive, Nordson Corp created Nordson Medical and has purchased a company in southern California. The incentives and partnership with Nordson Corp/Value Plastics are helping to facilitate the development of the land, which could become a major hub for the production of high grade medical plastics and devices.

**Nordson Corp/Value Plastics:**

The cost increase was not unique to the City. It was also shared by Nordson Corp/Value Plastics whose cost rose by **18 percent or \$3.2 million** from December of 2013 to March of 2014. As the construction has progressed, the costs have risen by an additional \$1 million. The total investment is now roughly \$18 million, when the process began they had budgeted just under \$14 million. A briefing provided by Nordson Corp/Value Plastics is attached for your review. In addition, Nordson Corp/Value Plastics is spending an additional \$6 million on owner equipment.

Also, since making the decision to move to Loveland, the Nordson Foundation has provided grant funding to Alternatives to Violence as well as flood relief efforts.

**ATTACHMENTS:**

*Budget Spreadsheet*

*10 Year Revenue Analysis*

*Nordson Corp/Value Plastics Presentation*

*Nordson Medical Press Release*

Item	Appropriated	Spent	Current Balance	Actuals	Additional Cost to Nordson	Additional Cost to City	Notes
FCLWD/Tap Fees (planned 1.5")	\$119,000	\$241,591	(\$122,591)	\$241,591		\$122,591	Engineering determined 2" tap requirement (+\$90,546) , FCLWD fee increase in Jan '14 (+\$32,405)
Water/Sewer Off-Site Installation	\$138,000	\$0	\$138,000	\$292,855	\$22,761	\$132,094	Cost increases from October estimates to actual bids - Nordson contractor doing work/contract with Nordson
Emergency access road and water line from 66th (bollards, signs, recycled asphalt road to truck court, water line looped to 71st)	\$0	\$0	\$79,969	\$79,969	\$79,969		Consider a bike lane easement along the RR tracks in reciprocation for the Emergency access/looped line.
Electric	\$15,844	\$1,600	\$14,244	\$15,844	\$9,763	\$0	Conduit and installation from vault
Contingency	\$40,927	\$38,616	\$2,311	\$38,616		\$0	Interwest utility engineering, ROW utility permit, fees to enter FCLWD
Capital Expansion Fee/Back Fill	\$230,000	\$0	\$230,000	\$230,000		\$0	
3rd Party Reimbursement Agreement	\$49,970	\$50,610	(\$640)	\$50,610		\$640	Previous land owner agreement with City to pay for utility improvements @ 65th to carry over at land sale
<i>subtotal</i>	\$593,741	\$332,416	\$341,294	\$949,484	\$112,493	\$255,325	

NOTE: Value Plastics is also eligible for a rebate of 100% of the City's Business Personal Property Tax for the first four years of operator



	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	10 Year TOTAL
Building Permit Fee Waiver	(\$311,110)												
Capital Expansion Fee Waiver	(\$230,000)												
Cost of Infrastructure to the Site	(\$527,529)												
3rd Party Reimbursement	(\$50,610)												
Rebate of Business Personal Property Tax	\$0	\$0	(\$40,000)	(\$40,000)	(\$40,000)	(\$40,000)	(\$40,000)	\$0	\$0	\$0	\$0	\$0	
<i>Subtotal City Incentive</i>	(\$1,119,249)	\$0	(\$40,000)	(\$40,000)	(\$40,000)	(\$40,000)	(\$40,000)	\$0	\$0	\$0	\$0	\$0	(\$1,319,249)
<u>Net New Revenue to the City</u> [1]	\$246,633	\$91,486	\$95,997	\$98,840	\$102,561	\$106,150	\$109,865	\$113,711	\$117,691	\$121,810	\$126,073	\$130,486	\$1,461,304
<i>Subtotal Gross Annual Revenue</i>	(\$872,616)	\$91,486	\$55,997	\$58,840	\$62,561	\$66,150	\$69,865	\$113,711	\$117,691	\$121,810	\$126,073	\$130,486	\$142,055
Annual Return on Investment	(\$872,616)	(\$781,130)	(\$725,133)	(\$666,293)	(\$603,732)	(\$537,582)	(\$467,716)	(\$354,005)	(\$236,314)	(\$114,504)	\$11,569	\$142,055	
<b>Estimated New Revenue to other public entities (real property tax only)</b>													
<u>Thompson R2-J General (32.83 mill levy)</u> [2]	\$0	\$123,769	\$125,625	\$127,509	\$129,422	\$131,363	\$133,334	\$135,334	\$137,364	\$139,424			\$1,183,148
<u>Larimer County (22.52 mill levy)</u>	\$0	\$84,900	\$86,173	\$87,466	\$88,778	\$90,109	\$91,461	\$92,833	\$94,225	\$95,639			\$811,587

[1] Net new revenue is based on the Economic Impact Analysis completed by Dr. Martin Shields of Colorado State University. The EIA is included in the Council pack

[2] Figures are based on a 12 percent increase from the \$13,000,000 valuation.



# Nordson – Value Plastics Loveland Incentives

Information to be used for September 2<sup>nd</sup> City Council meeting

# Appropriations and Cost History

- Negotiations and economic impact evaluations began in September 2013
- Nordson – Value Plastics project bids increased by \$3.2 MM between December 2013 and April 2014
- Planning session with City Council on September 24<sup>th</sup>, 2013
  - Costs of off-site utility work, water tap, etc. based upon then-current economic conditions and contractor estimates
- Off-site utility bids received on January 23<sup>rd</sup>, 2014
  - Costs exceed initial allocation by \$116,613
  - Nordson solicits bids looking to lower cost by economies of scale in their project
  - Due to economic activity and contractor workload, this bid exceeds initial allocation by \$154,855 (bid = \$292,855)

## Appropriations and Cost History (cont.)

- FCLWD 1.5" tap fee increased \$32,405 in January from the original allocation of \$119,000 to \$151,405
- Water demand engineering of project resulted in the need for a 2" water tap, not the 1.5" estimate
  - This added another \$90,546
- The two water tap related increases total an additional \$122,591 over initial allocation

## Nordson as a Community Partner


- The Value Plastics community affairs committee evaluated over 20 grant and giving requests and presentations
- Through the generosity of the Nordson Foundation (which receives 5% of Nordson Corporation pre-tax profits) we have committed to over \$375,000 of community investments in 2014, including:
  - Loveland Alternatives to Violence: \$100,000
  - OUR Center: \$100,000
  - Sexual Assault Victim Advocate Center: \$50,000
  - Over \$50,000 to build a new community playground in Estes Park (volunteer labor by local Nordson employees). Build dates September 8<sup>th</sup> and 9<sup>th</sup>.
- Nordson also does full matching of other campaign giving by the Value Plastics employees such as
  - United Way
  - Fire and Flood relief (over \$40,000 given in 2013)




## Nordson Investments in the “Nordson Medical” Division (housed at the new building)

- The Longview site is 117 acres (~40 buildable)
- There is room for an additional 2-3 buildings at the site
- Nordson is aggressively committed to expanding it’s new “Nordson Medical” division: [Link to Nordson Medical WWW](#)
  - Just completed an \$118MM investment in the purchase of Avalon Laboratories which produces specialized catheters and products for cardiology, pulmonology and other related applications
- Nordson is a \$1.6B (revenue) manufacturer of diverse technology solutions with a world-wide presence in over 30 countries founded in 1954
  - NASDAQ - NDSN

## Nordson Corporation Expanding in Colorado to Meet Growing Demand for its Value Plastics Product Line in Medical End Markets

 Follow us on TWITTER

 Visit us on Facebook

### Company to maintain long-time presence in the region with new facility on Loveland site

02 Jun 2014

**Loveland, CO, USA – June 2, 2014** - Nordson Corporation (Nasdaq: NDSN) broke ground today on a new state-of-the-art manufacturing facility, located on a 116 acre site in Loveland, Colorado, to meet growing demand in medical end markets for its Value Plastics brand of engineered, single-use plastic-molded fluid management components and to provide flexibility and capacity for continued long term growth.

"We continue to see outstanding global growth opportunities for innovative components, devices and custom OEM solutions related to precision fluid management and delivery of biomaterials," said George Porter, Nordson Vice President and General Manager for medical product lines. "This new facility reflects Nordson's ongoing commitment and investment to meeting our medical customers' needs at the highest level. Our plans at this time call for construction of a 115,000 square foot facility with full clean room molding, assembly, packaging and inventory storage capabilities. The facility also will allow us to significantly reduce energy use and maintenance costs, and provide us with highly configurable spaces to minimize expense and disruption as business needs may change. We also expect the expansion of our business to provide many personal opportunities for our employees' professional growth. Full operations are anticipated to commence in the first half of 2015."

Nordson's current Value Plastics operation is located in a leased facility in Fort Collins, Colorado and employs approximately 90 people. "Fort Collins has been a great home for us for many years, and we thank local officials who helped us examine several options to remain there," said Porter. "However, we were unable to find an existing facility or site in the city fully suitable for our expansion needs. The nearby Loveland location allows us to stay in the same general region with access to many amenities and a highly talented workforce. We will continue to support the region through grants to local charitable organizations and our ongoing employee volunteer efforts."

Nordson's growing fluid management offering for medical markets includes the Value Plastics brand of single-use fluid management components, including quick connect fittings, luer fittings, check valves, tube-to-tube fittings, threaded fittings and blood pressure monitoring components, and Micromedics brand biomaterial delivery devices, including FibriJet applicators and tips and OsteoExpress bone graft delivery products. Visit [www.nordsonmedical.com](http://www.nordsonmedical.com) and [www.valueplastics.com](http://www.valueplastics.com) for more information

Nordson engineers, manufactures and markets differentiated products and systems used for [dispensing](#) and processing [adhesives](#), [coatings](#), [plastics](#), sealants and [biomaterials](#), with related technologies for [managing fluids](#), [testing and inspecting](#) for quality, and [treating surfaces](#). These products are supported with extensive application expertise and direct global sales and service. The company serves a wide variety of consumer non-durable, durable and technology end markets including packaging, nonwovens, electronics, medical, appliances, energy, transportation, construction, and general product assembly and finishing. Founded in 1954 and headquartered in Westlake, Ohio, the company has operations and support offices in more than 30 countries. Visit Nordson on the web at [www.nordson.com](http://www.nordson.com), [www.facebook.com/nordson](http://www.facebook.com/nordson), or [@Nordson\\_Corp](https://twitter.com/Nordson_Corp).

###

CONTACT: Nordson Corporation  
James R. Jaye (Director, Communications and Investor Relations)  
440.414.5639  
[Jim.Jaye@nordson.com](mailto:Jim.Jaye@nordson.com)



**CITY OF LOVELAND**  
CITY CLERKS OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2322 • FAX (970) 962-2901 • TDD (970) 962-2620

**AGENDA ITEM:** 5  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Terry Andrews, Municipal Clerk Services  
**PRESENTER:** Terry Andrews, City Clerk

**TITLE:**

An Ordinance Authorizing Election Procedures In Connection With Downtown Development Authority Elections Conducted by the City Clerk

**RECOMMENDED CITY COUNCIL ACTION:**

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

**OPTIONS:**

1. Adopt the ordinance as recommended
2. Deny the ordinance
3. Refer back to staff for further development and consideration

**SUMMARY:**

This is a legislative action. This ordinance will amend the term “eligible elector” to mean the same as “qualified elector” for purposes of conducting elections relative to a Downtown Development Authority (“DDA”). “Qualified electors” for a DDA include residents, landowners, and lessees of property located within the proposed DDA boundaries, and include designated representatives of landowners or lessees which are not natural persons. This ordinance will allow the City Clerk to provide ballots to all qualified electors, when conducting DDA elections.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

At a Special meeting on October 14, 2014, consensus of Council was to direct Staff to move forward with the necessary steps to place a question before the voters, establishing a Downtown Development Authority. The DDA Act (Title 31, Article 25, Part 8, C.R.S.) requires an election of all the “qualified electors” within the proposed DDA boundaries.



The Municipal Election Code directs the City Clerk to deliver mail ballot packets to all registered voters, while the eligibility requirements for a DDA election do not require voter registration, but instead defines “qualified electors” to include residents, landowners and lessees of property located within the proposed DDA boundaries. Staff is compiling the list of “qualified electors” from various resources. Of note, landowners and lessees that are not natural persons (e.g. entities and corporations) may designate a “natural person” to vote on their behalf. The ordinance defines “qualified electors” consistent with the DDA Act and resolves inconsistencies that would otherwise exist in using the Municipal Election Code for a DDA election

Also, contained within the ordinance is the “Self-affirmation” to be printed on the ballot envelope, for qualified electors to sign as verification of the qualification(s) of their eligibility.

If approved on first reading, Staff will follow up at second reading with the ordinance calling for the election to establish the “DDA” on February 10, 2015. A time line for Council actions related to the special election is attached.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance
2. Time Line for DDA Election

FIRST READING: November 4, 2014

SECOND READING: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING ELECTION PROCEDURES IN CONNECTION WITH DOWNTOWN DEVELOPMENT AUTHORITY ELECTIONS CONDUCTED BY THE CITY CLERK**

**WHEREAS**, the City of Loveland, in the County of Larimer and State of Colorado, (the “City”) is a home-rule municipality duly organized and existing under the laws of the State of Colorado and in particular under the provisions of Article XX of the Constitution of the State of Colorado and the City of Loveland Charter (the “Charter”); and

**WHEREAS**, the members of the City Council (the “City Council”) have been duly elected and qualified; and

**WHEREAS**, Section 6-1 of the Charter provides that “City elections shall be governed by the State statutes contained in The Colorado Municipal Election Code [Title 31, Article 10, Parts 1 through 15, C.R.S., the “Municipal Election Code”], except as otherwise provided by [the] Charter or by ordinance”; and

**WHEREAS**, the City is considering the formation of a downtown development authority (the “DDA”) pursuant to Title 31, Article 25, Part 8, C.R.S. (the “DDA Act”); and

**WHEREAS**, the DDA Act provides that a qualified elector in an election related to the DDA includes a person who is a resident, a landowner or a lessee within the DDA, as defined in Section 31-25-802 thereof, and authorizes a landowner or lessee which is not a natural person to designate a representative to cast its ballot; and

**WHEREAS**, certain provisions of the Municipal Election Code are designed for electors to be persons who are registered to vote, and such provisions are not consistent with the elector qualifications set forth in the DDA Act; and

**WHEREAS**, it is necessary to adopt this ordinance to resolve such inconsistencies to permit elections related to the DDA to be conducted by the City Clerk in accordance with the DDA Act, applicable provisions of the Municipal Election Code, and this Ordinance; and

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

**Section 1. DDA Elections.** That any election conducted with respect to the DDA pursuant to the DDA Act shall be conducted by the City Clerk as an independent mail ballot election pursuant to Sections 31-10-907 through 31-10-913 of the Colorado Municipal Election Code except that:

(a) The term “eligible electors” as used in the Municipal Election Code shall mean “qualified electors” as defined in the DDA Act;

(b) An eligible electors shall not be required to register to vote; and

(c) The self-affirmation printed on the return envelope shall be in substantially the following form:

State of Colorado, City of Loveland, County of Larimer

I, ..., affirm and say that I am a qualified elector of the Loveland Downtown Development Authority because I (check one)

\_\_\_ Own in fee an undivided interest in real property or any improvement fixed thereto within the boundaries of the DDA; or

\_\_\_ am a citizen of the United States and a resident of the State of Colorado, eighteen years of age or older and I make my primary dwelling place within the boundaries of the DDA; or

\_\_\_ hold a leasehold interest in real property within the boundaries of the DDA;  
or

\_\_\_ have been designated as a representative of a landowner or lessee of real property located within the boundaries of the DDA which is not a natural person to cast its ballot.

that my mailing address is ....; and that I herein enclose my ballot in accordance with the provisions of the "Colorado Municipal Election Code of 1965". I realize that if any false statements are contained herein that I shall be subject to prosecution for criminal action.

.....  
Date    Signature of voter

**Section 2. Other Election Procedures.** That the City Clerk shall use registration records, property owner lists, utility billings, lists of business licenses and other records she deems appropriate to assist in determining who are qualified electors of the DDA. The City Clerk shall develop a form for a landowner or lessee in the DDA who is not a natural person to designate a

representative to cast its ballot. Pursuant to Section 6-5 of the Charter, in any case where the election procedure is in doubt, the City Clerk shall prescribe the procedure to be followed.

**Section 3. Repealer.** That all bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any such bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

**Section 4. Severability.** That if any section, subsection, paragraph, clause or other provision of this Ordinance for any reason is invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this Ordinance.

**Section 5. Publication.** That as provided in 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 6. Effective Date.** That this Ordinance shall be in full force and effect ten (10) days after its final publication, as provided in Charter Section 4-8(b).

**ADOPTED** this \_\_ day of November, 2014.

**CITY OF LOVELAND, COLORADO**


(SEAL)

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney

## LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY APPROVAL TIMETABLE

Note: Regular meetings of the Loveland City Council are held at 6:30 p.m., the first and third Tuesday of each month, in the City Council Chambers, 500 East Third Street, Loveland, Colorado. This timetable assumes that items marked with an asterisk (\*) will be set forth the Loveland DDA Municipal Mail Ballot Code, which will be adopted by the Loveland City Council at the outset of this timetable.

DATE	EVENT
<b>Tuesday, November 4, 2014</b> Dee Wisor: Amending Language CAO- Ordinance CAO/CCO cover sheet due October 20, 2014	Regular City Council meeting; first reading and public hearing of ordinance adopting Loveland DDA Municipal Mail Ballot Code (“Mail Ballot Code Ordinance”).
<b>Wednesday, November 5, 2014</b> CCO	Submission of Mail Ballot Code Ordinance to <i>Loveland Daily Reporter-Herald</i> by 4 p.m. for publication (at least two days before publication).
<b>Friday, November 7, 2014</b> CCO	Mail Ballot Code Ordinance appears in newspaper (first publication).
<b>Tuesday, November 18, 2014</b> Lucia Liley: Ballot question title CAO/CCO: Ordinances CAO/CCO: Coversheet due November 3, 2014	Regular City Council meeting; second reading, final adoption of Mail Ballot Code Ordinance. First reading and public hearing of ordinance referring question of forming Downtown Development Authority to eligible electors (“DDA Election Ordinance”).
<b>Wednesday, November 19, 2014</b> CCO	Mail Ballot Code Ordinance submitted to newspaper for second publication.
<b>Friday, November 21, 2014</b> CCO	Mail Ballot Code Ordinance appears in newspaper (second publication). Submission of DDA Election Ordinance to newspaper for publication. (first publication)
<b>Monday, December 1, 2014</b>	Mail Ballot Code Ordinance effective.
<b>Tuesday, December 2, 2014</b> CAO/CCO: Ordinances CAO/CCO: Coversheet due November 17, 2014	Regular City Council meeting; second reading of ordinance referring question of forming Downtown Development Authority to eligible electors (“DDA Election Ordinance”).

<b>Wednesday, December 3, 2014</b> CCO	Mail Ballot Code Ordinance submitted to newspaper for second publication.
<b>Friday, December 5, 2014</b>	DDA Election Ordinance appears in newspaper (second publication).
<b>Monday, December 15, 2014</b>	DDA Election Ordinance effective.
<b>Tuesday, December 16, 2014</b> CAO/CCO: Resolution CAO/CCO: Cover sheet due December 1, 2014	Regular City Council meeting; adoption of resolution calling special election pursuant to Charter Sec. 6-3; effective immediately
<b>Monday, January 5 through Friday, January 16, 2015</b>	* City Clerk certifies ballot content; identifies electors; prepares mail ballot packets.
<b>Monday, January 19 through Monday, January 26, 2015</b>	* City Clerk mails mail ballot packets to electors (no sooner than 22 days and no later than 15 days before the election).
<b>Monday, January 19, 2015 through Election Day</b>	* Mail ballots must be available at the City Clerk's office for electors who request a ballot (no sooner than 22 days before the election). The City Clerk must provide a replacement ballot to any eligible elector whose ballot was destroyed, spoiled, lost or for some other reason was not received by the eligible elector. To obtain a ballot in such cases, the elector must sign a sworn statement specifying the reason for requesting the ballot and attesting to the elector's eligibility to vote and present the statement to the City Clerk no later than 6:30 p.m. on Election Day, and such ballots must be cast no later than 7 p.m. on Election Day.
<b>Tuesday, January 20, 2015</b>	* City Council appoints election judges at regular City Council Meeting (at least 15 days before election). Promptly after such appointment, the City Clerk shall issue certificates with the City seal certifying such appointments and deliver or mail one certificate to each person appointed. With each certificate there shall be enclosed a form for acceptance of the appointment, and each person appointed as election judge shall file the acceptance with the City Clerk within seven days after the mailing by the City Clerk of the

	certificate of appointment; failure to do so shall result in a vacancy which shall be filled in the same way the original appointment was made.
<b>Monday, January 26, 2015</b>	* First day election officials may begin counting ballots (starts no sooner than 15 days before the election and continues through election day, until counting completed).
<b>Thursday, January 29, 2015</b>	* City Clerk submits of Notice of Election to newspaper.
<b>Friday, January 30, 2015</b>	* City Clerk to post notice of the election in the office of the City Clerk and at any separate polling place (at least 10 days before the election).
<b>Saturday, January 31, 2015</b>	* Notice of election appears in newspaper (on the 10 <sup>th</sup> day before the election).
<b>Tuesday, February 10, 2015 – ELECTION DAY</b>	* Ballots must be received at the City Clerk’s office or a designated depository, which must remain open from 7 a.m. until 7 p.m. on Election Day.  * The abstract of the count of votes by the election judges shall be posted outside the City Clerk’s office immediately upon completion of the count and can be removed any time after forty-eight hours following the election.
<b>Tuesday, February 17, 2015</b>	* Last day for the City Clerk and the Mayor to conduct the canvass of votes (within 7 days after Election Day).  * Last day for any interested party to request a recount (within 7 days after Election Day).
<b>Friday, February 20, 2015</b>	* Votes must be recounted if the difference between the yes and no votes on the question of the DDA formation is less than or equal to one half of one percent of the higher number of votes; additionally, votes must be recounted if requested by an interested party (must be completed within 10 days after Election Day). The City Clerk shall give prior notice of any

	recount to the petition representatives.
<b>By end of February, 2015</b>	DDA board appointed in accordance with Section 31-25-805 and 806, Colorado Revised Statutes.





**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:** 6  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** Brent Worthington, Finance Director

**TITLE:**

An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2014 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

**SUMMARY:**

This is an administrative action. The ordinance appropriates funding for police overtime and equipment costs funded by Federal and State grants and re-budgets items previously approved by Council for accounting and audit purposes in the amount of \$1,248,760.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The ordinance is funded by Federal and State revenues not anticipated in the 2014 Budget adoption and by available reserves in the Fleet Fund, which reduces the flexibility to fund other Fleet projects. The items re-budgeted is movement of costs between funds and does not affect the overall budget.

**BACKGROUND:**

Each year in November, staff bring a “wrap-up” ordinance to address any remaining issues and insure there are sufficient appropriations to meet projected expenditures. The ordinance is necessary to resolve several year-end issues and finalize the 2014 Budget. Most issues 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.

New items in the ordinance include overtime for the Police Department funded by federal or state grants for specific programs such as the “Click It or Ticket” campaign and for the reimbursement of overtime time and vehicle lease costs for the Special Investigation Unit from other police agencies and seizure funds. Also a transfer from the Fleet Fund to provide funding for the new vehicle was at the Service Center was inadvertently left out of the rollover ordinance this spring. This appropriation is needed to balance the transfers and provide funding for the expenses budgeted in the Capital Projects Fund.

Two ordinances approved earlier in the year are re-budgeted for accounting and audit purposes.

- Ordinance #5863 approved on April 8, 2014, was approved for the escrow and closing costs on the downtown properties for \$250,000. The ordinance transferred the funding to the Capital Projects Fund and appropriated the expense in that fund. Subsequently when the cost for the land purchases were appropriated it was determined that the General Fund was the more appropriate fund for these costs. This item moves the closing cot funding into the general Fund so that the entire cost of the purchase is budgeted in the same place for better transparency and tracking.
- Ordinance #5871 approved on August 5, 2014, was approved to fund engineering work for the stretches of the Big Thompson River bordering the Morey Wildlife Reserve and Marianna Butte Golf Course; the River’s Edge Natural Area and Viestenz-Smith Park to alleviate future flood issues. The funding was transferred from the General Fund, the Conservation Trust Fund and the Golf Enterprise Fund into a line item managed by the Public Works Department, which is the lead on all river work and to show the total cost of the work in one place. Subsequent to the ordinance adoption it was determined that the Parks and Recreation Department would manage the Rivers Edge Natural Area and Morey/Golf Course projects and that for audit purposes the actual costs for these two projects should be maintained within the source funds, the Conservation Trust Fund and the Golf Enterprise Fund rather than transferring the funding to the Capital Projects Fund. This change is implemented in this ordinance.

---

**REVIEWED BY CITY MANAGER:**

*William A. Cahill*

---

**LIST OF ATTACHMENTS:**

1. Ordinance

FIRST READING      November 4, 2014

SECOND READING      \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET**

**WHEREAS**, the City has received and/or reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2014; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2014, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That revenues and/or reserves in the amount of \$104,000 from federal and state grants in the General Fund 100, and \$44,560 in Police Seizure revenue sharing in the Police Seizure and Forfeiture Fund 207, and \$1,600,000 from fund balance in the Fleet Fund 500, are available for appropriation. Revenues in the total amount of \$1,748,560 are hereby appropriated for police overtime and equipment costs and for funding of the new vehicle wash building at the Service Center. In addition \$500,000 in expenses for river engineering and land purchases are re-budgeted from the original appropriation to meet accounting and audit requirements. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 100**

**Revenues**

100-21-202-2102-32000	Federal Grants	28,380
100-21-202-2113-32100	State Grant	38,890
100-21-204-2112-32301	Overtime Reimbursement	36,930

**Total Revenue** **104,200**

**Appropriations**

100-18-180-1500-49010-EDDTLAND	Land	250,000
100-21-202-2113-41021	Overtime	38,890
100-21-204-2112-41021	Overtime	61,640
100-21-204-2112-43775	Equipment Rental/Lease	3,670
100-91-999-0000-47120-EDDTLAND	Transfer to Capital Projects Fund	(250,000)

**Total Appropriations** **104,200**

**Supplemental Budget  
Capital Projects Fund 120**

**Revenues**

120-00-000-0000-37100-EDDTLAND	Transfer from General Fund	(250,000)
120-00-000-0000-27202	Transfer from Open Space Fund	(162,500)
120-00-000-0000-37375	Transfer from Golf Enterprise Fund	(87,500)

**Total Revenue** **(500,000)**

**Appropriations**

120-18-180-1500-49010-EDDTLAND	Land	(250,000)
120-23-280-0000-49352	Engineering	(250,000)

**Total Appropriations** **(500,000)**

**Supplemental Budget  
Open Space Fund 202**

**Appropriations**

202-51-590-0000-49352	Engineering	162,500
202-51-590-0000-47120	Transfer to Capital Projects Fund	(162,500)

**Total Appropriations** **-**

**Supplemental Budget  
Golf Enterprise Fund 375**

<b>Appropriations</b>		
375-51-510-0000-47120	Transfer to Capital Projects Fund	(87,500)
375-51-510-0000-49352	Engineering	87,500
<b>Total Appropriations</b>		<b>-</b>

**Supplemental Budget  
Police Seizure Fund 207**

<b>Revenues</b>		
207-00-000-0000-32300	Other Government Agency	44,560
<b>Total Revenue</b>		<b>44,560</b>
<b>Appropriations</b>		
207-21-204-2112-41021	Overtime	44,560
<b>Total Appropriations</b>		<b>44,560</b>

**Supplemental Budget  
Fleet Fund 500**

<b>Revenues</b>		
Fund Balance		1,600,000
<b>Total Revenue</b>		<b>1,600,000</b>
<b>Appropriations</b>		
500-23-260-0000-47120-GF1107	Transfer to Capital Project Fund	1,600,000
<b>Total Appropriations</b>		<b>1,600,000</b>

**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, 2014.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney



**CITY OF LOVELAND**  
PUBLIC WORKS DEPARTMENT

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

**AGENDA ITEM:** 7  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Project Engineering Division, Public Works Department  
**PRESENTER:** Dave Klockeman, Acting Public Works Director/City Engineer

**TITLE:**

1. A Resolution Approving an Intergovernmental Agreement between the City of Loveland, Colorado and the State of Colorado, Acting by and through, the Colorado Department of Transportation for Garfield Elementary School Sidewalk Improvements
2. An Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for Garfield Elementary School Sidewalk Improvements

**RECOMMENDED CITY COUNCIL ACTION:**

1. Approve the resolution.
2. Conduct a public hearing and approve the ordinance on first reading.

**OPTIONS:**

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

**SUMMARY:**

These are administrative actions. The City has received a CDOT grant through the Safe Routes to School (SRTS) Program for the construction of sidewalk improvements in the vicinity of Garfield Elementary School at 8<sup>th</sup> and Colorado. The resolution authorizes the Loveland City Manager to execute the Grant Agreement. The Ordinance appropriates the Grant funds in the amount of \$113,000.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The project is funded from federal funds.

**BACKGROUND:**

CDOT has approved a grant totaling \$113,000.00 for the Garfield Elementary School Sidewalk Improvements. This project was developed in coordination with Garfield Elementary School and the Thompson School District. This project will fund the installation curb ramps and sidewalks in the neighborhood adjacent to the school, and safety gates in one of the schools parking lots. The City will design and manage the project as an in-kind service.

This project is currently in design stage with construction is planned for the spring/summer of 2015.

Funding Summary:

State Funds		\$113,000
Local Agency Match Funds*	\$ 0	
Local Over-Matching Funds**	<u>\$ 0</u>	
Subtotal Local Funds	\$ 0	<u>\$ 0</u>
Total Project Funds:		\$113,000

\* Local Agency Match Funds are defined as funding required to be provided by a local entity as part of the State grant process. For SRTS projects, the local match required is 0%.

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

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

**REVIEWED BY CITY MANAGER:**



**LIST OF ATTACHMENTS:**

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



**RESOLUTION #R-77-2014**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR GARFIELD ELEMENTARY SCHOOL SIDEWALK IMPROVEMENTS**

**WHEREAS**, the City of Loveland desires to install curb ramps and sidewalks in the neighborhood adjacent to Garfield Elementary School and safety gates in the school parking lots to increase the safety of children walking to school and during child drop-off and pick-up times at the school (the “Project”); and

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

**WHEREAS**, the estimated cost of the Project is \$113,000 plus project management costs of which the FHWA will reimburse \$113,000, representing 100.00% of monetary hard costs on the condition that the City manage the Project as an in-kind contribution; and

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

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

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

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

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

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

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

ADOPTED this \_\_\_\_\_ day of November, 2014.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney

**STATE OF COLORADO**  
**Department of Transportation**  
**Agreement**  
**with**  
**City of Loveland**

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## 1. PARTIES

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

## 2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

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

## 3. RECITALS

### A. Authority, Appropriation, and Approval

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

#### i. Federal Authority

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

#### ii. State Authority

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

### B. Consideration

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

### C. Purpose

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

### D. References

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

## 4. DEFINITIONS

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

### A. Agreement or Contract

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

### B. Agreement Funds

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

### C. Budget

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

**D. Consultant and Contractor**

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

**E. Evaluation**

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

**F. Exhibits and Other Attachments**

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

**G. Goods**

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

**H. Oversight**

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

**I. Party or Parties**

“Party” means the State or the Local Agency and “Parties” means both the State and the Local Agency

**J. Work Budget**

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

**K. Services**

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

**L. Work**

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

**M. Work Product**

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

**5. TERM AND EARLY TERMINATION**

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

**6. SCOPE OF WORK****A. Completion**

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

**B. Goods and Services**

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

**C. Employees**

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

## D. State and Local Agency Commitments

### i. Design

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

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

### ii. Local Agency Work

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

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

- (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
- (c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

### iii. Construction

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

- a) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b) The Local Agency shall be responsible for the following:
  - (1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.
  - (2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).
    - (a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).
    - (b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.
    - (c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.
  - (3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.
  - (4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.
    - (a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided

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

- (b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.
- (c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.
- (d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

#### **E. State's Commitments**

- a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**.

#### **F. ROW and Acquisition/Relocation**

- a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.
- b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.
- d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at [http://www.dot.state.co.us/ROW\\_Manual/](http://www.dot.state.co.us/ROW_Manual/)) and reimbursement for the levels will be under the following categories:
  - (1) Right of way acquisition (3111) for federal participation and non-participation;
  - (2) Relocation activities, if applicable (3109);
  - (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

#### **G. Utilities**

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

- a) Railroads
 

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:
- b) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- c) Obtain the railroad's detailed estimate of the cost of the Work.
- d) Establish future maintenance responsibilities for the proposed installation.
- e) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.



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

#### H. Environmental Obligations

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

#### I. Maintenance Obligations

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

### 7. OPTION LETTER MODIFICATION

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

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

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

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

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

#### C. Option to do both Options A and B.

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

### 8. PAYMENTS

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

**A. Maximum Amount**

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

**B. Payment**

**i. Advance, Interim and Final Payments**

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

**ii. Interest**

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

**iii. Available Funds-Contingency-Termination**

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

**iv. Erroneous Payments**

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

**C. Use of Funds**

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

**D. Matching Funds**

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

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

**E. Reimbursement of Local Agency Costs**

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

**i. Reasonable and Necessary**

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

**ii. Net Cost**

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

**9. ACCOUNTING**

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

**A. Local Agency Performing the Work**

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

**B. Local Agency-Checks or Draws**

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

**C. State-Administrative Services**

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

**D. Local Agency-Invoices**

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

**E. Invoicing Within 60 Days**

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

**F. Reimbursement of State Costs**

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from

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

#### **10. REPORTING - NOTIFICATION**

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

##### **A. Performance, Progress, Personnel, and Funds**

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

##### **B. Litigation Reporting**

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

##### **C. Noncompliance**

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

##### **D. Documents**

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

#### **11. LOCAL AGENCY RECORDS**

##### **A. Maintenance**

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

##### **B. Inspection**

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

##### **C. Monitoring**

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency

pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

**D. Final Audit Report**

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

**12. CONFIDENTIAL INFORMATION-STATE RECORDS**

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

**A. Confidentiality**

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

**B. Notification**

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

**C. Use, Security, and Retention**

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

**D. Disclosure-Liability**

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

**13. CONFLICT OF INTEREST**

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

**14. REPRESENTATIONS AND WARRANTIES**

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

**A. Standard and Manner of Performance**

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

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

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

**C. Licenses, Permits, Etc.**

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

**15. INSURANCE**

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

**A. The Local Agency****i. Public Entities**

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

**ii. Non-Public Entities**

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

**B. Contractors**

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

**i. Worker’s Compensation**

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

ii. **General Liability**

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

iii. **Automobile Liability**

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

iv. **Additional Insured**

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

v. **Primacy of Coverage**

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

vi. **Cancellation**

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

vii. **Subrogation Waiver**

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

**C. Certificates**

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

**16. DEFAULT-BREACH**

**A. Defined**

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

**B Notice and Cure Period**

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

**17. REMEDIES**

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

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

**A. Termination for Cause and/or Breach**

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

**i. Obligations and Rights**

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

**ii. Payments**

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

**iii. Damages and Withholding**

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

**B. Early Termination in the Public Interest**

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

**i. Method and Content**

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

**ii. Obligations and Rights**

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



iii. **Payments**

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

**C. Remedies Not Involving Termination**

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

i. **Suspend Performance**

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

ii. **Withhold Payment**

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

iii. **Deny Payment**

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

iv. **Removal**

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

v. **Intellectual Property**

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

**18. NOTICES and REPRESENTATIVES**

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

**A. If to State:**

CDOT Region: 4  
Long Nguyen  
Resident Engineer  
1420 2nd Street  
Greeley, CO 80631  
970-350-2126

**B. If to the Local Agency:**

City of Loveland  
Michelle Aschenbrenner  
Project Manager  
410 E 5th Street  
Loveland, CO 80537  
970-962-2258

### **19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

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

### **20. GOVERNMENTAL IMMUNITY**

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

### **21. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

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

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

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

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

### **22. FEDERAL REQUIREMENTS**

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended.

### **23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The Local Agency will comply with all requirements of Exhibit G and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this

Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State- approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

#### **24. DISPUTES**

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

#### **25. GENERAL PROVISIONS**

##### **A. Assignment**

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

##### **B. Binding Effect**

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

##### **C. Captions**

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

##### **D. Counterparts**

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

##### **E. Entire Understanding**

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

##### **F. Indemnification - General**

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

##### **G. Jurisdiction and Venue**

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

**H. Limitations of Liability**

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

**I. Modification**

i. By the Parties

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

ii. By Operation of Law

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

**J. Order of Precedence**

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

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

**K. Severability**

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

**L. Survival of Certain Agreement Terms**

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

**M. Taxes**

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

**N. Third Party Beneficiaries**

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

**O. Waiver**

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

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**

## 26. COLORADO SPECIAL PROVISIONS

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

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

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

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

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

### C. GOVERNMENTAL IMMUNITY.

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

### D. INDEPENDENT CONTRACTOR.

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

### E. COMPLIANCE WITH LAW.

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

### F. CHOICE OF LAW.

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

### G. BINDING ARBITRATION PROHIBITED.

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

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

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

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

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

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

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

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

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

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

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

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

SPs Effective 1/1/09

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**27. SIGNATURE PAGE**  
 Agreement Routing Number:

**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 style="text-align: center;"><b>THE LOCAL AGENCY CITY OF LOVELAND</b></p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Donald E. Hunt, Executive Director</b></p> <hr/> <p>By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>
<p style="text-align: center;">2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>LEGAL REVIEW John W. Suthers, Attorney General</b></p> <p>By: _____</p> <p style="text-align: center;">Signature - Assistant Attorney General</p> <p>Date: _____</p>

**ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

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

<p style="text-align: center;"><b>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____</p> <p style="text-align: center;">Colorado Department of Transportation</p> <p>Date: _____</p>
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28. EXHIBIT A – SCOPE OF WORK

<b>COLORADO DEPARTMENT OF TRANSPORTATION</b> <b>DESIGN DATA</b>  Page 1 to 3 Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised		Orig.Date: 03/27/2014		Project Code # (SA#): 20212		STIP#: SR47001	
		Rev.Date:		Project #: SAR M830-081			
		Revision #: 0		PE Project Code:			
		Region #: 04		Project Description: Garfield Elementary Sidewalks (SRTS)			
Submitted By PM: SCHUCHM		Approved by Program Engineer:		County: 069			
Date:				Municipality: Loveland			
Revised by:				System Code: O-Other Federal-Aid Highway			
Date:				Oversight By: Delegated/Locally Administered			
				Planned Length: 1.000			
Geographic Location: IN THE VACINITY OF GARFIELD ELEMENTARY SCHOOL IN							
Type of Terrain: Urban							
Description of Proposed Construction/Improvement(Attach map showing site location) CONSTRUCT SIDEWALKS AND INTERSECTION IMPROVEMENTS							
<b>1 Project Characteristics (Proposed)</b>					Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input type="checkbox"/> None		
<input type="checkbox"/> Lighting		<input type="checkbox"/> Handicap Ramps		<input type="checkbox"/> Traffic Control Signals		<input type="checkbox"/> Striping	
<input type="checkbox"/> Curb and Gutter		<input type="checkbox"/> Curb Only		<input type="checkbox"/> Left-Turn Slots		<input type="checkbox"/> Continuous Width=	
<input checked="" type="checkbox"/> Sidwalk Width= 4'		<input type="checkbox"/> Bikeway Width=		<input type="checkbox"/> Right-Turn Slots		<input type="checkbox"/> Continuous Width=	
<input type="checkbox"/> Parking Lane Width=		<input type="checkbox"/> Detours		<input type="checkbox"/> Signing		<input type="checkbox"/> Construction <input type="checkbox"/> Permanent	
<input type="checkbox"/> Landscaping requirements (description):				<input type="checkbox"/> Other (description):			
<b>2 Right of Way</b>					<b>3 Utilities (list names of known utility companies)</b>		
ROW &/or Perm. Easement Required		Yes/No	Est. #				
Relocation Required		No	_____				
Temporary Easement Required:		No	_____				
Changes in Access:		No	_____				
Changes to Connecting Roads:		No	_____				
<b>4 Railroad Crossings</b>					# of Crossings:		
Recommendations :							
<b>5 Environmental</b>		Type:		Approved On:		Project Code # Cleared Under:	
		None		/ /		Project # Cleared Under:	
Comments:							
<b>6 Coordination</b>							
<input type="checkbox"/> Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office				Irrigation Ditch Name:			
<input type="checkbox"/> New Traffic Ordinance Required				<input type="checkbox"/> Modify Schedule of Existing Ordinance		Municipality: Loveland	
Other:							
<b>7 Construction Method</b>		Advertised By:		NoAd Reason:		Entity / Agency Contact Name:	
		None		Design		Michelle Aschenbrenner	
						Phone #: 970-962-2558	
<b>8 Safety Considerations</b>		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			
<input type="checkbox"/> Justification Attached		<input type="checkbox"/> Request to be Submitted		Comments:			
<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#): 20212		Project #: SAR M830-081		Revise date:	
Use Columns A, B, C, D and/or E to identify facility described below							
A =		B =		C =		D =	
E =							
<b>9 Traffic</b>							
Current Year	ADT						
	DHV						
	DHV % Trucks						
Future Year	ADT						
	DHV						
Facility Location		<input type="checkbox"/> Industrial	<input type="checkbox"/> Commercial	<input type="checkbox"/> Industrial	<input type="checkbox"/> Commercial	<input type="checkbox"/> Industrial	<input type="checkbox"/> Commercial
		<input type="checkbox"/> Residential	<input type="checkbox"/> Other	<input type="checkbox"/> Residential	<input type="checkbox"/> Other	<input type="checkbox"/> Residential	<input type="checkbox"/> Other
<b>10 Roadway Class</b>							
Route							
Relpt	0.000						
Endrefpt	0.000						
Functional Classification	R						
Facility type	U						
Rural Code	2						
Design Standards		Standard	Ultimate	Standard	Ultimate	Standard	Ultimate
		Existing	Proposed	Existing	Proposed	Existing	Proposed
		Ultimate	Ultimate	Ultimate	Ultimate	Ultimate	Ultimate
<b>11 Design Variance Required (substandard items are identified with an * in 1<sup>st</sup> column &amp; clarify as design variance with CDOT Form #404)</b>							
Width of Travel Lanes							
Shoulder width ft/outside							
Shoulder width ft/outside							
Design Speed							
Cross Slope							
Max. superelevation rate							
Min. Radius							
Min. Horizontal SSD							
Min. Vertical SSD							
Max Grade							
<b>Design Decision Letter Required (substandard items are identified with an * in 1<sup>st</sup> column &amp; clarify with decision letter)</b>							
Typical Section Type							
# of Travel Lanes							
Side Slope Dist. (ft)							
Median Width							
Posted Speed							

Page 3 of 3		Project Code #(SA#): 20212		Project #: SAR M830-081		Revise Date:				
<b>12 Major Structures</b> 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):										
<b>13 Remarks</b>										
<p>The Colorado Department of Transportation (#CDOT#) will oversee the City of Loveland when the City of Loveland designs and constructs sidewalk and safety improvements at various locations surrounding Garfield Elementary School (Hereinafter referred to as #this work#) CDOT and the City of Loveland believe it will be beneficial to perform this work because several sidewalks around the school are incomplete and children's safety at the school is at risk during pickup and drop off time. By removing the sidewalk gaps in several locations, children will have a safer walk to Garfield elementary school. This work will be located in the neighborhoods surrounding Garfield Elementary School. This work will contain curb ramp installation, sidewalk construction, and the installation of gates in one of the school's parking lots. This work will conform to ADA requirements&lt;(&gt;,&lt;-&gt; city standards, and all other applicable state and federal requirements. The design phase of the work is currently underway. A combined FIR/FOR is planned for July or August of 2014. The design phase will identify more exact requirements, qualities, and attributes for this work. (Herein after referred to as #the exact work#) The exact work shall be used to complete the construction phase of the project. The construction phase of the contract shall begin November of 2014 or in the spring of 2015.</p>										

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY  
ORDINANCE  
or  
RESOLUTION

**30. EXHIBIT C – FUNDING PROVISIONS**

**A. Cost of Work Estimate**

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

<b>1 BUDGETED FUNDS</b>			
a. Federal Funds			
(100.00% of Participating Costs – SAR)			\$113,000.00
b. Local Agency Matching Funds			
(0.00%)			\$0.00
<b>TOTAL BUDGETED FUNDS</b>			<b>\$113,000.00</b>
<b>2 ESTIMATED CDOT-INCURRED COSTS</b>			
a. Federal Share			\$0.00
(0% of Participating Costs)			
b. Local Share			
Local Agency Share of Participating Costs	\$0.00		
Local Agency Share of Non-Participating Costs	\$0.00		
Estimated to be Billed to Local Agency			\$0.00
<b>TOTAL ESTIMATED CDOT-INCURRED COSTS</b>			<b>\$0.00</b>
<b>3 ESTIMATED PAYMENT TO LOCAL AGENCY</b>			
a. Federal Funds Budgeted (1a)			\$113,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)			\$0.00
c. State Funds Budgeted (1c)			\$0.00
<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>			<b>\$113,000.00</b>
<b>FOR CDOT ENCUMBRANCE PURPOSES</b>			
<i>*Note - \$0.00 is currently available. Funds will be available in the future either by Option Letter or Amendment.</i>			
Net to be encumbered as follows:			\$0.00
WBS Element 19595.20.10   Construc.   3301			\$0.00

## B. Matching Funds

The matching ratio for the federal participating funds for this Work is 100% federal-aid funds (CFDA #20 2050) to 0.00% Local Agency and State funds, it being understood that such ratio applies only to the \$113,000.00 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 \$113,000.00 and additional federal funds are made available for the Work, the Local Agency shall pay 0.00% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$113,000.00, 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 \$113,000.00 (For CDOT accounting purposes, the federal funds of \$113,000.00, State funds of \$0.00, Local Agency matching funds of \$0.00, and Local Agency Overmatch funds of \$0.00 will be encumbered for a total encumbrance of \$113,000.00), 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 will be available in the future either by Option Letter or Amendment \*\*\*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

## D. Single Audit Act Amendment

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

### i. Expenditure less than \$750,000

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

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

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

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

If the Sub-The Local Agency expends more than \$750,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

### iv. Independent CPA

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

31. EXHIBIT D – OPTION LETTER

**SAMPLE IGA OPTION LETTER**

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

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

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

Vendor name: \_\_\_\_\_

**SUBJECT:**

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

**REQUIRED PROVISIONS:**

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

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

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

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

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

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

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

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

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

**APPROVALS:**

**State of Colorado:**

John W. Hickenlooper, Governor

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Executive Director, Colorado Department of Transportation

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

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

**State Controller  
Robert Jaros, CPA, MBA, JD**

By: \_\_\_\_\_

Date: \_\_\_\_\_



**32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

COLORADO DEPARTMENT OF TRANSPORTATION <b>LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST</b>			
Project No. SAR M830-081	STIP No. SR47001.022	Project Code 20212	Region 04
Project Location Garfield Elementary School - Loveland			Date 6/11/2014
Project Description Safe Routes to School – Sidewalk Construction			
Local Agency City of Loveland	Local Agency Project Manager Michelle Aschenbrenner		
CDOT Resident Engineer Long Nguyen	CDOT Project Manager Jake Schuch		
<p><b>INSTRUCTIONS:</b></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
<b>TIP / STIP AND LONG-RANGE PLANS</b>			
2-1	Review Project to ensure consistency with STIP and amendments thereto		X
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
<b>PROJECT DEVELOPMENT</b>			
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	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
<b>PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		NA
6-2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.)  _____ Long Nguven _____ 6/11/2014 CDOT Resident Engineer (Signature on File) Date		X
6-3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6-4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
<b>ADVERTISE, BID AND AWARD</b>			
7-1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7-2	Advertise for Bids	X	
7-3	Distribute "Advertisement Set" of Plans and Specifications	X	
7-4	Review Worksite and Plan Details with Prospective Bidders While Project is Under Advertisement	X	
7-5	Open Bids	X	
7-6	Process Bids for Compliance	X	
	Check CDOT Form 1415 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UBDE goals		X
	Evaluate CDOT Form 1416 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7-7	Concurrence from CDOT to Award		X
7-8	Approve Rejection of Low Bidder		X
7-9	Award Contract	X	#
7-10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
<b>CONSTRUCTION MANAGEMENT</b>			
8-1	Issue Notice to Proceed to the Contractor	X	
8-2	Project Safety	X	#
8-3	Conduct Conferences:		
	Pre-construction Conference (Appendix B)	X	X
	Presurvey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i> )	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )	X	
8-4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8-5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision."  _____ Mike Jacobson _____ 970-962-2642 Local Agency Professional Engineer or Phone number CDOT Resident Engineer	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>Michelle Aschenbrenner</u> <u>970-962-2558</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	
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.		X
	<u>Long Nguven</u> <u>970-350-2126</u>		
	CDOT Resident Engineer    Phone number		
<b>MATERIALS</b>			
9-1	Conduct Materials Preconstruction Meeting	X	X
9-2	Complete CDOT Form 250 - Materials Documentation Record		X
	• 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	X	
	• Complete and distribute form after work is completed	X	
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products	X	
	Inspection of structural components:		
	• Fabrication of structural steel and pre-stressed concrete structural components	X	
	• Bridge modular expansion devices (0" to 6" or greater)	X	
	• Fabrication of bearing devices	X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input type="checkbox"/>		X
	• Generate IAT schedule	X	
	• Schedule and provide notification	X	
	• Conduct IAT	X	
9-8	Approve Mix Designs		
	• Concrete	X	
	• Hot Mix Asphalt	X	
9-9	Check Final Materials Documentation	X	
9-10	Complete and Distribute Final Materials Documentation	X	

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Previous editions are obsolete and may not be used

<b>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
10-1	Fulfill Project Bulletin Board and Pre-construction Packet Requirements	X	
10-2	Process CDOT Form 205b - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	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	X
10-7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
<b>FINALS</b>			
11-1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11-2	Write Final Project Acceptance Letter	X	
11-3	Advertise for Final Settlement	X	
11-4	Prepare and Distribute Final As-Constructed Plans	X	
11-5	Prepare EEO Certification	X	
11-6	Check Final Quantities, Plans and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11-7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11-8	Obtain CDOT Form 1419 - Contractor DBE Payment Certification from the Contactor and submit to the Resident Engineer (Quarterly)	X	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		NA
11-10	Process Final Payment	X	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 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

#### SECTION 2. DBE Obligation.

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

#### SECTION 3 DBE Program.

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

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

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 26

### 35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

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

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

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

Evaluation factors for final selection are the consultant's:

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

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the 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 journeyman 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: debayment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debayment 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 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 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 Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

### **F. Clear Air Act**

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

### **G. Energy Policy and Conservation Act**

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

### **H. OMB Circulars**

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

**I. Hatch Act**

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

**J. Nondiscrimination**

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

**K. ADA**

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

**L. Uniform Relocation Assistance and Real Property Acquisition Policies Act**

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

**M. Drug-Free Workplace Act**

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

**N. Age Discrimination Act of 1975**

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

**O. 23 C.F.R. Part 172**

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

**P. 23 C.F.R Part 633**

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

**Q. 23 C.F.R. Part 635**

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

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

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

**S. Nondiscrimination Provisions:**

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

**i. Compliance with Regulations**

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

**ii. Nondiscrimination**

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

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

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

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

**iv. Information and Reports**

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

**v. Sanctions for Noncompliance**

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

**T. Incorporation of Provisions §22**

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

## 37. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado**  
**Supplemental Provisions for**  
**Federally Funded Contracts, Grants, and Purchase Orders**  
**Subject to**  
**The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended**  
**Revised as of 3-20-13**

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

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

Award **does not** include:

    - 1.1.12. Technical assistance, which provides services in lieu of money;
    - 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
    - 1.1.14. Any award classified for security purposes; or
    - 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
  - 1.2. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
  - 1.3. **“Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
  - 1.4. **“Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
  - 1.5. **“Entity”** means all of the following as defined at 2 CFR part 25, subpart C;
    - 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
    - 1.5.2. A foreign public entity;
    - 1.5.3. A domestic or foreign non-profit organization;



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

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

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

**7.1 ToSAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1** Subrecipient DUNS Number;
- 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3** Subrecipient Parent DUNS Number;
- 7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

**7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 7.2.1** Subrecipient's DUNS Number as registered in **SAM**.
- 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

## **8. Exemptions.**

- 8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.

**Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

FIRST READING November 4, 2014

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET FOR GARFIELD ELEMENTARY SCHOOL SIDEWALK IMPROVEMENTS**

**WHEREAS**, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2014; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2014, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That revenues in the amount of \$113,000 from Colorado Department of Transportation (CDOT) through the Safe Routes to School (SRTS) Program in the Transportation Fund 211 are available for appropriation. Revenues in the total amount of \$113,000 are hereby appropriated for the Garfield Elementary School Sidewalk Improvements. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Transportation Fund 211**

<b>Revenues</b>	
211-23-232-1701-32000 TSSR15ifs Federal Grant	113,000
<b>Total Revenue</b>	<b>113,000</b>
<b>Appropriations</b>	
211-23-232-0000-49360 TSSR15ifs Construction	113,000
<b>Total Appropriations</b>	<b>113,000</b>

**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, 2014.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney



**AGENDA ITEM:** 8  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Garth Silvernale, Water and Power  
**PRESENTER:** Garth Silvernale, Power Operations Supervisor

**TITLE:**  
A Resolution Approving an Intergovernmental Agreement for Mutual Aid-Power Operations

**RECOMMENDED CITY COUNCIL ACTION:**  
Adopt the resolution.

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

**SUMMARY:**  
This is an administrative action to approve an Intergovernmental Agreement (IGA) for mutual aid in the area of power operations between the Town of Estes Park, the Cities of Longmont, Fort Collins and Loveland and Platte River Power Authority.

- BUDGET IMPACT:**
- Positive
  - Negative
  - Neutral or negligible

**BACKGROUND:**  
Mutual aid agreements are an essential element of an electric utility's operational response plan. They enable utilities to call upon the mutual aid parties to assist with resources such as manpower, tools, equipment, stock items, etc. Establishing this agreement will provide Loveland Water and Power prior defined operational assistance to call upon when needed.

Operational, Management and Legal staff from each organization have worked on this for several months and all support the IGA as presented.

The Loveland Utilities Commission considered the proposed IGA at its October 15, 2014 meeting and unanimously voted to recommend that Council approve the IGA.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Attachment A: Resolution
2. Attachment B: Intergovernmental Agreement (Exhibit A to Resolution)

**RESOLUTION #R-78-2014****A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR MUTUAL AID-POWER OPERATIONS**

**WHEREAS**, C.R.S. § 29-1-201 permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

**WHEREAS**, C.R.S. § 29-1-203 authorizes governments to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each; and

**WHEREAS**, the City of Loveland, City of Fort Collins, City of Longmont and Town of Estes Park (the “Municipalities”) own and maintain power distribution facilities whereby they supply their respective customers with power and energy; and

**WHEREAS**, Platte River Power Authority (“Platte River”) owns and maintains power generation and transmission facilities for the benefit of the Municipalities, which are member owners of Platte River; and

**WHEREAS**, the Municipalities and Platte River desire to cooperate and contract with one another to provide essential services during critical periods when a party determines additional resources are necessary to maintain the safe and efficient operation of power and energy facilities and services, not to include disaster or emergency events; and

**WHEREAS**, neither the Municipalities nor Platte River desire to interfere with or supersede the provision of mutual aid under any separate intergovernmental agreement, as may be executed by or among any of the Municipalities, Platte River, and other regional entities.

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

**Section 1.** That the Inter-Governmental Agreement for Mutual Aid-Power Operations (“Intergovernmental Agreement”), attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

**Section 2.** That the City Manager is 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 of Loveland.

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

ADOPTED this 4<sup>th</sup> day of November, 2014.



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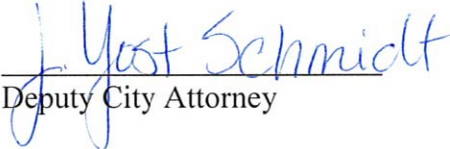
Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
Deputy City Attorney

## EXHIBIT A

### INTERGOVERNMENTAL AGREEMENT FOR MUTUAL AID – POWER OPERATIONS

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between THE TOWN OF ESTES PARK, COLORADO, a municipal corporation, THE CITY OF FORT COLLINS, COLORADO, a municipal corporation, THE CITY OF LONGMONT, COLORADO, a municipal corporation, and THE CITY OF LOVELAND, COLORADO, a municipal corporation (collectively, the “Municipalities”), and PLATTE RIVER POWER AUTHORITY, a political subdivision of the State of Colorado (“Platte River”) (each a “Party,” and collectively, the “Parties”).

#### WITNESSETH:

WHEREAS, C.R.S. § 29-1-201 permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, C.R.S. § 29-1-203 authorizes governments to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, the Municipalities own and maintain power distribution facilities whereby they supply their respective customers with power and energy; and

WHEREAS, Platte River owns and maintains power generation and transmission facilities for the benefit of the Municipalities, which are member owners of Platte River; and

WHEREAS, the Municipalities and Platte River desire to cooperate and contract with one another to provide essential services during critical periods when a Party determines additional resources are necessary to maintain the safe and efficient operation of power and energy facilities and services, not to include disaster or emergency events; and

WHEREAS, neither the Municipalities nor Platte River desire for this Agreement to interfere with or supersede the provision of mutual aid under any separate intergovernmental agreement, as may be executed by or between any of the Parties and other regional entities.

NOW, THEREFORE, in consideration of the mutual promises and commitments made herein, the Parties agree as follows:

1. Definitions.

- A. “Requesting Party” shall mean the Party requesting aid under this Agreement.
- B. “Aiding Party” shall mean the Party responding to a request for aid under this

Agreement.

- C. “Authorized Representative” shall mean the person responsible for managing a Party’s response and activities under this Agreement.
2. Provision of Mutual Aid. Subject to the limitations and conditions set forth in this Agreement, the Parties agree to work cooperatively and collaboratively to provide mutual aid, assistance, and support, in the form of personnel, equipment, vehicles, materials, and supplies, in order to prevent, minimize, or mitigate the impacts of any event that threatens public health, safety, or welfare.
  3. Request for Aid. The Requesting Party shall make its request in writing to the Aiding Party with reasonable specificity. The Requesting Party agrees to compensate the Aiding Party as specified in this Agreement, or as may later be negotiated and agreed to by the Parties.
  4. Discretionary Rendering of Aid. Rendering of aid is entirely at the discretion of the Aiding Party and shall not be contingent upon a declaration of a major disaster or emergency by the federal government or upon receiving federal funds. The Aiding Party shall determine, in its sole discretion, the level and amount of resources, including equipment and personnel, to be devoted in response to any request for aid. Neither the Aiding Party nor the Requesting Party shall in any way be liable to the other or to any person, firm, or corporation for the determination to supply or not to supply, or to limit the amount of aid supplied, upon such request following such determination.
  5. Authorized Representatives. In connection with each request for aid, the Parties shall designate an Authorized Representative to manage the Party’s response and cooperative activities hereunder.
  6. Response to Request for Aid. The Aiding Party shall report to the Requesting Party’s Authorized Representative for assignment of duties. The Requesting Party’s Authorized Representative shall direct and coordinate all activities; provided, however, that the Aiding Party’s Authorized Representative shall remain in direct charge of all personnel and resources assigned to him or her to assist in providing aid, and shall be responsible for ensuring that appropriate staffing, training, and supervision have been provided to those rendering assistance on behalf of the Aiding Party. The Aiding Party may refuse to perform requested acts it deems inappropriate or that it is unable to perform under the circumstances.
  7. No Employment Relationship. Notwithstanding the provision of aid as set forth in this Agreement, the personnel of the Aiding Party shall not be considered the employees or agents of the Requesting Party.
  8. Recall of Aid. The Aiding Party reserves the right to recall its personnel, equipment, materials, supplies, and other resources at any time. The Aiding Party will endeavor to give the Requesting Party at least twenty-four (24) hours advance notice of its intent to withdraw. If such notice is not practicable, the Aiding Party will give the Requesting

Party the earliest notice it deems possible.

9. Additional Responsibilities.

- A. Compliance with all Applicable Laws. The Parties shall each comply with all laws and regulations applicable to its actions hereunder. Each Party must, upon request by any other Party, make available on a reasonable basis such information as may be required to ensure or show compliance with local, state, and federal laws, except as otherwise prohibited by law or court order.
  - B. Safety Policies. The Requesting Party shall provide safety policies and procedures to the Aiding Party, and the Aiding Party must abide by them in the course of providing aid and assistance hereunder to the extent practicable.
  - C. Materials Management. The Requesting Party shall be responsible for the cleanup, removal, and disposition of any substances generated, managed, or requiring disposal in the course of an event during which aid was provided to the Requesting Party.
  - D. Food and Shelter. The Requesting Party shall supply reasonable food and shelter for the Aiding Party's personnel during the period of assistance. If the Requesting Party cannot provide such food and shelter, the Aiding Party is authorized to secure the resources necessary to meet the needs of its personnel. The cost for such resources must not exceed the State per diem rates for that area. The Parties' Authorized Representatives shall determine whether the Requesting Party is responsible for reimbursing the Aiding Party for all costs associated with providing food and shelter, if the Requesting Party does not provide such resources. If the Parties cannot agree on the level of reimbursement, they may agree to submit the matter to mediation at a mutually-agreed upon location; provided, however, that nothing in this section shall restrict the right of either Party to apply to a court of competent jurisdiction for a judicial resolution. The Parties shall jointly select the mediator. If a mediator cannot be agreed upon, each Party shall select a mediator and the two mediators so chosen shall select a third mediator. Each Party shall pay its own expenses associated with the mediation, and each Party shall pay one-half of the mediator's fees and costs.
  - E. Nondiscrimination. No person with responsibility for providing services under this Agreement shall discriminate against persons being assisted or requesting assistance on the basis of race, color, national origin, age, sex, religion, handicap, political affiliation or beliefs, or any other unlawful basis.
  - F. Public Information. All public information regarding any mutual aid incident shall be channeled through, or coordinated with, the Requesting Party's Authorized Representative.
10. Invoice to the Requesting Party. Within ninety (90) days of the recall of aid by the Aiding Party, the Aiding Party shall submit to the Requesting Party an invoice for all charges related to the aid provided pursuant to this Agreement.

11. Charges to the Requesting Party. Charges to the Requesting Party from the Aiding Party shall be as follows:
- A. Labor force. Charges for labor force shall be in accordance with the Aiding Party's standard pay practices.
  - B. Equipment. Charges for equipment, such as bucket trucks, digger derricks, and other special equipment used by the Aiding Party, shall be at the reasonable and customary rates for such equipment in the Aiding Party's location.
  - C. Transportation. The Aiding Party shall transport needed personnel and equipment by reasonable and customary means and shall charge reasonable and customary rates for such transportation.
  - D. Miscellaneous Expenses. Charges for other expenses related to the provision of aid pursuant to this Agreement, not otherwise addressed above, shall be the reasonable and actual costs incurred by the Aiding Party.
12. Insurance. The Aiding Party shall maintain workers compensation coverage for its employees, automobile liability coverage for its vehicles and equipment, and adequate general liability, public official's liability, and law enforcement liability insurance, or self-insurance coverage as applicable. The Requesting Party agrees to maintain adequate liability insurance under State law.
13. No Liability. Each Party assumes responsibility for the actions and omissions of its employees and agents in the performance or non-performance of its obligations under this Agreement, and, to the extent permitted by law, agrees to hold harmless the other Parties for the actions or omissions of its employees and agents. Nothing herein is intended as a waiver by the Parties of the privileges and protections of the Colorado Governmental Immunity Act, C.R.S § 24-10-101 *et seq.*
14. Modification. This Agreement may be updated, modified, revised, or renegotiated at any time by written agreement signed by the Parties.
15. Notice. Whenever a notice is either required or permitted to be given under this Agreement, it shall be given in writing and delivered personally, by U.S. Postal Service, certified mail, return receipt requested, or by email to the other Party at the address indicated below or at such other address as may be designated by the Party:

If to the Town of Estes Park:

Office of the Town Administrator  
Town of Estes Park  
170 MacGregor Ave  
P.O. Box 1200  
Estes Park, CO 80517

If to the City of Fort Collins: Office of the City Manager  
City of Fort Collins  
300 LaPorte Avenue  
P.O. Box 580  
Fort Collins, CO 80522

If to the City of Longmont: Longmont Power & Communications  
Attn: General Manager, Tom Roiniotis  
1100 S. Sherman St.  
Longmont, CO 80501

If to the City of Loveland: Loveland Water & Power  
Attn: Stephen C. Adams, Director  
200 N. Wilson Avenue  
Loveland, CO 80537  
Steve.Adams@cityofloveland.org

If to Platte River Power Authority: General Manager/CEO  
2000 East Horsetooth Rd.  
Fort Collins, CO 80525

16. Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Colorado, without giving effect to its conflicts of law provisions.
17. No Third Party Beneficiary. The terms and conditions of this Agreement, and all rights of action relating thereto, are strictly reserved to the Parties, and nothing in this Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not a party to this Agreement. Any person or entity other than the Parties receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
18. Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the Parties will renegotiate any terms affected by the severance.
19. Appropriation Required. All obligations of each Party hereunder are expressly contingent upon the annual appropriation of funds sufficient and intended to carry out the same by the governing body of such Party, in its sole discretion. Nothing in this Agreement constitutes a debt, a direct or indirect multiple fiscal year financial obligation, a pledge of a Party's credit, or a payment guarantee by one Party to another.
20. Counterparts. The Parties may execute this Mutual Aid Agreement in one or more counterparts, with each counterpart being deemed an original Agreement, but with all counterparts being considered one Agreement.

21. Execution. Each Party hereto has read, agreed to, and executed this Agreement on the date first written above.
22. Prior and Other Mutual Aid Agreements. This Agreement expressly supersedes and replaces the intergovernmental agreements for mutual aid executed by the Municipalities on January 24, 1983 and August 18, 1999.

[Signatures appear on the following pages]

THE TOWN OF ESTES PARK, COLORADO,  
A Municipal Corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

(Remaining signatures on the following pages.)



THE CITY OF FORT COLLINS, COLORADO,  
A Municipal Corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

(Remaining signatures on the following pages.)

THE CITY OF LONGMONT, COLORADO,  
A Municipal Corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

Proofread:

\_\_\_\_\_

Approved as to Form and Substance:

\_\_\_\_\_  
Originating Department

(Remaining signatures on the following pages.)

THE CITY OF LOVELAND, COLORADO,  
A Municipal Corporation

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

(Remaining signatures on the following page.)

PLATTE RIVER POWER AUTHORITY,  
A Political Subdivision of the State of Colorado

By: \_\_\_\_\_  
General Manager/CEO

APPROVED AS TO FORM:

\_\_\_\_\_  
General Counsel



## CITY OF LOVELAND

### PARKS & RECREATION DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2303 • FAX (970) 962-2903 • TDD (970) 962-2620

**AGENDA ITEM:** 9  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Parks & Recreation  
**PRESENTER:** Keven Aggers, Acting Director

**TITLE:**

A Motion to Award a Contract to Musco Sports Lighting LLC for Barnes Field Light Replacement in the Amount Not to Exceed \$610,000 and Authorize the City Manager to Execute the Contract

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the motion.

**OPTIONS:**

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

**SUMMARY:**

This is an administrative action to approve a contract with Musco Lighting LLC for \$610,000 for the replacement of sports field lighting at Barnes Fields 1-4.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Budget dollars were allocated in the 2014 Budget for this project.

**BACKGROUND:**

Musco Lighting was initially selected as the provider for Barnes Fields 7-10 systems due to their ability to phase installation; their use of fewer poles and fixtures with less "light spill"; "Green Technology" with reduced operating costs and increased fixture life; their inclusion of the ControlLink control and monitoring system; and the City's excellent experience with the Musco systems that serve the Loveland Sports Park Championship Field and Barnes Fields 5 and 6. The

Musco system installed in 2013 survived the flood with few concerns and the system remains operational today.

For the above reasons and the need to maintain repair and replacement parts from one manufacturer, the Parks and Recreation Department requests the purchase be made as a sole source procurement.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Contract

## SERVICES CONTRACT

This Contract is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **City of Loveland, Colorado** (“City”) and **Musco Lighting** (“Contractor”).

Whereas, the parties desire to contract with one another to complete the following project:  
**Barnes Field Light Replacement.**

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

1. Services. The Contractor shall perform the services set forth in Exhibit A, attached hereto and incorporated herein by reference (“Services”). The Contractor represents that it has the authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Contract and all applicable laws. The City reserves the right to remove any of the Services from Exhibit A upon written notice to Contractor. In the event of any conflict between this Contract and Exhibit A, the provisions of this Contract shall prevail.

2. Price. The City shall pay the Contractor a sum not to exceed **\$610,000**. The City shall make payment within thirty days of receipt and approval of monthly invoices, which shall identify the specific Services performed for which payment is requested.

3. Term. This Contract shall be effective from **through** . This Contract may be extended or renewed by written agreement of the parties.

4. Appropriation. To the extent this Contract constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Contract in any fiscal year in which no such appropriation is made.

5. Independent Contractor. The parties agree that the Contractor is an independent contractor and is not an employee of the City. **The Contractor is not entitled to workers’ compensation benefits from the City and is obligated to pay federal and state income tax on any money earned pursuant to this Contract.**

6. Insurance Requirements.

a. Policies. The Contractor and its subcontractors, if any, shall procure and keep in force during the duration of this Contract the following insurance policies and shall provide the City with a certificate of insurance evidencing upon execution of this Contract:

(i) Comprehensive general liability insurance insuring the Contractor and naming the City as an additional insured with minimum combined single limits of \$1,000,000 each occurrence and \$1,000,000 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for

bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

(ii) Comprehensive automobile liability insurance insuring the Contractor and naming the City as an additional insured against any liability for personal injury, bodily injury, or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by the Contractor which are used in connection with this Contract, whether the motor vehicles are owned, non-owned, or hired, with a combined single limit of at least \$1,000,000.

(iii) Professional liability insurance insuring the Contractor against any professional liability with a limit of at least \$1,000,000 per claim and annual aggregate. *(Note: this policy shall only be required if the Contractor is an architect, engineer, surveyor, appraiser, physician, attorney, accountant, or other licensed professional.)*

(iv) Workers' compensation insurance and all other insurance required by any applicable law. *(Note: if under Colorado law the Contractor is not required to carry workers' compensation insurance, the Contractor shall execute a Certificate of Exemption and Waiver, attached hereto as Exhibit B and incorporated herein by reference.)*

b. Requirements. Required insurance policies shall be with companies qualified to do business in Colorado with a general policyholder's financial rating acceptable to the City. Said policies shall not be cancelable or subject to reduction in coverage limits or other modification except after thirty days prior written notice to the City. The Contractor shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the Contractor changes to "occurrence," the Contractor shall carry a six-month tail. Comprehensive general and automobile policies shall be for the mutual and joint benefit and protection of the Contractor and the City. Such policies shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its officers, employees, and agents by reason of negligence of the Contractor, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the City may carry.

7. Indemnification. The Contractor agrees to indemnify and hold harmless the City, its officers, employees, and agents from and against all liability, claims, and demands on account of any injury, loss, or damage arising out of or connected with the Services, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom the Contractor is responsible.



The Contractor shall investigate, handle, respond to, and defend against any such liability, claims, and demands, and shall bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage to the extent caused by the act, omission, or other fault of the City. This paragraph shall survive the termination or expiration of this Contract.

8. Governmental Immunity Act. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* and under any other applicable law.

9. Compliance with Applicable Laws.

a. Generally. The Contractor shall comply with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City. The Contractor shall solely be responsible for payment of all applicable taxes and for obtaining and keeping in force all applicable permits and approvals.

b. C.R.S. Article 17.5, Title 8. The Contractor hereby certifies that, as of the date of this Contract, it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that the Contractor will participate in the e-verify program or Colorado Department of Labor and Employment ("Department") program as defined in C.R.S. § 8-17.5-101 in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. The Contractor certifies that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the e-verify program or the Department program. The Contractor is prohibited from using either the e-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to: (i) notify the subcontractor and City within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor shall comply with any reasonable request by the Department made in the course of an investigation that it is undertaking pursuant to the authority established in C.R.S. Article 17.5, Title 8. If the Contractor violates this paragraph, the City may terminate this

Contract for default in accordance with “Termination,” below. If this Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City. *(Note: this paragraph shall not apply to contracts: (i) for Services involving the delivery of a specific end product (other than reports that are merely incidental to the performance of said work); or (ii) for information technology services and/or products.)*

c. C.R.S. § 24-76.5-103. If the Contractor is a natural person (*i.e.*, not a corporation, partnership, or other legally-created entity), he/she must complete the affidavit attached hereto as Exhibit C and attach a photocopy of a valid form of identification. If the Contractor states that he/she is an alien lawfully present in the United States, the City will verify his/her lawful presence through the SAVE Program or successor program operated by the U.S. Department of Homeland Security. In the event the City determines that the Contractor is not lawfully present in the United States, the City shall terminate this Contract for default in accordance with “Termination,” below.

10. Termination.

a. Without Cause. Either party may terminate this Contract without cause upon thirty days prior written notice to the other. The City shall be liable to pay the Contractor for Services performed as of the effective date of termination, but shall not be liable to the Contractor for anticipated profits.

b. For Default. Each and every term and condition hereof shall be deemed to be a material element of this Contract. In the event either party fails to perform according to the terms of this Contract, such party may be declared in default. If the defaulting party does not cure said breach within ten days of written notice thereof, the non-defaulting party may terminate this Contract immediately upon written notice of termination to the other. In the event of such termination by the City, the City shall be liable to pay the Contractor for Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits; provided, however, that the Contractor shall not be relieved of liability to the City for any damages sustained by the City by virtue of any default under this Contract, and the City may withhold payment to the Contractor for the purposes of setoff until such time as the exact amount of damages is determined.

11. Notices. Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three days after being sent by certified mail, return receipt requested:

To the City:  
 Merinda Bennett  
 City of Loveland  
 135 North Dotsero  
 Loveland, CO 80537  
 Email:  
 merinda.bennett@cityofloveland.org

To the Contractor:  
 Richard Wadlow  
 Musco Lighting  
 2107 Stewart Road  
 Muscatine, Iowa 52761  
 Email: richard.wadlow@musco.com

12. Special Provisions.  
See Attachment A

13. Time of the Essence. Time is of the essence in performance of the Services and is a significant and material term of this Contract.

14. Miscellaneous. This Contract contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. In the event a court of competent jurisdiction holds any provision of this Contract invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Contract. The Contractor shall not assign this Contract without the City’s prior written consent. This Contract shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

15. Electronic Signature. This Contract may be executed by electronic signature in accordance with C.R.S 24-71.3-101 *et seq.*

Signed by the parties on the date written above.

**City of Loveland, Colorado**

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

**Contractor**

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by \_\_\_\_\_.

(Insert name of individual signing on behalf of the Contractor)

\_\_\_\_\_  
Notary's official signature

S E A L

\_\_\_\_\_  
Commission expiration date

*The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, color, national origin, religion, sexual orientation, age or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act.*

**EXHIBIT A – SERVICES**

Barnes Sports Complex Lighting Replacement



Quote

**Barnes Field Sports Complex – Phase 2**  
**Loveland, Colorado**  
**Date: 9/26/2014**

**To: Keven Aggers and Merinda Bennett**  
**Parks and Recreation Department**

#### Quotation Price

Musco's Light Structure Green™ as described below, delivered to the job site and installed per the scope of work below:

~~\$622,200.00~~ Light Structure Green with Constant 25 (Year parts and Labor) Warranty and Light Guarantee

\*610,000 RAW [Signature] 9/26/14

#### Equipment Description

Light Structure Green™ System delivered to your site in Five Easy Pieces™

- Pre-cast concrete bases
- Galvanized steel poles
- UL Listed remote electrical component enclosures
- Pole length wire harness
- Factory-aimed and assembled luminaires

Also Includes:

- Energy savings of more than 50% over a standard lighting system
- 50% less spill and glare light than Musco's prior industry leading technology
- Musco Constant 25™ product assurance and warranty program that eliminates 100% of your maintenance costs for 25 years, including labor and materials
- Guaranteed constant light level of 50 foot-candles on infield and 30 fc on outfield for 25 years
- One group re-lamp at the end of the lamps' rated life, 5000 hours
- Reduced energy consumption with an average of 228.3 kW per hour
- Control Link® Control & Monitoring System for flexible control and solid management of your lighting system
- Lighting Contactors sized for on site voltage and phase
- 2 Parking Lot Security Lights
- Colorado Stamped Structural Foundation based on 2012 IBC
- Colorado Stamped Electrical Engineer Drawings

Sales tax, if applicable, is not included as part of this quote.

**Pricing furnished is effective for 60 days unless otherwise noted and is considered confidential.**  
**Divulging technical or pricing information to competitive vendors will result in removal from the bid list.**

**Payment Terms**

---

Terms to be determined with the Musco Credit Department.

**Late payment will be subject to service charges of 1 ½% per month (18% APR).**

Musco will make every effort to coordinate shipment so that delivery corresponds with the customer's payment schedule. We will expect payment within the terms described above unless there is a written statement from Musco's corporate headquarters stating the acceptance of different terms.

**Delivery to the job site from the time of order, submittal approval, and confirmation of order details including voltage and phase, pole locations is approximately 30-45 days. Due to the built-in custom light control per luminaire, pole locations need to be confirmed prior to production. Changes to pole locations after the product is sent to production could result in additional charges.**

**Notes**

---

Quote is based on:

- Shipment of entire project together to one location
- Wagon Wheel Ballfield Complex (per design #158369A)
- Structural code = 2012 with area Wind Load Requirements
- Confirmation of pole locations prior to production

**Scope of work:****Light Structure Green™ Turnkey Scope of Work**

**Barnes Fields**

**Loveland, CO**

**Owner Responsibilities:**

1. Total access to the site and pole locations for construction. Must be able to move from location to location on standard rubber tires.
2. Removal of any trees, limbs, shrubs, etc. for total access to pole locations.
3. Removal, replacement, and repair of all fencing necessary for construction.
4. Locate and mark existing irrigation systems prior to excavation as necessary.
5. Pay for all permitting costs as required.
6. Extra costs associated with foundation excavation and construction in non-standard soils (rock, high water table, collapsing holes, alluvial soils, etc.). Standard soils are defined as Class 5 soils and can be excavated using standard earth auguring equipment and methods.
7. Patching of asphalt and concrete as required. Musco subcontractor to saw cut where required for sports lighting installation.

**Musco Responsibilities:**

1. Provide required poles, fixtures, foundations, and associated designs.
2. Provide structural design for poles and foundations, certified by a professional engineer licensed in the State as required.
3. Provide layout of pole locations and aiming diagram.
4. Provide light test upon owner supplied electrical system.
5. Provide Project Management assistance as needed.
6. Provide review of electrical design as provided by Electrical Contractor.

**Musco Subcontractor Responsibilities:**

1. Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
2. Provide storage containers for material as necessary.
3. Provide adequate trash container for cardboard waste and packing debris.
4. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
5. Provide equipment and materials to remove and properly dispose of existing sports lighting poles and associated equipment.
6. Obtain required permits, owner to pay cost of permits. Subcontractor to advise Musco of costs to subcontractor, if any, before proceeding with permitting.
7. Provide electrical design as required. Also provide any as-built drawings as required following the completion of the project.
8. Provide materials and equipment to install or upgrade existing electrical service panels as required or necessary. This needs to be defined in the electrical design.
9. Provide materials and equipment to install all underground conduit, wiring, pull boxes, switchgear, etc. and terminate wiring as required per electrical design.
10. Saw cut asphalt and concrete as required. Owner to patch as required.
11. Make appropriate contact to ensure utility locates have been done prior to excavation and trenching. Repair any such damage to existing utilities during construction.
12. Provide materials and equipment to install (16) Light Structure System foundations as specified on Layout. Musco supplied pre cast foundations to include integrated grounding system for lightning and surge protection.
13. Remove augured spoils to owner-designated location at jobsite.
14. Provide materials and equipment to assemble and install Light Structure Green™ fixtures and terminate all necessary wiring.
15. Provide equipment and materials to assemble and erect (16) Light Structure System Poles.
16. Verify aiming points have been located and are correct before sighting in lighting cross-arms.
17. Provide equipment and materials to install the new Controls and Monitoring Cabinets and terminate all necessary wiring. Installation of Musco supplied surge protection required. Subcontractor to commission Control Link once system is energized.
18. Keep all heavy equipment off of playing fields and surfaces when possible using due care to minimize damages.
19. Provide startup and aiming as required to provide complete and operating sports lighting system.

Thank you for considering Musco for your sports-lighting needs. Please contact me with any questions.

Richard Wadlow  
Sales Representative  
Musco Sports Lighting, LLC  
PO Box 260  
2107 Stewart Road  
Muscatine, Iowa 52761  
Phone: 866-552-1591  
E-mail: [Richard.wadlow@muscocom](mailto:Richard.wadlow@muscocom)  
Fax: 800-374-6402



**EXHIBIT B – CERTIFICATE OF EXEMPTION AND WAIVER**

**DIRECTIONS:**

- ✓ If the Contractor is NOT required under Colorado law to carry workers’ compensation insurance and DOES NOT carry it, this exhibit MUST be completed and attached to the Contract.
- ✓ If the Contractor IS required under Colorado law to carry workers’ compensation insurance and DOES carry it, this exhibit IS NOT REQUIRED and may be discarded.

The Contractor certifies to the City that it is not required to carry workers’ compensation insurance under the Colorado Workers’ Compensation Act. The Contractor acknowledges that it will be engaging in activities that may expose it to risk of bodily injury. The Contractor affirms that it is physically capable of performing the activities and that all necessary precautions to prevent injury to the Contractor and others will be taken. The Contractor shall not hold the City liable for any injuries that may arise during or resulting from the work performed under the Contract, and the Contractor shall defend, indemnify, and hold harmless the City from all such claims.

**Contractor**

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
 20\_\_\_\_ by \_\_\_\_\_.  
 (Insert name of individual signing on behalf of the Contractor)

\_\_\_\_\_  
Notary’s official signature

S E A L

\_\_\_\_\_  
Commission expiration date

**EXHIBIT C – AFFIDAVIT**

**DIRECTIONS:**

- ✓ If the Contractor is an individual, this exhibit **MUST** be completed and attached to the Contract. A copy of a valid form of identification **MUST** be attached.
- ✓ If the Contractor is a corporation, partnership, or other legally-created entity, this exhibit **IS NOT REQUIRED** and may be discarded.

I swear or affirm under penalty of perjury under the laws of the State of Colorado that (check **one**):

- \_\_\_\_\_ **I am a United States citizen.**  
(Valid I.D. must be provided)
- or*
- \_\_\_\_\_ **I am a legal permanent resident of the United States.**  
(Alien registration number and valid I.D. must be provided)
- or*
- \_\_\_\_\_ **I am lawfully present in the United States pursuant to federal law.**  
(Alien registration number and valid I.D. must be provided)

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under C.R.S. § 18-8-503 and that it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

\_\_\_\_\_ **Signature** \_\_\_\_\_ **Date**  
*C.R.S. 24-76.5-103* *Rev. 1-1-2010*

**Internal Use Only – Valid Forms of Identification**

- Current Colorado driver’s license, minor driver’s license, probationary driver’s license, commercial driver’s license, restricted driver’s license, or instruction permit.
- Current Colorado identification card.
- U.S. military card or dependent identification card.
- U.S. Coast Guard Merchant Mariner card.
- Native American tribal document.
- Original birth certificate from any state of the U.S.
- Certificate verifying naturalized status by U.S. with photo and raised seal.
- Certificate verifying U.S. citizenship by U.S. government (e.g., U.S. passport).
- Order of adoption by a U.S. court with seal of certification.
- Valid driver’s license from any state of the U.S. or the District of Columbia excluding AK, HI, IL, MD, MI, NE, NM, NC, OR, TN, TX, UT, VT and WI.
- Valid immigration documents demonstrating lawful presence (e.g., current foreign passport with current I-551 stamp or visa, current foreign passport with I-94, I-94 with asylum status, unexpired Resident Alien card, Permanent Resident card or Employment Authorization card).

*Note: If an individual has identification (excluding driver’s licenses) not included on this list, contact the Department Director. Also, a waiver may be available where no identification exists or can be obtained due to a medical condition, homelessness, or insufficient documentation to receive a Colorado driver’s license or identification card.*

**CITY OF LOVELAND**  
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 10  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Brent Worthington, Finance  
**PRESENTER:** Brent Worthington, Finance Director

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**TITLE:**

September 2014 Financial Report

**RECOMMENDED CITY COUNCIL ACTION:**

This is an information only item.

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**SUMMARY:**

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending September 30, 2014.

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**BACKGROUND:**

The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures, including detailed reports on tax revenue and health claims as of September 30, 2014. Citywide Revenue (excluding internal transfers) of \$192,936,727 is 97.4% of year to date (YTD) budget or \$5,155,505 under the budget. Sales Tax collections are 102.3% of the YTD budget or \$652,695 over budget. Building Material Use Tax is 148.8% of YTD budget, or \$671,761 over budget. Sales and Use Tax collections combined were 106.2% of YTD budget or \$1,965,719 over budget. When the combined sales and use tax for the current year are compared to 2013 for the same period last year, they are higher by 9.8% or \$3,026,462.

Citywide total expenditures of \$188,492,228 (excluding internal transfers) are 73.1% of the YTD budget or \$69,498,210 under the budget.

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**REVIEWED BY CITY MANAGER:**

**LIST OF ATTACHMENTS:**

1. September Snapshot Presentation
2. Snapshot report for September 2014

# Snapshot

P.149



# September 2014

**Brent Worthington**  
Finance Director

**Presented**  
November 4, 2014

# September 2014 Snapshot

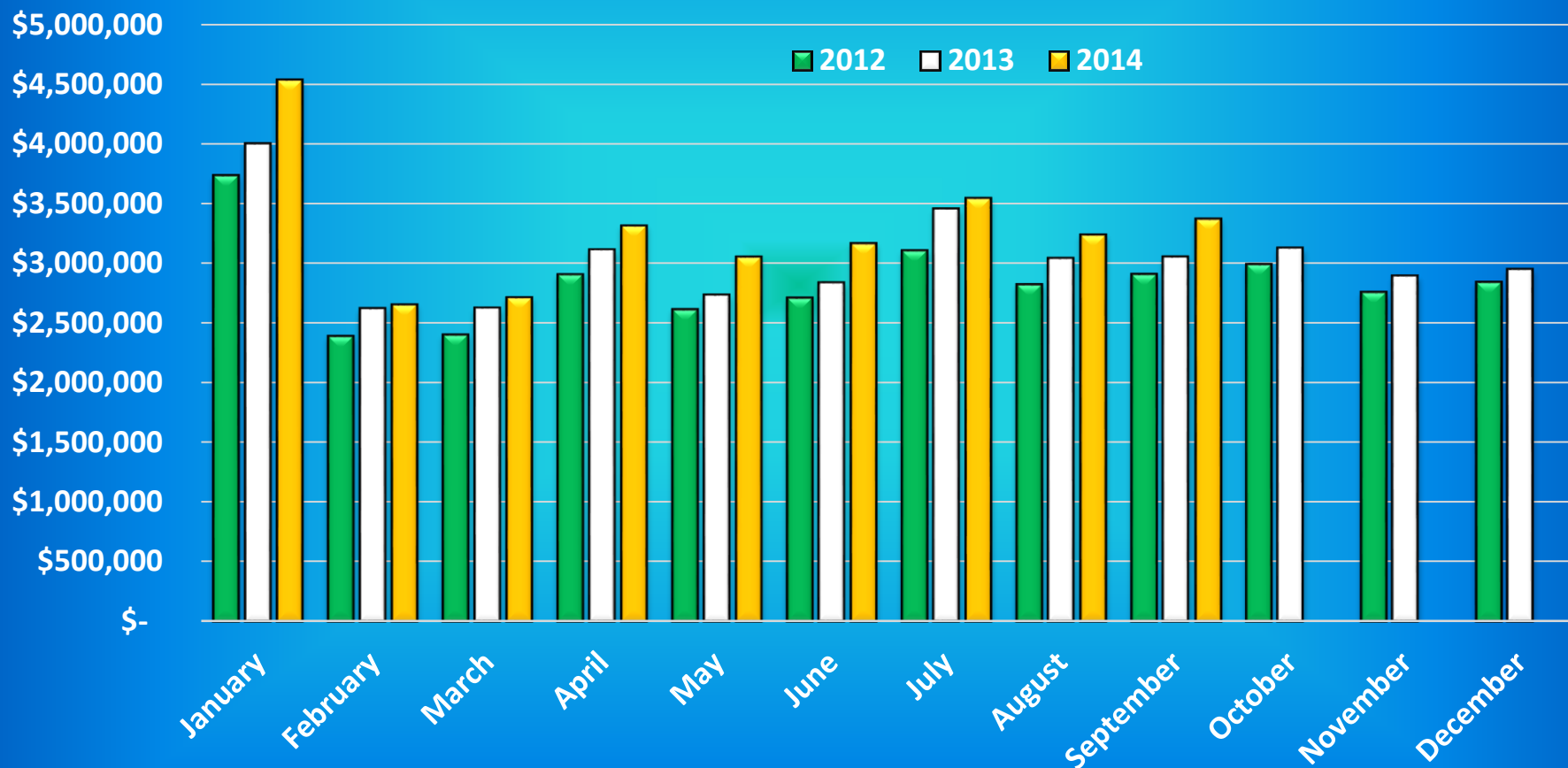
- Citywide Revenue
  - \$192.9 million, excluding transfers
  - 4.2% above budget projections
  
- Citywide Expenditures
  - \$188.5 million, excluding transfers
  - 26.9% below budget projections
  
- Citywide revenues exceed expenditures by \$4.4 million.

# September 2014 Snapshot

- General Fund Revenue
  - \$66.9 million YTD, excluding transfers
  - 9.6% above YTD Budget
  - 15.8% above same period last year
  
- Sales and Use Tax Revenue
  - \$33.8 million YTD
  - 6.2% above budget projections
  - 9.8% above same period as last year
  
- Sales Tax only
  - \$29.6 million YTD
  - 2.3% above budget projections
  - 7.9% above same period last year

# September 2014 Snapshot

## Sales Tax Pre / Post Flood



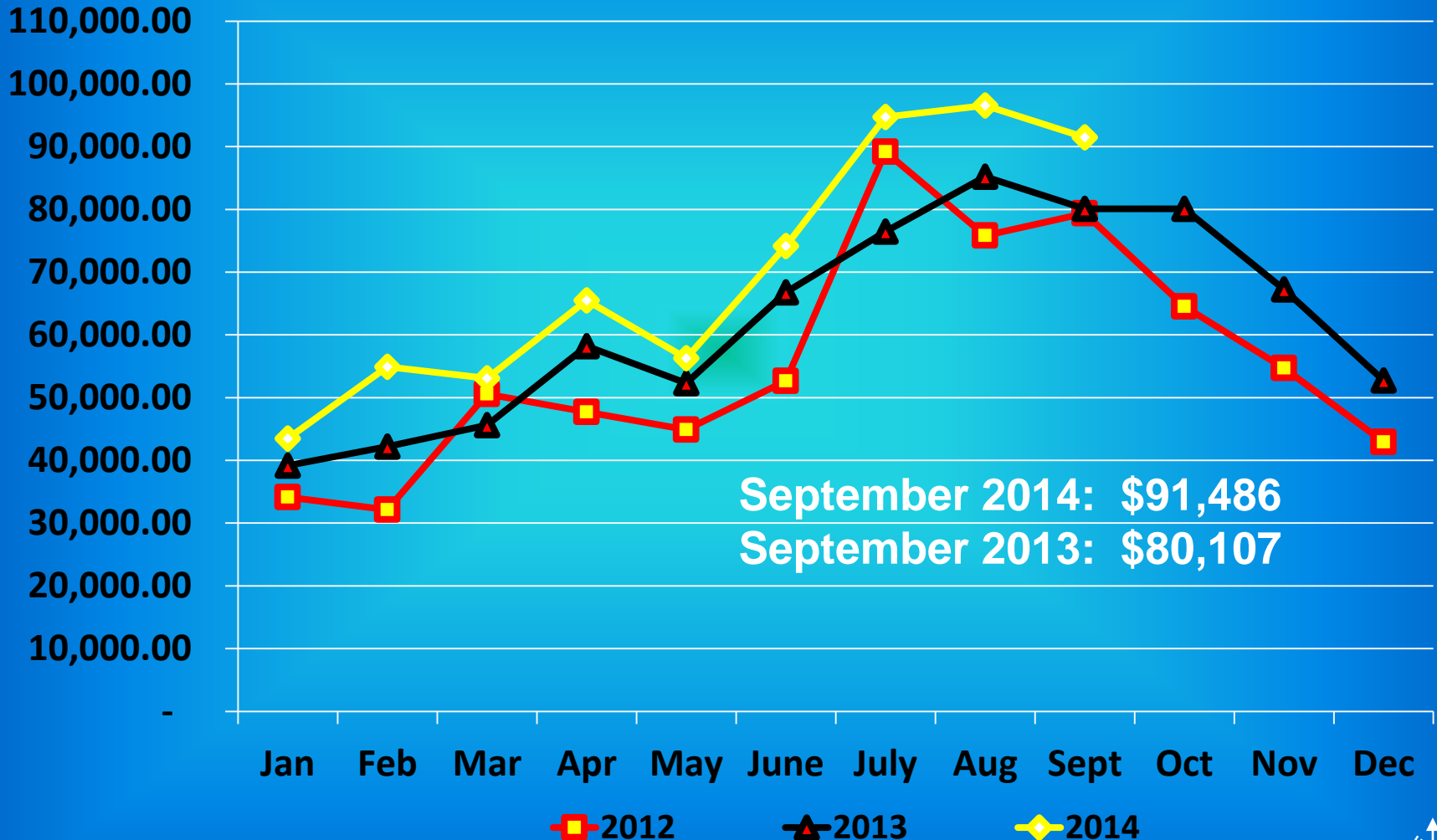


# September 2014 Snapshot

- General Fund Expenditures
  - \$49.0 million YTD, excluding transfers
  - 17.3% below budget projections
  
- General Fund Revenues Exceed Expenditures by \$12.9 million
  
- Health Claims
  - September Claims \$632k
  - 2014 YTD increased from \$6.1 mil to \$7.8 mil from same time as last year (26.8%)

# Lodging Tax Comparison

## Lodging Tax



September 2014: \$91,486  
September 2013: \$80,107

➤ Lodging tax YTD is \$630,211 (15.4% higher than 2013 YTD).

# Flood Report

## Cost Estimates

Emergency Response	\$2,000,000
Business Assistance	600,000
Capital	23,100,000
<b>Total</b>	<b>\$25,700,000</b>

## Actual Expenditures

	<u>September</u>	<u>To Date</u>
<b>Total</b>	<b>294,730</b>	<b>13,989,752</b>

## Reimbursements Applied For

	<u>September</u>	<u>To Date</u>
FEMA	\$ 694,053	\$ 6,289,189
CIRSA	11,850	6,910,194
Other	-	247,471
<b>Total</b>	<b>\$ 705,903</b>	<b>\$ 13,446,854</b>

## Reimbursements Received

	<u>September</u>	<u>To Date</u>
FEMA	\$ 167,387	\$ 2,528,953
CIRSA	1,429,184	6,898,344
Other	-	247,471
<b>Total</b>	<b>\$ 1,596,571</b>	<b>\$ 9,674,768</b>

# September 2014 Snapshot

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## Questions?

**Brent Worthington**  
Finance Director

**Presented**  
November 4, 2014

September

# SnapShot

Monthly Financial Report

2014

## A Snapshot In Time

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- ◇ Citywide Revenue, excluding transfers between funds, \$192.9 million (4.2% above budget projections)
- ◇ Sales & Use Tax Collection, \$33.8 million (6.2% above budget projections)
- ◇ Citywide Expenditures, excluding transfers between funds, \$188.5 million (26.9% below budget projections)
- ◇ Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$4.4 million
- ◇ General Fund Revenue, excluding transfers between funds, \$66.9 million (9.6% above budget projections)
- ◇ General Fund Expenditures, excluding transfers between funds, \$49.0 million, (17.3% below budget projections)
- ◇ General Fund Revenues exceed Expenditures by \$12.9 million

## The Sales / Use Tax Basics



September 2014	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2014	\$ 28,967,170	\$ 1,490,690	\$ 1,375,550	\$ 31,833,410
Actual 2014	29,619,864	2,131,952	2,047,311	33,799,127
% of Budget	102.3%	143.0%	148.8%	106.2%
Actual 2013	\$ 27,460,475	\$ 2,000,309	\$ 1,311,881	\$ 30,772,665
Change from prior year	7.9%	6.6%	56.1%	9.8%

## 2013 Flood:

The 2013 Flood resulted in some businesses being closed during the clean-up/restoration process. In addition, reduced traffic on U.S. 34 due to the closure at the canyon may have reduced sales in businesses along the 34 Corridor. Tracking the impact of the flood on retail sales will provide important information related to the sustainability of City finances due to the flood event. Pre-flood to post flood tracking on a monthly basis began in the September 2013 Snapshot. Sales tax revenue through September is above the previous year by \$2.2 million or 7.3%, and above 2012 by \$4.0 million or 15.7%, evidence that city businesses as an aggregate were not affected by the flood.

Combined Statement of Revenues and Expenditures September 2014				
REVENUE	Current Month	YTD Actual	YTD Revised Budget	% of Budget
<b>General Governmental</b>				
1 General Fund	\$ 7,029,410	\$ 66,924,598	\$ 61,045,612	109.6%
2 Special Revenue	638,401	6,083,182	7,772,237	78.3% <sup>1</sup>
3 Other Entities	1,122,217	21,343,443	22,786,073	93.7% <sup>2</sup>
4 Internal Service	1,423,366	12,742,643	12,378,536	102.9%
5 <i>Subtotal General Govt Operations</i>	<i>10,213,394</i>	<i>107,093,865</i>	<i>103,982,458</i>	<i>103.0%</i>
6 Capital Projects	976,970	6,961,836	5,821,055	119.6%
<b>Enterprise Fund</b>				
7 Water & Power	9,364,165	67,168,105	63,380,520	106.0%
8 Stormwater	441,464	3,760,814	3,633,705	103.5%
9 Golf	414,120	3,230,172	3,480,670	92.8% <sup>3</sup>
10 Solid Waste	588,119	4,721,935	4,893,825	96.5%
11 <i>Subtotal Enterprise</i>	<i>10,807,868</i>	<i>78,881,026</i>	<i>88,288,720</i>	<i>89.3%</i>
<b>12 Total Revenue</b>	<b>\$ 21,998,232</b>	<b>\$ 192,936,727</b>	<b>\$ 185,192,233</b>	<b>104.2%</b>
<i>Prior Year External Revenue</i>		<i>175,639,209</i>		
<i>Increase From Prior Year</i>		<i>9.8%</i>		
13 Internal Transfers	127,927	13,014,513	41,894,765	31.1%
<b>14 Grand Total Revenues</b>	<b>\$ 22,126,159</b>	<b>\$ 205,951,241</b>	<b>\$ 227,086,997</b>	<b>90.7%</b>
<b>EXPENDITURES</b>				
<b>General Governmental</b>				
15 General Fund	6,371,624	46,294,202	49,253,764	94.0%
16 Special Revenue	1,047,359	8,750,115	9,482,128	92.3%
17 Other Entities	1,228,476	19,602,762	18,765,626	104.5%
18 Internal Services	1,320,720	12,721,060	13,575,296	93.7%
19 <i>Subtotal General Gov't Operations</i>	<i>9,968,178</i>	<i>87,368,139</i>	<i>91,076,813</i>	<i>95.9%</i>
20 Capital	5,042,450	43,229,085	102,063,367	42.4%
<b>Enterprise Fund</b>				
21 Water & Power	6,156,136	50,169,002	56,477,699	88.8%
22 Stormwater	230,362	2,056,669	2,122,784	96.9%
23 Golf	309,316	2,241,998	2,393,066	93.7%
24 Solid Waste	445,969	3,427,335	3,856,709	88.9%
25 <i>Subtotal Enterprise</i>	<i>7,141,784</i>	<i>57,895,004</i>	<i>64,850,258</i>	<i>89.3%</i>
<b>26 Total Expenditures</b>	<b>\$ 22,152,411</b>	<b>\$ 188,492,228</b>	<b>\$ 257,990,438</b>	<b>73.1%</b>
<i>Prior Year External Expenditures</i>		<i>155,358,024</i>		
<i>Increase (-Decrease) From Prior Year</i>		<i>21.3%</i>		
27 Internal Transfers	127,927	13,014,513	46,964,250	27.7%
<b>28 Grand Total Expenditures</b>	<b>\$ 22,280,338</b>	<b>\$ 201,506,741</b>	<b>\$ 304,954,688</b>	<b>66.1%</b>

<sup>1</sup> Lower than anticipated Revenue due to timing of transfers from the General Fund.

<sup>2</sup> Lower than anticipated revenue due to timing of payments.

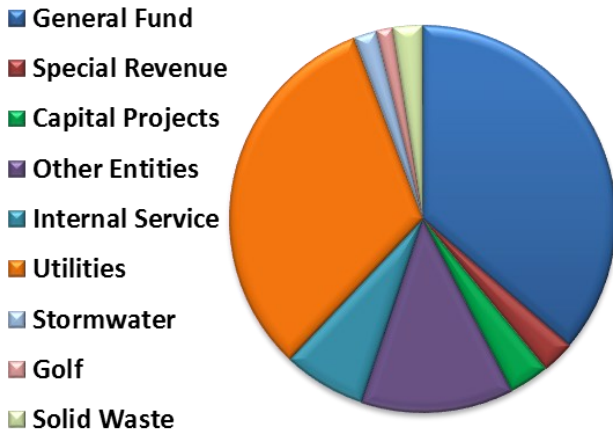
<sup>3</sup> Lower than projected revenue due to lower revenue generated from green fees due to weather.

**Special Revenue Funds:** Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures, Transit, Transportation.

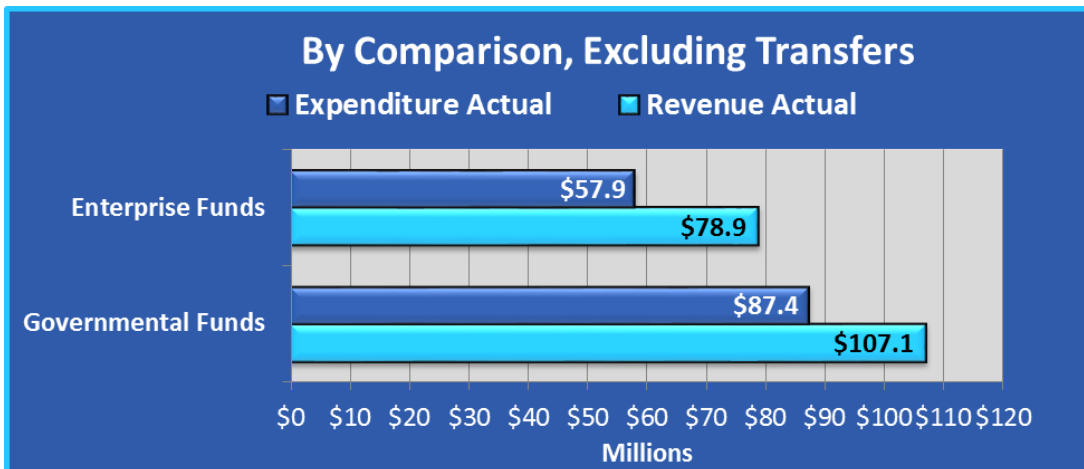
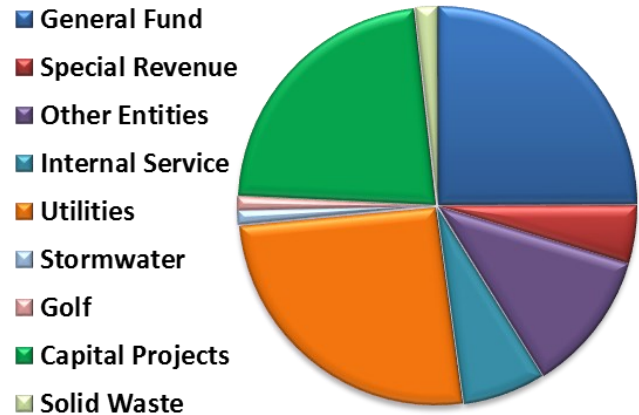
**Other Entities Fund:** Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority, Loveland Fire and Rescue Authority.

**Internal Service Funds:** Risk/Insurance, Fleet, Employee Benefits.

## YTD Operating Revenues of \$192.9 Million



## YTD Operating Expenditures of \$188.5 Million



- ◆ General Fund Revenue, excluding transfers between funds, \$66.9 million (9.6% above budget projections)
  - \* 15.8% above 2013 YTD
- ◆ General Fund Expenditures, excluding capital and transfers between funds, \$46.3 million (6.0% below budget projections)
  - \* 15.6% above 2013 YTD
- ◆ Water & Power Revenue, excluding transfers between funds, \$67.2 million (6.0% above budget projections)
  - \* 9.8% above 2013 YTD
- ◆ Water & Power Expenditures, excluding transfers between funds, \$50.2 million (11.2% below budget projections)
  - \* 4.4% above 2013 YTD
- ◆ Other Entities Fund Revenue, excluding transfers between funds, \$21.3 million (6.3% below budget projections)
  - \* 89.3% below 2013 YTD
- ◆ Other Entities Expenditures, excluding capital and transfers between funds, \$19.6 million (4.5% above budget projections)
  - \* 3.3% above 2013 YTD

# General Fund Revenues & Expenditures

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General Fund Revenue & Expenditures September 2014				
REVENUES	Current Month	YTD Actual	YTD Revised Budget	% of Budget
1 Taxes				
2 Property tax	\$ 44,578	\$ 7,462,734	\$ 7,481,460	99.7%
3 Sales tax	3,374,248	29,619,865	28,967,170	102.3%
4 Building use tax	377,319	2,047,311	1,375,550	148.8%
5 Auto use tax	262,754	2,131,953	1,490,690	143.0%
6 Other taxes	178,622	2,700,711	2,177,680	124.0%
7 Intergovernmental	523,921	1,228,885	287,725	427.1% <sup>1</sup>
8 License & Permits				
9 Building Permits	251,188	1,665,884	1,355,000	122.9%
10 Other Permits	9,536	338,226	127,860	264.5%
11 Charges for Services	1,197,311	11,605,529	11,502,942	100.9%
12 Fines & Forfeitures	(51,787)	732,124	753,150	97.2%
13 Interest Income	26,796	302,536	249,750	121.1%
14 Miscellaneous	834,926	7,088,840	5,276,635	134.3%
15 <i>Subtotal</i>	7,029,410	66,924,598	61,045,612	109.6%
16 Interfund Transfers	6,560	84,100	86,170	97.6%
<b>17 Total Revenue</b>	<b>\$ 7,035,970</b>	<b>\$ 67,008,698</b>	<b>\$ 61,131,782</b>	<b>109.6%</b>
<b>EXPENDITURES</b>				
Operating Expenditures				
18 Legislative	9,138	98,281	116,392	84.4%
19 Executive & Legal	193,537	1,387,653	1,458,630	95.1%
20 City Clerk & Court Admin	78,662	756,269	786,871	96.1%
21 Economic Development	493,936	1,628,778	7,996,910	20.4%
22 Cultural Services	166,914	1,320,148	1,558,144	84.7%
23 Development Services	369,270	2,553,469	3,003,155	85.0%
24 Finance	475,708	3,473,251	3,619,994	95.9%
25 Fire & Rescue	-	6,523	7,500	0.0%
26 Human Resources	130,978	814,438	896,503	90.8%
27 Information Technology	359,064	2,673,261	3,047,744	87.7%
28 Library	296,978	2,211,103	2,399,762	92.1%
29 Parks & Recreation	1,124,367	8,470,759	10,246,383	82.7%
30 Police	1,852,503	13,456,275	13,988,434	96.2%
31 Public Works	497,214	4,089,081	4,154,951	98.4%
32 Water/ Waste Operations	-	-	100,350	0.0%
33 Non-Departmental	809,951	6,086,211	5,933,760	102.6%
34 <i>Subtotal Operating</i>	6,858,220	49,025,499	59,315,484	82.7%
35 Internal Transfers	116,436	5,057,701	17,433,430	29.0%
<b>36 Total Expenditures</b>	<b>\$ 6,974,655</b>	<b>\$ 54,083,200</b>	<b>\$ 76,748,914</b>	<b>70.5%</b>

<sup>1</sup> Higher than projected revenue due to FEMA reimbursements for small project and insurance reimbursements.

<sup>2</sup> Lower than anticipated expenditures due to timing of Downtown property purchases.

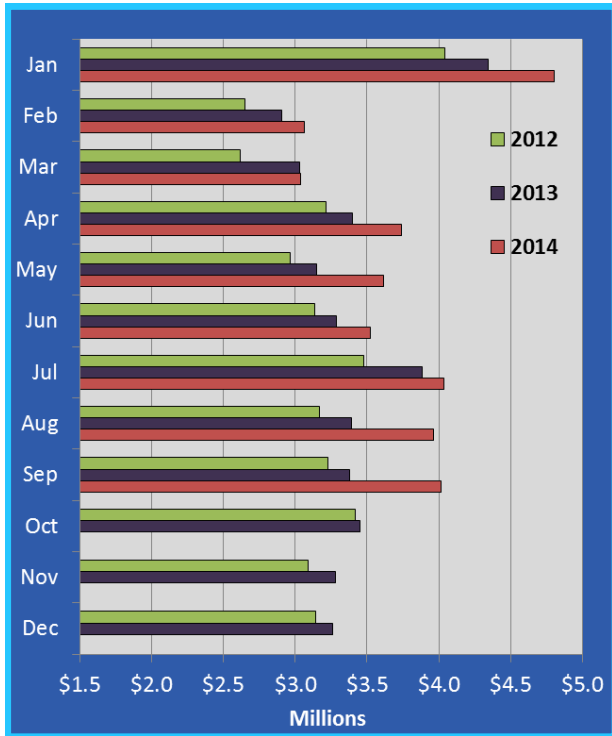


## Capital Projects \$500,000+

Project Title	2014 Budget	2014 Expenditures	Remaining 2014	% of 2014 Budget
<b>Water Capital</b>				
2013 Flood-48" Water Trans Line-WTP to Hwy 34 Capl	\$ 4,140,610	\$ 3,886,573	\$ 254,037	93.86%
WTP Phase II Expansion (38MGD)	26,436,410	26,110,399	326,011	98.77%
36"&20" Wtr Transmission Line River X'ings (capl)	1,500,000	242,524	1,257,476	16.17%
2013 Small Diameter Waterline Replacement	973,590	841,065	132,525	86.39%
Water Line Replacements Project	687,750	671,195	16,555	97.59%
2014 Water Line Replacements- Phase 1	1,729,960	1,615,850	114,110	93.40%
White Elm Dr. Water Line Rehab	560,130	297,948	262,182	53.19%
<b>Raw Water Capital</b>				
Windy Gap Firing Project	1,886,770	190,451	1,696,319	10.09%
Purchase CBT Water	1,120,090	-	1,120,090	0.00%
<b>Wastewater Utility Capital</b>				
Gas Conditioning at WWTP	1,010,000	-	1,010,000	0.00%
WWTP Digester System Improvements	3,104,790	830,286	2,274,504	26.74%
Southside Lift Station	529,000	-	529,000	0.00%
Digester Building Code Compliance	555,000	-	555,000	0.00%
2014 CIPP Sewer Rehabilitation	1,056,500	-	1,056,500	0.00%
<b>Power Capital</b>				
Idylwilde Dam	2,875,000	-	2,875,000	0.00%
Horseshoe Substation Replace H1 Transformer	750,000	1,147,007	(397,007)	152.93%
Colorado Renewable Energy Standard Compliance	500,000	-	500,000	0.00%
Callisto (vault 2716) East along 5th, North on Boyd Lake to railroad crossing	570,000	-	570,000	0.00%
OH to UG Conversion (Circuit 314) from 42nd along Garfield to 57th	890,000	16,052	873,948	1.80%
Horseshoe Substation - purchase new transformer H4	650,000	-	650,000	0.00%
Horseshoe Substation - new switchgear & transformer install H4	500,000	604,061	(104,061)	120.81%
Extend new feeders from Horseshoe H4 into system	1,000,000	-	1,000,000	0.00%
<b>Stormwater Capital</b>				
Airport Regional Detention Pond	1,300,000	-	1,300,000	0.00%
29th & Monroe Outfall (Phase II- Dry Creek)	1,000,000	-	1,000,000	0.00%
MeHaffey Park Regional Detention Pond	616,700	15,000	601,700	2.43%
<b>Streets Transportation Program</b>				
2014 Street Rehabilitation	5,320,000	3,805,248	1,514,752	71.53%
Fiber Network to signals and other facilities	976,830	875,090	101,740	89.58%
Boise & 37th Intersection Improvements	796,860	469,216	327,644	58.88%
Small Capital Projects- Citywide (yearly)	685,880	8,510	677,370	1.24%
Miscellaneous Repairs	736,170	75,400	660,770	10.24%
<b>All Other</b>				
Facilities Maintenance Capital Projects	687,500	446,879	240,621	65.00%
Open Lands Acquisition	2,371,000	1,500,000	871,000	63.26%
Fire Station 2 Relocation	3,841,740	3,485,153	356,587	90.72%
Fire- Aerial Platform Truck	1,458,610	1,324,899	133,711	90.83%
Police RMS (Communications)	3,000,000	-	3,000,000	0.00%
Barnes Park Field Lighting	600,000	-	600,000	0.00%
Mehaffy Park	9,194,190	7,919,513	1,274,677	86.14%
Telephone Switch Replacement	750,000	716,809	33,191	95.57%
Transportation Program	\$ 7,636,850	\$ 2,213,351	\$ 5,423,499	28.98%

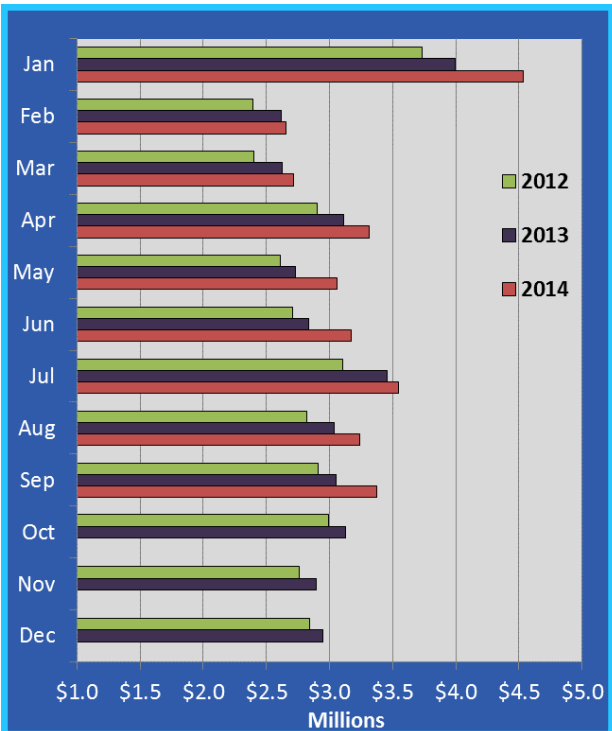


## Sales & Use Tax



	2012	2013	2014	2014 Budget	+ / - Budget
Jan	\$ 4,039,678	\$ 4,345,835	\$ 4,801,433	\$ 4,459,360	7.7%
Feb	2,649,229	2,906,780	3,066,965	2,973,250	3.2%
Mar	2,618,052	3,033,347	3,037,688	3,074,180	-1.2%
Apr	3,215,437	3,397,074	3,737,255	3,633,800	2.8%
May	2,966,032	3,150,201	3,614,459	3,298,790	9.6%
Jun	3,136,015	3,284,808	3,525,536	3,435,130	2.6%
Jul	3,480,123	3,882,561	4,038,555	3,832,510	5.4%
Aug	3,171,055	3,392,757	3,962,915	3,550,120	11.6%
Sep	3,225,155	3,379,303	4,014,321	3,576,270	12.2%
Oct	3,421,098	3,452,052		3,757,520	
Nov	3,092,095	3,280,666		3,436,030	
Dec	3,142,793	3,259,189		3,728,460	
	\$38,156,762	\$ 40,764,573	\$ 33,799,127	\$42,755,420	
YTD	\$28,500,776	\$ 30,772,666	\$ 33,799,127	\$31,833,410	6.2%

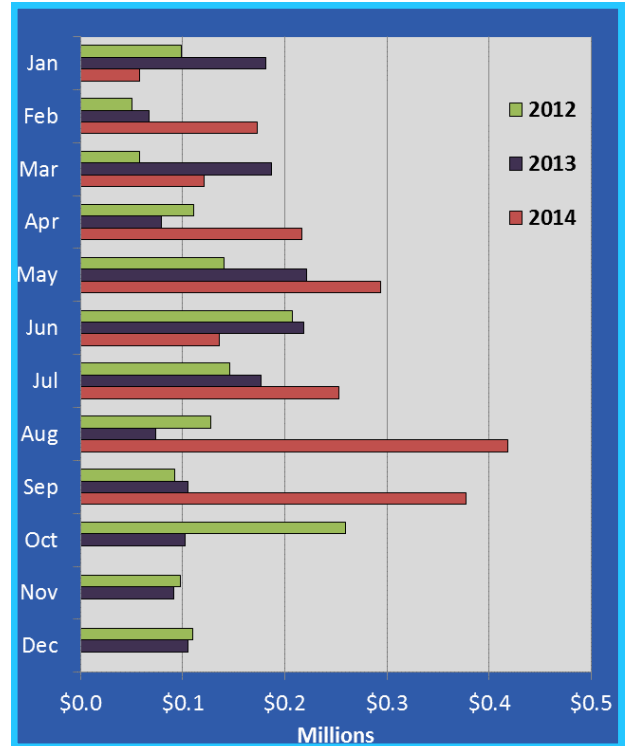
## Retail Sales Tax



	2012	2013	2014	2014 Budget	+ / - Budget
Jan	\$ 3,733,309	\$ 3,995,194	\$ 4,531,650	\$ 4,192,160	8.1%
Feb	2,390,409	2,619,453	2,658,798	2,698,090	-1.5%
Mar	2,403,380	2,622,808	2,719,254	2,737,490	-0.7%
Apr	2,905,558	3,109,701	3,317,905	3,309,560	0.3%
May	2,614,500	2,733,983	3,059,076	2,966,740	3.1%
Jun	2,711,906	2,835,171	3,170,467	3,119,270	1.6%
Jul	3,105,564	3,453,149	3,546,945	3,492,520	1.6%
Aug	2,823,319	3,039,219	3,241,521	3,214,360	0.8%
Sep	2,909,008	3,051,797	3,374,248	3,236,980	4.2%
Oct	2,991,033	3,125,566		3,402,460	
Nov	2,757,932	2,892,986		3,123,880	
Dec	2,841,959	2,946,709		3,413,130	
	\$34,187,877	\$ 36,425,736	\$ 29,619,864	\$38,906,640	
YTD	\$25,596,953	\$ 27,460,475	\$ 29,619,864	\$28,967,170	2.3%

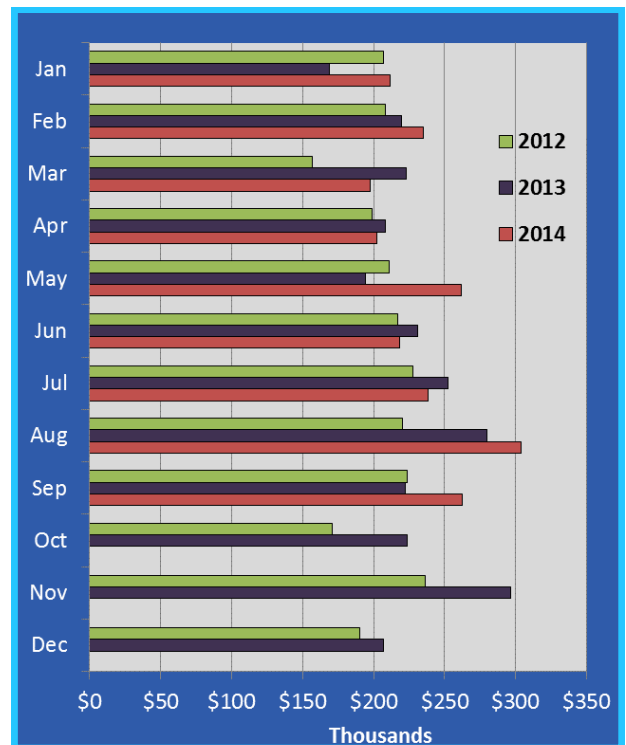
## Building Materials Use Tax

	2012	2013	2014	2014 Budget	+ / - Budget
Jan	\$ 99,108	\$ 181,907	\$ 57,942	\$ 120,610	-52.0%
Feb	50,703	67,440	173,295	114,230	51.7%
Mar	57,845	187,222	120,768	192,970	-37.4%
Apr	111,197	79,229	217,134	158,210	37.2%
May	140,470	221,834	293,543	156,550	87.5%
Jun	207,024	218,722	136,432	162,080	-15.8%
Jul	146,570	176,829	253,077	161,510	56.7%
Aug	127,261	73,524	417,801	153,690	171.8%
Sep	92,415	105,174	377,319	155,700	142.3%
Oct	259,279	102,584		170,910	
Nov	97,778	91,453		140,530	
Dec	110,414	105,740		161,790	
	\$1,500,063	\$1,611,658	\$2,047,311	\$1,848,780	
YTD	\$1,032,593	\$1,311,881	\$2,047,311	\$1,375,550	48.8%

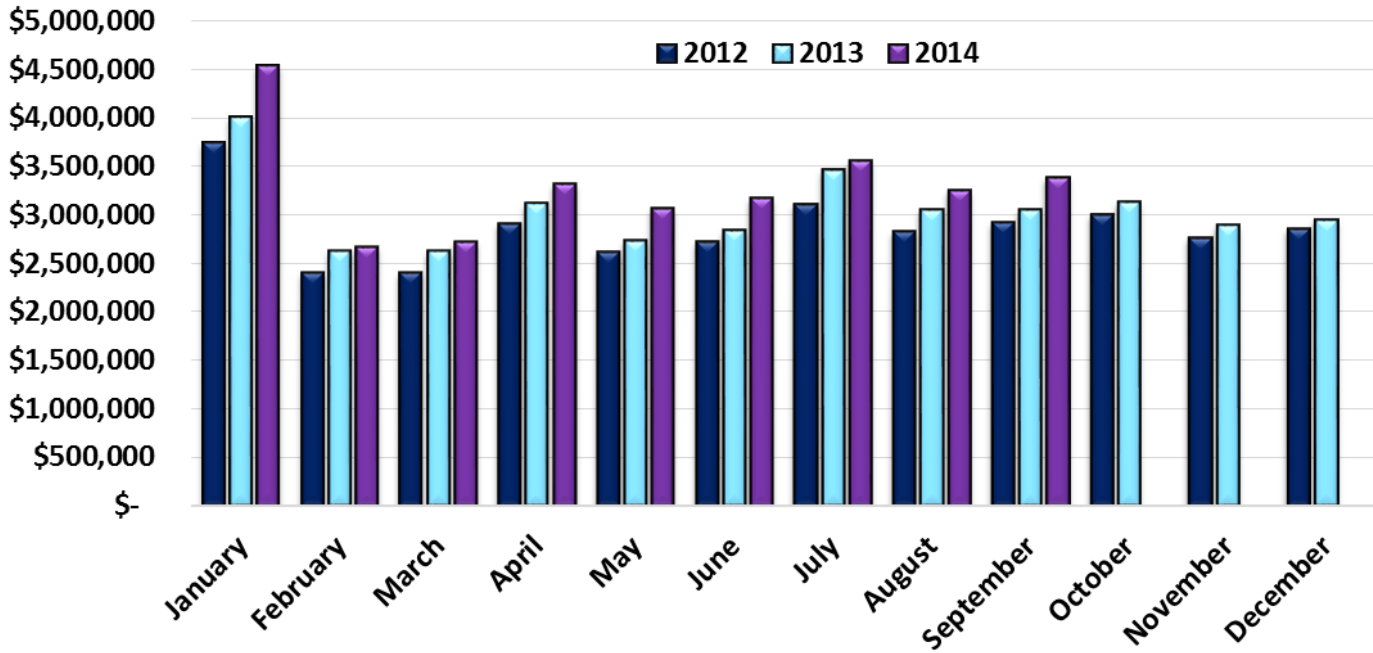


## Motor Vehicle Use Tax

	2012	2013	2014	2014 Budget	+ / - Budget
Jan	\$ 207,261	\$ 168,734	\$ 211,841	\$ 146,590	44.5%
Feb	208,117	219,886	234,872	160,930	45.9%
Mar	156,828	223,317	197,666	143,720	37.5%
Apr	198,682	208,144	202,216	166,030	21.8%
May	211,062	194,384	261,840	175,500	49.2%
Jun	217,084	230,915	218,637	153,780	42.2%
Jul	227,989	252,583	238,533	178,480	33.6%
Aug	220,475	280,014	303,593	182,070	66.7%
Sep	223,732	222,332	262,754	183,590	43.1%
Oct	170,786	223,902		184,150	
Nov	236,385	296,227		171,620	
Dec	190,420	206,740		153,540	
	\$2,468,822	\$ 2,727,178	\$ 2,131,952	\$2,000,000	
YTD	\$1,871,230	\$ 2,000,309	\$ 2,131,952	\$1,490,690	43.0%



## Sales Tax Pre-Flood/Post Flood



	<u>Pre-Flood</u>		<u>Post-Flood</u>	
	<u>2012</u>	<u>2013</u>	<u>2014</u>	
<b>January</b>	\$ 3,733,309	\$ 3,995,194	\$ 4,531,650	
<b>February</b>	2,390,409	2,619,453	2,658,798	
<b>March</b>	2,403,380	2,622,808	2,719,254	
<b>April</b>	2,905,558	3,109,701	3,317,905	
<b>May</b>	2,614,500	2,733,983	3,059,076	
<b>June</b>	2,711,906	2,835,171	3,170,467	
<b>July</b>	3,105,564	3,452,149	3,546,945	
<b>August</b>	2,823,319	3,040,219	3,241,521	
<b>September</b>	2,909,008	3,051,797	3,374,248	
<b>October</b>	2,991,034	3,125,566		
<b>November</b>	2,757,932	2,892,986		
<b>December</b>	2,841,959	2,946,709		
<b>YTD</b>	\$ 34,187,878	\$ 36,425,736	\$ 29,619,864	

## Cost Estimates

Emergency Response	\$ 2,000,000
Business Assistance	600,000
Capital	23,100,000
<b>Total</b>	<b>\$ 25,700,000</b>

## Actual Expenditures

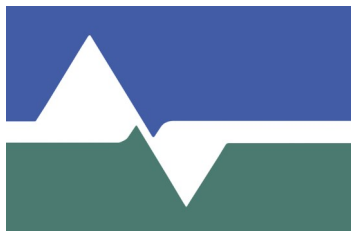
	September	To Date
<b>Total</b>	294,730	13,989,752

## Reimbursements Applied For

	September	To Date
FEMA	\$ 694,053	\$ 6,289,189
CIRSA	11,850	6,910,194
Other	-	247,471
<b>Total</b>	<b>\$ 705,903</b>	<b>\$ 13,446,854</b>

## Reimbursements Received

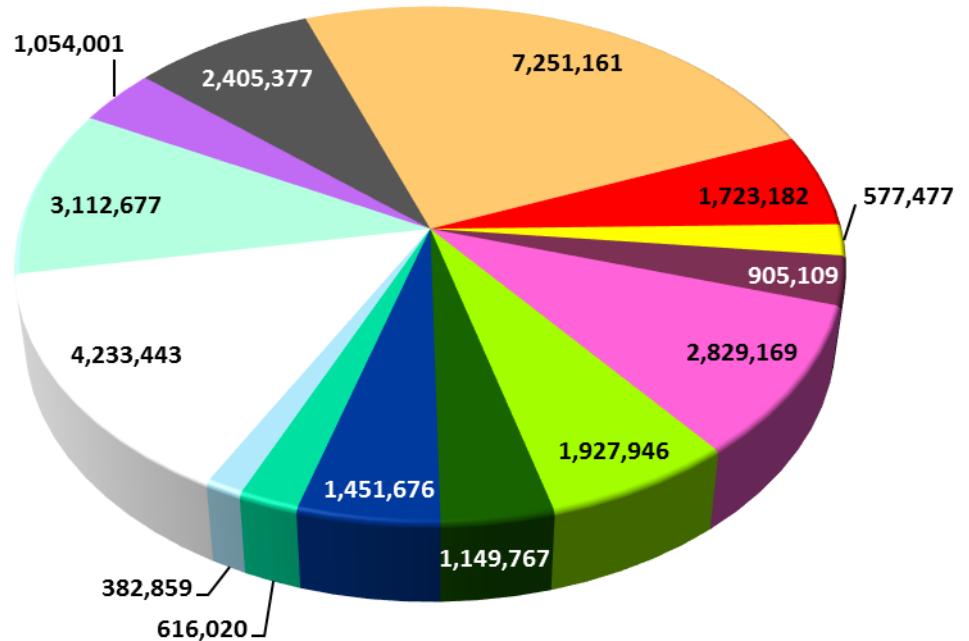
	September	To Date
FEMA	\$ 167,387	\$ 2,528,953
CIRSA	1,429,184	6,898,344
Other	-	247,471
<b>Total</b>	<b>\$ 1,596,571</b>	<b>\$ 9,674,768</b>



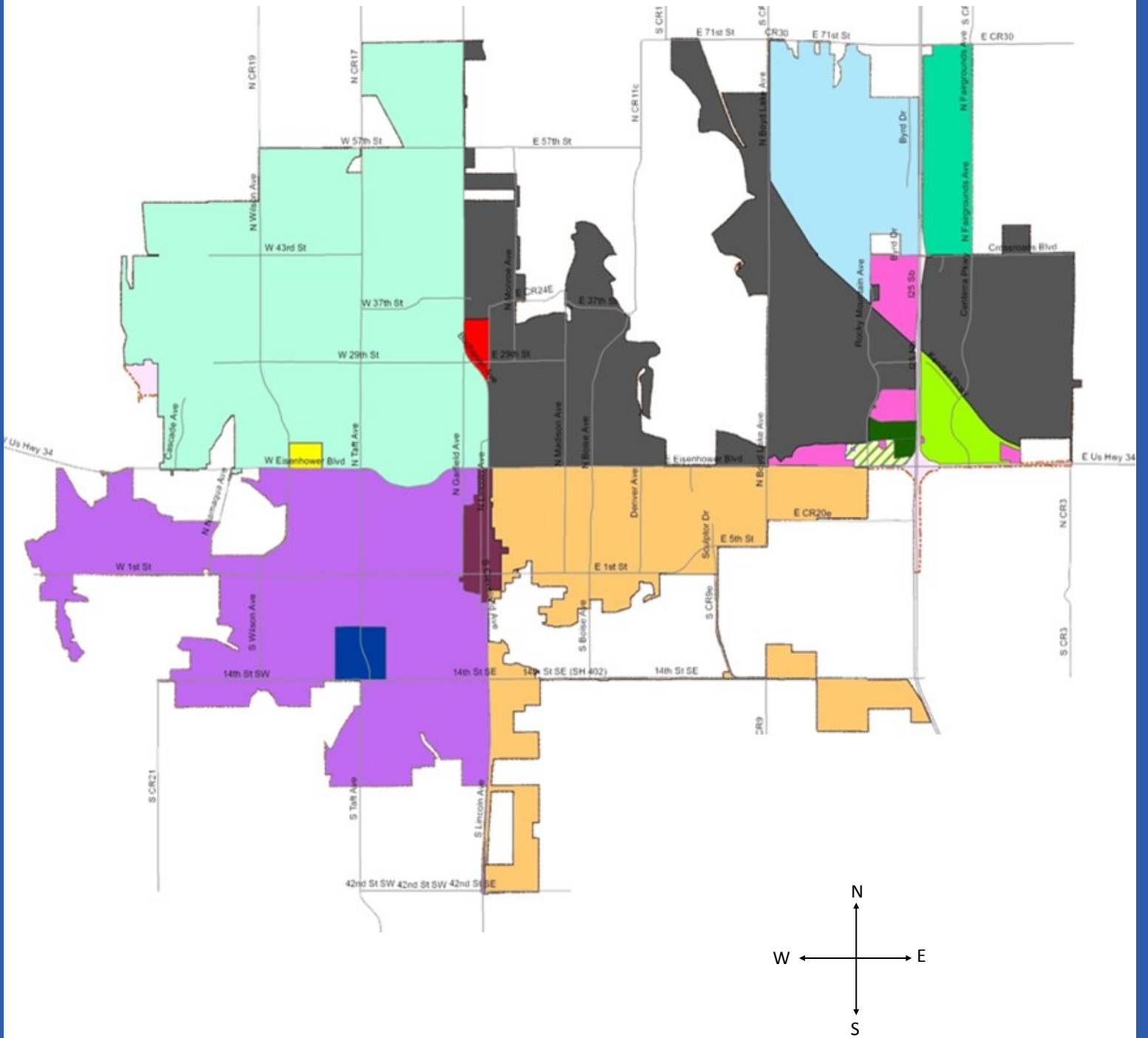
Geographical Area	YTD 2014	YTD 2013	Change
South East Loveland	7,251,161	6,851,281	5.8%
North West Loveland	3,112,677	3,027,799	2.8%
Centerra	2,829,169	2,774,452	2.0%
North East Loveland	2,405,377	2,074,887	15.9%
Promenade Shops	1,927,946	1,718,556	12.2%
Orchards Shopping Center	1,723,182	1,810,483	-4.8%
Thompson Valley Shopping Center	1,451,676	1,329,077	9.2%
Outlet Mall	1,149,767	1,083,095	6.2%
South West Loveland	1,054,001	903,834	16.6%
Downtown	905,109	825,333	9.7%
The Ranch	616,020	522,771	17.8%
Columbine Shopping Center	577,477	527,342	9.5%
Airport	382,859	313,177	22.3%
All Other Areas (1)	382,859	313,177	22.3%
<b>Total</b>	<b>\$29,619,864</b>	<b>\$27,460,475</b>	<b>7.9%</b>

(1) Refers to sales tax remitted by vendors who are located outside of the City but make sales to customers within Loveland.

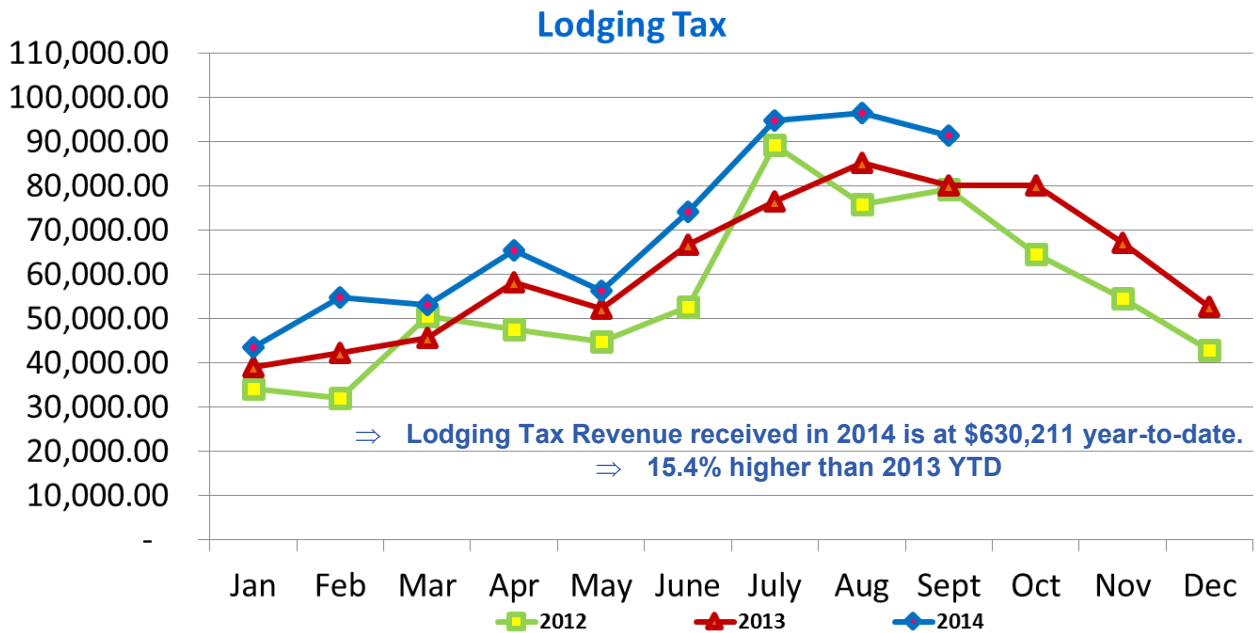
- █ North West Loveland
- █ North East Loveland
- █ Orchards Shopping Center
- █ Downtown
- █ Promenade Shops
- █ Thompson Valley Shopping Center
- █ Airport
- █ South West Loveland
- █ South East Loveland
- █ Columbine Shopping Center
- █ Centerra
- █ Outlet Mall
- █ The Ranch
- █ All Other Areas



Map →



Description	YTD 2014	YTD 2013	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	\$ 6,020,793	\$ 5,952,460	\$ 68,333	1.1%	20.3%	20.3%
Restaurants & Bars	3,845,978	3,538,005	307,973	8.7%	13.0%	33.3%
Grocery Stores & Specialty Foods	2,955,841	2,726,544	229,297	8.4%	10.0%	43.3%
Building Material & Lawn & Garden Supplies	2,216,376	1,920,602	295,774	15.4%	7.5%	50.8%
Motor Vehicle Dealers, Auto Parts & Leasing	2,190,859	1,919,986	270,873	14.1%	7.4%	58.2%
Clothing & Clothing Accessories Stores	2,152,668	2,001,455	151,213	7.6%	7.3%	65.4%
Utilities	1,513,791	1,411,705	102,086	7.2%	5.1%	70.5%
Sporting Goods, Hobby, Book & Music Stores	1,304,427	1,498,485	(194,058)	-13.0%	4.4%	75.0%
Broadcasting & Telecommunications	1,056,866	990,000	66,866	6.8%	3.6%	78.5%
Used Merchandise Stores	1,037,944	826,001	211,943	25.7%	3.5%	82.0%
Hotels, Motels & Other Accommodations	735,693	612,529	123,164	20.1%	2.5%	84.5%
Beer, Wine & Liquor Stores	721,465	660,278	61,187	9.3%	2.4%	86.9%
Consumer Goods & Commercial Equipment Rental	565,027	554,883	10,144	1.8%	1.9%	88.9%
Health & Personal Care Stores	481,531	456,084	25,447	5.6%	1.6%	90.5%
Electronic Shopping & Mail-Order Houses	475,558	350,056	125,502	35.9%	1.6%	92.1%
Electronics & Appliance Stores	405,900	306,717	99,183	32.3%	1.4%	93.5%
Furniture & Home Furnishing Stores	388,330	355,508	32,822	9.2%	1.3%	94.8%
Gasoline Stations with Convenience Stores	284,870	229,191	55,679	24.3%	1.0%	95.7%
Office Supplies, Stationery & Gift Stores	265,275	248,073	17,202	6.9%	0.9%	96.6%
All Other Categories	1,000,672	901,913	98,759	10.9%	3.4%	100.0%
<b>Total</b>	<b>\$ 29,619,864</b>	<b>\$ 27,460,475</b>	<b>\$ 2,159,389</b>	<b>7.9%</b>	<b>100.0%</b>	



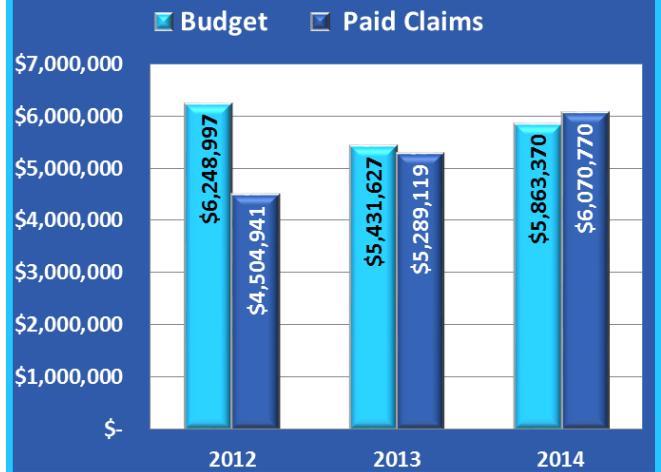


## Claims Incurred

		OAP	HRA	Total
2014	Sept	459,597	172,321	631,918
	YTD	6,008,898	1,780,402	7,789,300
2013	Sept	535,972	160,429	696,401
	YTD	4,837,699	1,303,848	6,141,547
Change	Sept	(76,375)	11,892	(64,483)
	% Sept	(14.2%)	7.4%	(9.3%)
	YTD	1,171,199	476,554	1,647,753
	% YTD	24.2%	36.5%	26.8%

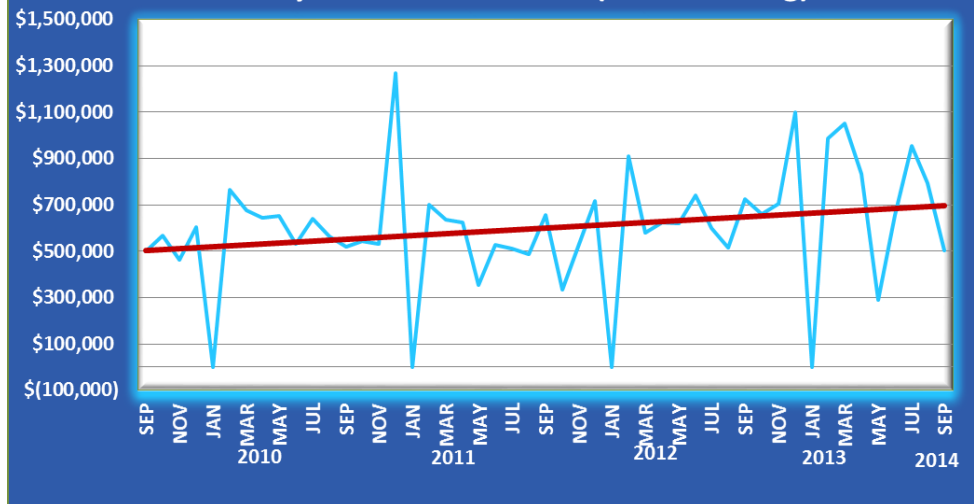
- ⇒ HRA—Health Reimbursement Arrangement
- ⇒ OAP—Open Access Plan

## YTD Paid Claims vs Budget



Incurred claims are total expenses the City is obligated to pay for claims, including claims paid and unpaid. Paid claims are those claims that have been paid and reconciled through the bank to-date, which may not reflect Stop Loss reimbursements or other refunds.

## Monthly Health Claims Paid (4 Year Rolling)

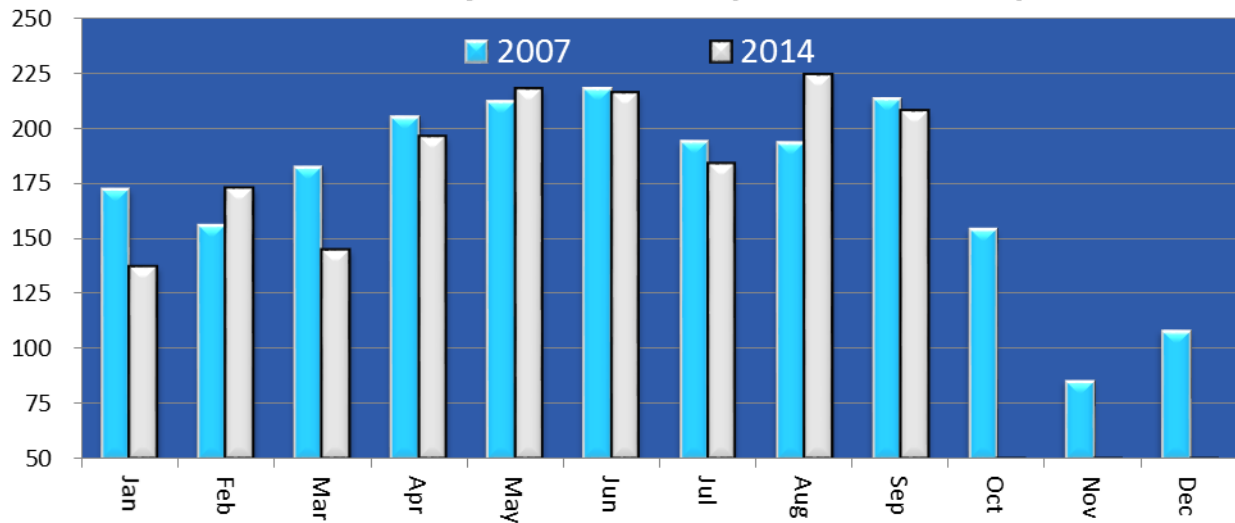


## Comparison of YTD Claims Over \$25k

September	2011	2012	2013	2014
<b># of claims</b>	44	37	48	56
<b>YTD Cost of high claims</b>	\$2,266,796	\$2,055,116	\$2,808,090	\$4,718,459

- ⇒ 2014 # of StopLoss claims: 5  
(claims over \$150k paid by StopLoss Carrier)

## Building Permit Comparison History



Measures	Sept 2012	Sept 2013	Sept 2014	2012 YTD	2013 YTD	2014 YTD
# of Building Permits	175	149	208	1,671	1,590	1,701
Building Permit Valuations	\$15,424,833	\$ 7,129,022	\$ 22,590,492	\$ 100,107,277	\$119,788,711	\$ 173,341,106
# of Certified Occupancies	31	28	30	254	269	181
Net # of Sales Tax Licenses	13	11	14	(102)	(303)	(88)
New Residential Electric Meter Sets	27	15	15	172	213	241
# of Utility Bills Sent	36,266	36,764	37,137	324,706	329,045	331,863
Rounds of Golf	13,590	9,545	12,590	108,562	93,848	95,144
\$ Average Health Claim Costs/Emp.	\$ 703	\$ 1,058	\$ 1,118	\$ 869	\$ 1,046	\$ 1,333
KWH Demand (kH)	123,680	136,885	123,900	1,015,066	1,038,908	1,007,272
KWH Purchased (kwh)	58,453,591	62,999,849	62,968,608	565,237,747	570,089,283	510,079,446
Gallons of Water Sold	620,840,014	553,577,414	462,067,181	3,473,224,224	2,889,783,591	2,830,473,362
# of Workers' Comp Claims 2014	8	10	7	80	83	65
\$ of Workers' Comp Claims Paid 2014	\$ 22,735	\$ 24,517	\$ 52,093	\$ 344,204	\$ 340,175	\$ 500,453
# of Total Open Claims	14	22	21	<i>Not Cumulative</i>		
\$ of Total Open Claims	\$ 227,325	\$ 212,886	\$ 259,290	<i>Not Cumulative</i>		
\$ of Lodging Tax Collected	\$ 79,380	\$ 80,107	\$ 91,486	\$ 506,447	\$ 546,079	\$ 630,210

# Quarterly Rialto Report

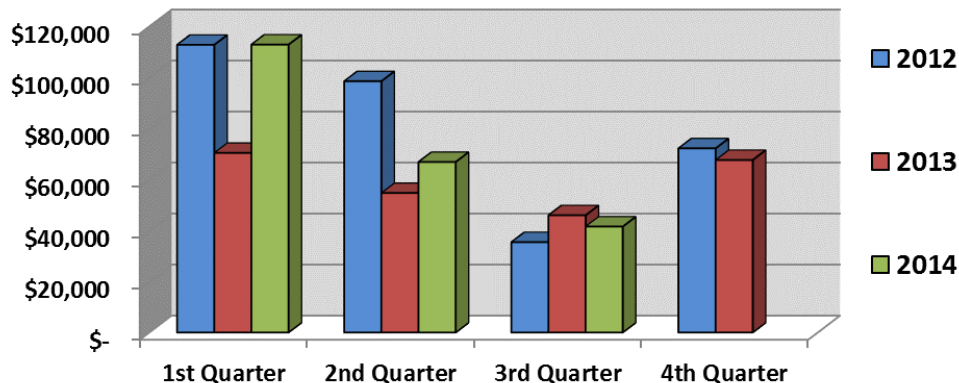
P.171

**City of Loveland**  
**Statement of Results of Operations for Rialto Theatre Center**  
 For Quarter Ending 09/30/2014

	YTD Amount	YTD Budget	% of Budget	2013 YTD	Change from Prior Year
<b>Rialto Theatre</b>					
<b>Rialto Theatre Revenues</b>					
Revenues from Operations	\$ 149,033	\$ 192,425	77.45%	\$ 128,452	16.02%
Gifts/Donations	25,193	30,500	82.60%	-	0.00%
Transfers from Lodging Tax Fund	25,000	25,000	100.00%	25,000	0.00%
<b>Total Rialto Theatre Revenues</b>	<b>199,226</b>	<b>247,925</b>	<b>80.36%</b>	<b>153,452</b>	<b>29.83%</b>
<b>Rialto Theatre Expenses</b>					
Personnel Costs	174,756	240,560	72.65%	168,319	3.82%
Supplies	14,681	17,900	82.02%	19,668	-25.35%
Purchased Services	114,064	130,987	87.08%	83,054	37.34%
Capital Outlay	-	20,000	0.00%	-	-
<b>Total Direct Costs</b>	<b>303,501</b>	<b>409,447</b>	<b>74.12%</b>	<b>271,041</b>	<b>11.98%</b>
Administrative Allocations	109,600	109,600	100.00%	91,150	0.00%
<b>Total Rialto Theatre Expenses</b>	<b>413,101</b>	<b>519,047</b>	<b>79.59%</b>	<b>362,191</b>	<b>14.06%</b>
<b>Rialto Theatre Net Income (Loss)</b>	<b>\$(213,875)</b>	<b>\$( 271,122)</b>	<b>78.89%</b>	<b>\$(208,738)</b>	<b>2.46%</b>
<b>Rialto Event Center</b>					
<b>Rialto Event Center Revenues</b>					
Revenues from Operations	\$ 15,089	\$ 20,565	73.37%	\$ 17,622	-14.37%
Gifts/Donations	-	5,000	0.00%	-	0.00%
<b>Total Event Center Revenues</b>	<b>15,089</b>	<b>25,565</b>	<b>59.02%</b>	<b>17,622</b>	<b>-14.37%</b>
<b>Rialto Event Center Expenses</b>					
Personal Services	28,208	17,750	158.92%	64,024	-55.94%
Supplies	267	560	47.63%	7,311	-96.35%
Purchased Services	550	40,300	0.00%	29,318	-98.12%
Capital Outlay	-	-	-	-	0.00%
<b>Total Rialto Event Center Expenses</b>	<b>29,025</b>	<b>58,610</b>	<b>49.52%</b>	<b>100,653</b>	<b>-71.16%</b>
<b>Rialto Event Center Net Income (Loss)</b>	<b>\$(13,936)</b>	<b>\$(33,045)</b>	<b>42.17%</b>	<b>\$(83,031)</b>	<b>-83.22%</b>
<b>Grand Total Rialto Theatre Center Revenues</b>	<b>214,315</b>	<b>273,490</b>	<b>78.36%</b>	<b>171,074</b>	<b>25.28%</b>
<b>Grand Total Rialto Theatre Center Expenses</b>	<b>442,126</b>	<b>577,657</b>	<b>76.54%</b>	<b>462,843</b>	<b>-4.48%</b>
<b>Rialto Theatre Center Net Income (Loss)</b>	<b>\$(227,811)</b>	<b>\$( 304,167)</b>	<b>74.90%</b>	<b>\$(291,769)</b>	<b>-21.92%</b>

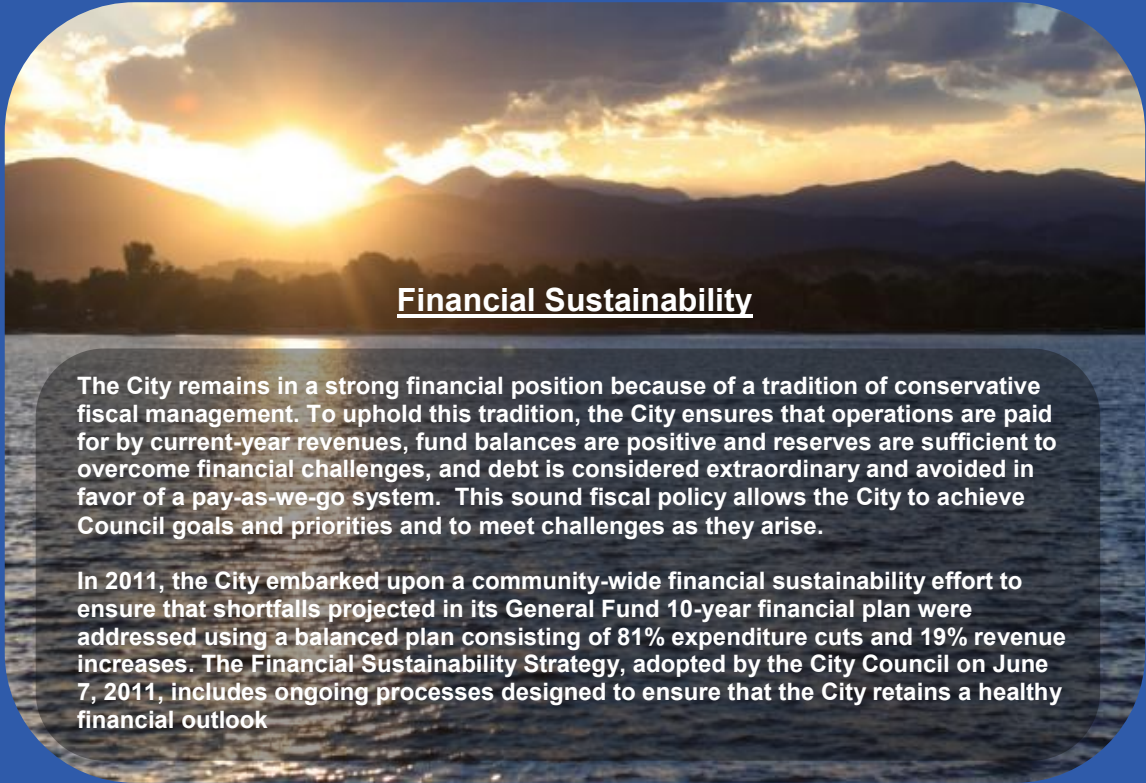
<sup>1</sup>Rialto Event Center 2013 Net Income/(Loss), NET OF \$0 donation = \$(83,031)

**Rialto Theater Center Quarterly Revenue Comparison**



# Snapshot

Monthly Financial Report



## 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 ongoing processes designed to ensure that the City retains a healthy financial outlook



**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

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**AGENDA ITEM:** 11  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Alan Krcmarik, Executive Fiscal Advisor  
**PRESENTER:** Alan Krcmarik, Executive Fiscal Advisor

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**TITLE:**

Investment Report for September 2014

**RECOMMENDED CITY COUNCIL ACTION:**

This is an information only item.

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**SUMMARY:**

The 2014 budget projection for investment earnings for 2014 is \$2,025,920 which equates to an annual interest rate of 0.94%. For September, the amount posted to the investment account is \$119,609. For the year-to-date, the amount posted is \$1,435,319. Actual earnings are below the year-to-date budget projection by \$114,884. Based on the monthly statement, the estimated annualized yield in September on the securities held by US Bank was up to 1.02% compared to 0.98% in August. Due to the demands for draws from the fund balances to pay for the cost of flood response and project repair, and slow reimbursement, the portfolio is about \$12 million lower than September 2013.

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**BACKGROUND:**

At the end of September, the City's portfolio had an estimated market value of \$211.8 million, about \$2.4 million less than a month ago. Of this amount, US Bank held (including accrued interest) \$187.9 million in trust accounts; other funds are held in local government investment pools, in operating accounts at First National Bank, and a few miscellaneous accounts. Interest rates trended to all-time record lows in 2012 – 2013 before rising in the second half of last year. Short-term rates are projected to rise but still remain historically low through 2014 and into 2015. Investments are in US Treasury Notes, high-rated US Agency Bonds, highly-rated corporate bonds, money market accounts, insured certificates of deposit and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each percent of earnings on the portfolio equates to about \$2.1 million annually.

**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

1. Investment Focus September 2014

Lowland Municipal Building

# Investment Focus

## Monthly Investment Report

## September 2014

### What's in here?

Focal Points	1
Gain / Loss	
Rate Trends /	2
Housing Recovery	
Cash Statement	3
Portfolio size	4
Investment types	
Transactions /	5
Maturity	
Future Scan	6
Labor Data	7-8

### Focal Points

- \* **2014 targets for the City's portfolio:**  
1) interest rate = **0.94%**; 2) earnings = **\$2,025,920**.
- \* **City investments are in high quality, low risk securities, to comply with state law and the City's adopted investment policy.**
- \* **Interest earnings posted for the month totaled \$119,609. Revenue posted Year-to-Date = \$1,435,319; **7.4% under target**.**
- \* **Each 1% of the market value amounts to nearly \$2.1 million.**
- \* **Month end market value shows the unrealized loss is now an estimated **\$1,506,384** at the end of September.**

### Housing Starts Pick Up, but Less So Where It Means Most

"Building permits climbed 1.5% overall but fell in the single-family segment, which yields a bigger economic boost than the multi-family side.

After a sharp fall early in the year, starts did rebound to match a postrecession high of a 1.1 million annual rate in July.

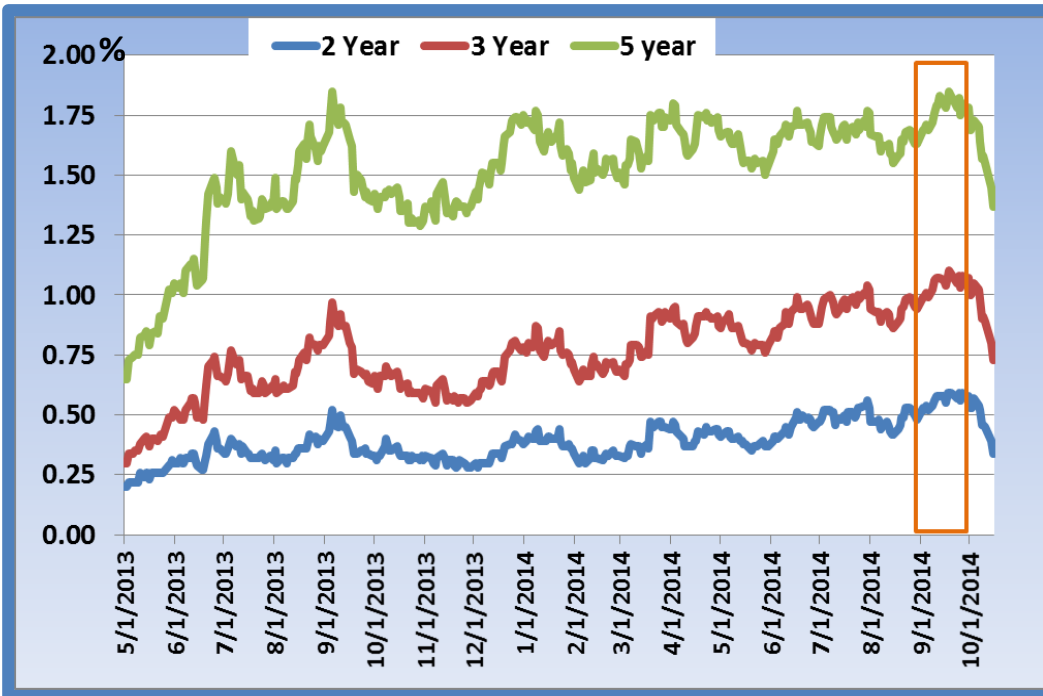
Heading into 2014, there was hope that better job creation and still historically low interest rates would generate demand for new homes."

*continued on page 2*

Type of Investment	Purchase Price	Market Price	Unrealized Gain or Loss
Checking Accounts	\$ 14,380,521	\$ 14,380,521	-
Investment Pools	\$ 9,519,345	\$ 9,519,345	-
Money Markets	\$ 15,334,859	\$ 15,334,859	-
<b>Subtotal</b>	<b>\$ 39,234,725</b>	<b>\$ 39,234,725</b>	-
Notes, Bonds, and CDs	\$ 174,121,475	\$172,615,091	<b>\$ (1,506,384)</b>
<b>Total Portfolio</b>	<b>\$ 213,356,201</b>	<b>\$211,849,817</b>	<b>\$ (1,506,384)</b>
Data sources	(Morgan Stanley)	(US Bank)	

Due to rounding, column and row totals may not add exactly.

## Treasury rate trends / Housing recovery update



Interest rates on U.S. Treasuries **rose** over the end of September. The 2-year was up 10 basis points, the 3-year was up 13, and the 5-year treasury rose by 15 basis points.

When rates rise, the price of securities held in the portfolio decreases, resulting in a larger unrealized loss at month end.

continued from page 1

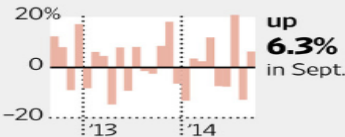
### Constrained Construction

Housing starts climbed in September, but that headline number was helped by a weak August and a rise in multifamily properties, including apartment buildings. The single-family sector, which is a larger driver of economic growth, barely budged. And permit figures show lackluster demand for future building.

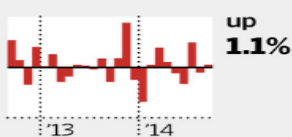
#### NEW RESIDENTIAL CONSTRUCTION STARTED

Change from a month earlier in the seasonally adjusted, annual rate

##### Overall



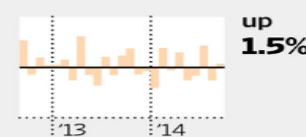
##### Single-family



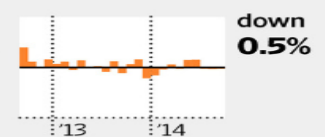
#### NEW PERMITS ISSUED

Change from a month earlier in the seasonally adjusted, annual rate

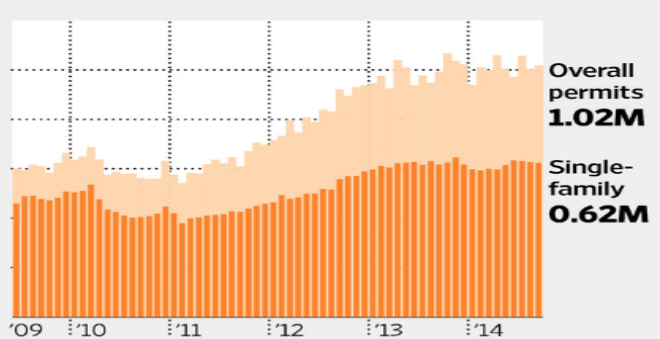
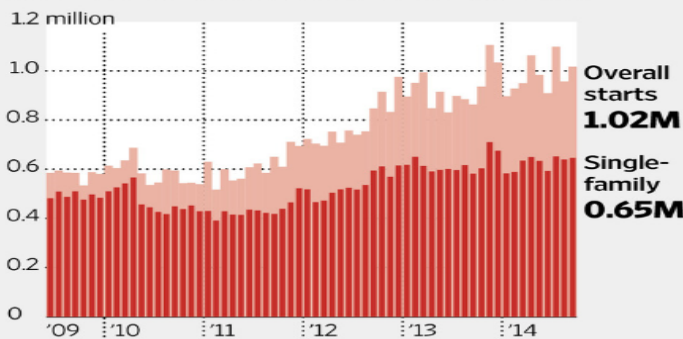
##### Overall



##### Single-family



Number of units, seasonally adjusted annual rate



Source: Commerce Department

Eric Morath and Andrew Van Dam/The Wall Street Journal

(Source: *Housing Starts Pick Up, but Less So Where It Means Most*, Eric Morath and Kris Hudson, in **THE WALL STREET JOURNAL** October 18 – 19, 2014.)



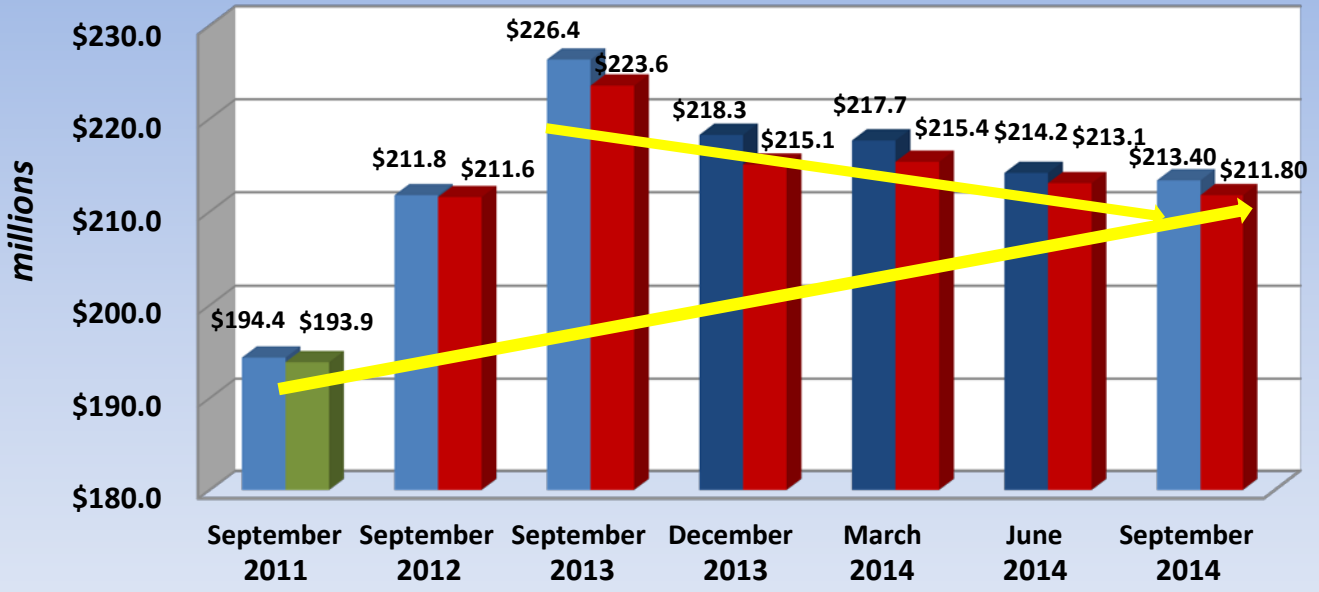
*Bottom line: Within 1/2% of beginning balance*

	2014 Beginning	YTD Activity	Month End Total
<b>Restricted Reserves</b>			
1 Capital Expansion Fees	\$ 34,039,809	\$ (4,686,058)	\$ 29,353,752
2 Water System Improvement Fees	8,688,911	(74,416)	8,614,495
3 Raw Water Revenue - Windy Gap	22,950,353	157,072	23,107,425
4 Wastewater System Imp. Fees	5,585,617	358,860	5,944,477
5 Storm Drainage System Imp. Fees	1,322,008	296,386	1,618,394
6 Power Plant Investment Fees	3,649,774	495,690	4,145,464
7 Cemetery Perpetual Care	2,717,271	52,749	2,770,021
8 Other Restricted	34,992,332	(9,415,829)	25,576,502
<b>9 Total Restricted</b>	<b>\$ 113,946,075</b>	<b>\$ (12,815,544)</b>	<b>\$ 101,130,531</b>
<b>Committed / Assigned</b>			
10 General Fund	\$ 11,224,908	\$ 2,025	\$ 11,226,933
11 Enterprise Funds	5,378,529	336,741	5,715,270
12 Internal Service Funds	19,704,008	(983,400)	18,720,608
<b>13 Total Committed / Assigned</b>	<b>\$ 36,307,445</b>	<b>\$ (644,634)</b>	<b>\$ 35,662,811</b>
<b>14 Total Restricted/Committed/Assigned</b>	<b>\$ 150,253,520</b>	<b>\$ (13,460,178)</b>	<b>\$ 136,793,342</b>
<b>Unassigned Balance</b>			
15 General Fund	\$ 29,263,846	\$ 8,150,669	\$ 37,414,515
16 Airport	1,200,770	529,682	1,730,452
17 Internal Service - Vehicle Maint.	77,200	59,828	137,028
18 Enterprise Funds	36,636,506	3,623,426	40,259,932
<b>19 Total Unassigned</b>	<b>\$ 67,178,322</b>	<b>\$ 12,363,605</b>	<b>\$ 79,541,927</b>
<b>20 TOTAL FUND BALANCE</b>	<b>\$ 217,431,842</b>	<b>\$ (1,096,573)</b>	<b>\$ 216,335,269</b>

Source: City of Loveland Budget Office  
 Due to rounding, column and row totals may not add exactly.

## Portfolio Growth Trend / Types of Investments

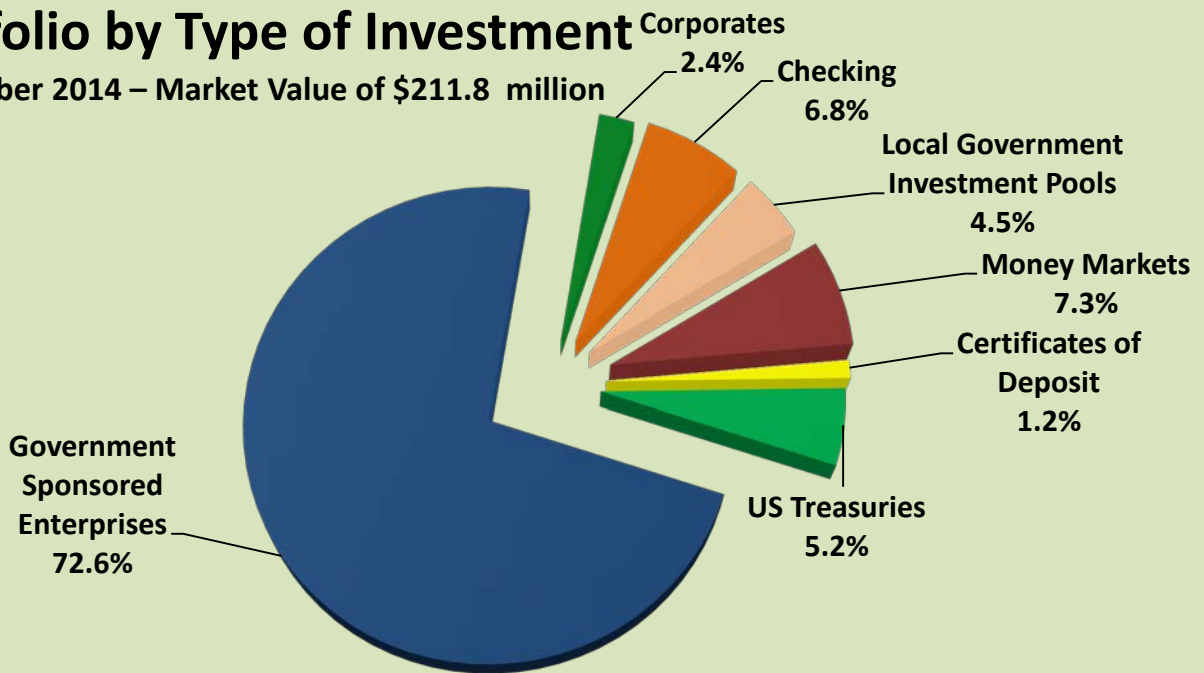
### Portfolio Size since September 2011



Blue bars show Purchase value; red or green bars show Market value (red = loss and green = gain).

### Portfolio by Type of Investment

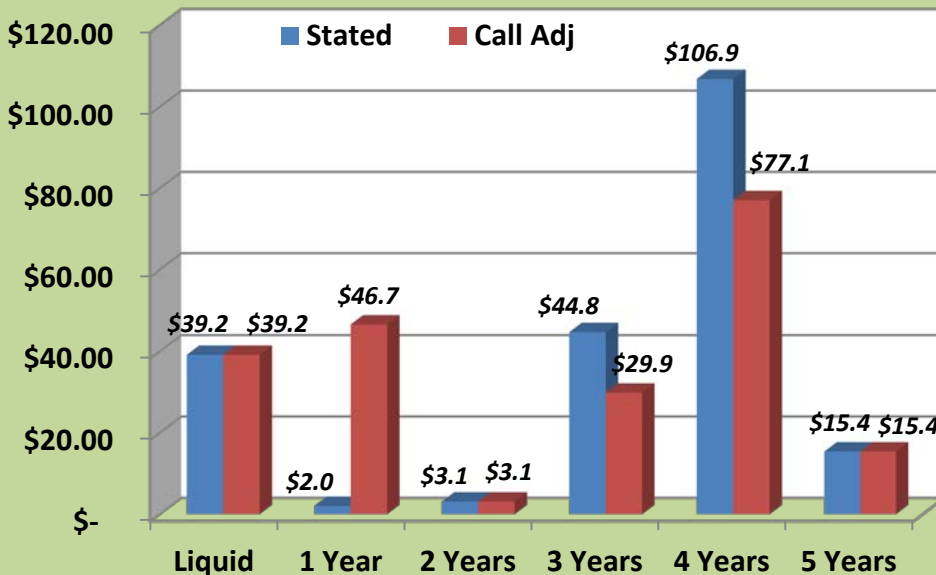
September 2014 – Market Value of \$211.8 million



# Transactions / Portfolio by Maturity

	Maturity Date	Face Value	Purchase \$	Stated Rate
<b><u>Purchases</u></b>				
none this month	09/30/2019	<u>\$ 5,000,000.00</u>	<u>\$ 4,972,671.15</u>	1.750%
<b><u>Matured</u></b>				
none this month				
<b><u>Called</u></b>			<b><u>Call Value \$</u></b>	
none this month				
<b><u>Sales</u></b>			<b><u>Gain \$</u></b>	
none this month				

**Portfolio by Estimated Maturity Term**  
(in millions - Total = \$211.8 at the end of September)



The target interest earnings rate for 2014 is 0.94%. Rates are now up from near record lows. For the year-to-date, the portfolio earnings are below the earnings target level for 2014.

To support earnings, or to reposition the portfolio, bonds may be sold. No sales have been completed so far.

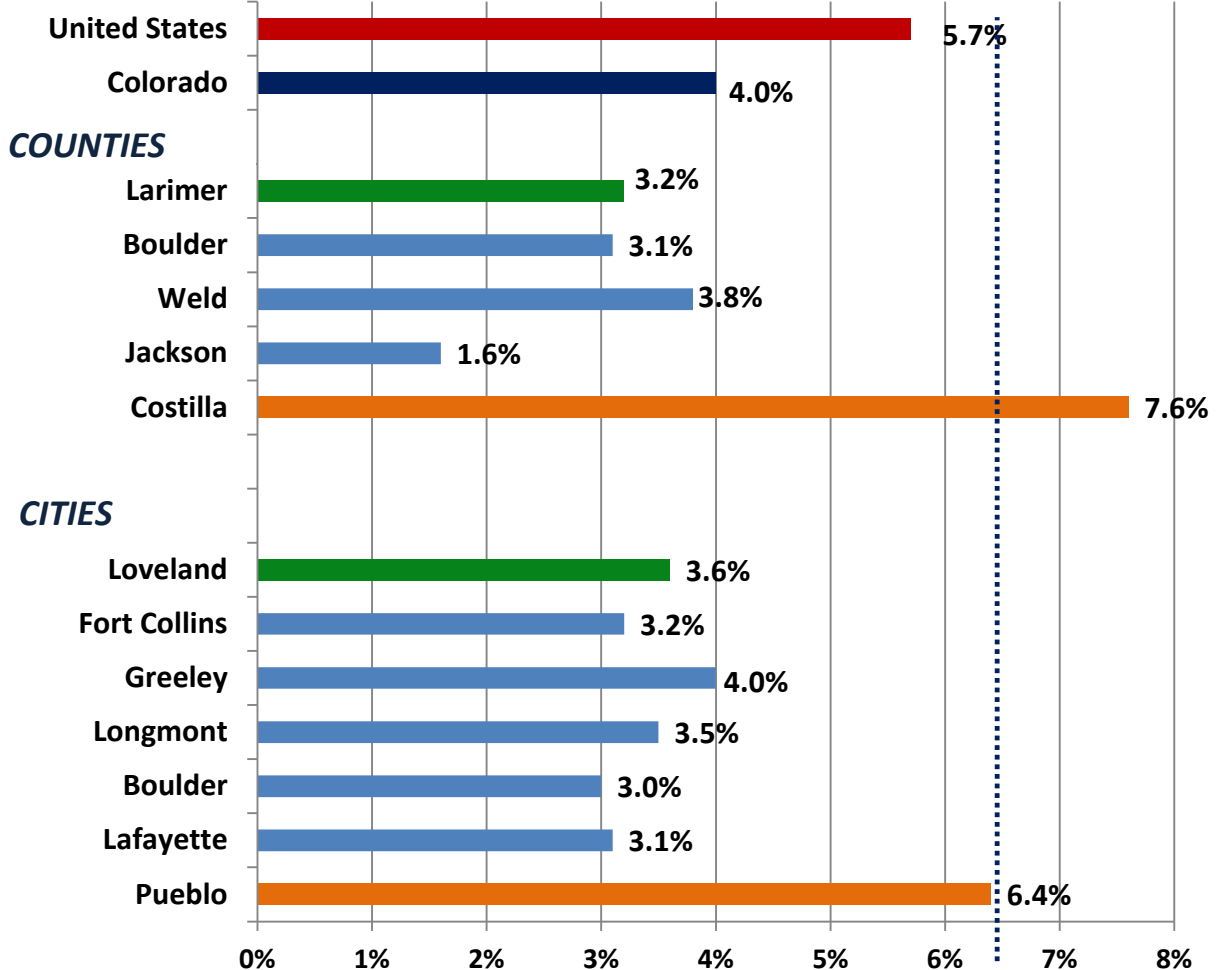
The blue bars show the stated term; red bars show the calls. Due to the rise in interest rates, only a few of the long term bonds may be called early.

Updated Colorado Labor Data  
from the Colorado Department of Labor and Employment

- ❑ Loveland’s employed workforce expanded in September, up 361 jobs from August.
- ❑ Compared to September of 2013, there are now **1,360 more** jobs reported by Loveland residents.

### Unemployment Rates

Data *not* adjusted for seasonality



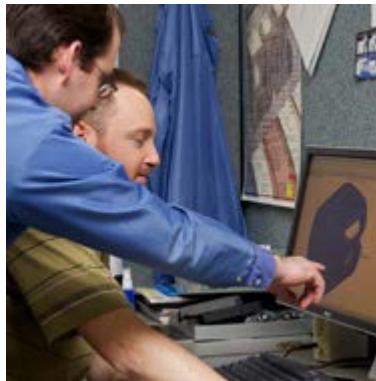
## Current “missing worker” estimates at a glance

*Updated October 3, 2014, based on most current data available*

Total missing workers, September 2014: <b>6,320,000</b>	Unemployment rate if missing workers were looking for work: <b>9.6%</b>	<i>Official</i> <i>unemployment rate:</i> <b>5.9%</b> <i>seasonally adjusted rate</i>
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In today’s labor market, the unemployment rate drastically understates the weakness of job opportunities. This is due to the existence of a large pool of *“missing workers”* – potential workers who, because of weak job opportunities, are neither employed nor actively seeking a job. In other words, these are people who would be either working or looking for work if job opportunities were significantly stronger. Because jobless workers are only counted as unemployed if they are actively seeking work, these “missing workers” are not reflected in the unemployment rate. See website below for more information. When persons marginally attached to the labor force and those plus total employed part time for economic reasons are added to the official unemployment rate (the 5.9% above right), the rate rises to **11.8% (the U-6 number)**.

<http://www.epi.org/publication/missing-workers/>





Loveland Municipal Building

## Future Scan: Federal Reserve members send mixed messages, last word for Yellen

- ❖ On October 16, three **Federal Reserve Bank Presidents** spoke on the future of the economy:
  - **“Labor Markets are not Normal.”** Atlanta Fed President Dennis Lockhart “focused on the labor market and stressed that it is far from normal as employers are using more part-time workers due to low sales and higher cost of full-time staff.” This statement suggests low rates and economic support should remain in place.
  - **“Waiting to raise rates is risky.”** Philadelphia Fed President Charles Plosser called “for a sooner rate hike as there can be risks by being too patient. ‘Waiting too long to begin raising rates – especially waiting until we have fully met our goals for maximum employment – is risky because we cannot know when we have arrived.’”
  - **“Average citizens need to be aware.”** Minneapolis Fed President Narayana Kocherlakota outlined “the constitutional role of the Federal Reserve and his goal of average citizens being aware of the what Fed is doing for the economy and not just people involved in finance.”
  - **Fed Chair “Yellen Decries Widening Wealth Disparity”** Yellen asserted “rising inequality of wealth and income in the U.S. was impeding the economic mobility at the heart of American values ... the disparity in the U.S. has grown wider for several decades, pausing during the recession and resuming its rise during the recovery as the stock market rebounded but the job market remained weak.”  
(Sources: *Duelling Fed Members Send Mixed Messages Chair Yellen to Get Last Word*, Alfonso Espara, in MARKETPULSE online, October 17, 2014; *Yellen Decries Widening Wealth Disparity*, Pedro Nicolaci Da Costa, in **THE WALL STREET JOURNAL**, October 18-19, 2014.)
- ❖ **Morgan Stanley Global Investment Committee – “Retest and Rebalance”**
  - “What is the market telling us? . . . we think the global economy is closer to a positive inflection point than a negative one. . . . this more recent sell-off is simply a retest of that more severe correction, something markets often do when establishing a more durable bottom.”
  - “The weak dollar also resulted in an unbalanced recovery, one that is destined to suffer a premature death if growth in the other major regions doesn’t improve. We believe central bankers understand this and are now orchestrating a transition in monetary policy they hope will weaken the euro and the yen as a means to assist the rebalancing act. Such transitions are never smooth and inevitably lead to higher market volatility as investors grapple with the ramifications and reposition their portfolios.”
  - “Our view remains constructive on global growth—and hence, equities—because we believe this transition to more balanced growth will succeed. Therefore, we recommend clients buy the dip yet again and look forward to the next stage of the global economic recovery, one which we believe will see broader participation from other regions.” (Source: Morgan Stanley *On the Markets*, Michael Wilson, October, 2014.)
- ❖ **The Colorado Employment Situation September 2014** was released October 21. Colorado reported 14,600 more nonfarm jobs since August. The Labor Force decreased by 400. The latest household survey data show Loveland’s unemployment rate to be 3.6%, much lower than July. Across the state, the unemployment rates were also much lower. The chart with other cities and counties is on page 6.  
(Source: Colorado Department of Labor and Employment *Colorado Employment Situation September 2014*, October 21, 2014.)
- ❖ **Recession Outlook:** Four indicators (Industrial Production, Nonfarm Employment, Real Personal Income, and Real Retail Sales) are the basis for determining a recession. Based on September data, Industrial Production rose just 0.07%; Real Retail Sales **fell** by **0.41%**; and, Employment continued on its slow 0.18% growth trend. Real Income was up 0.29% in August. The average is 0.03%. “The overall picture of the US economy had been one of slow recovery from the Great Recession with a clearly documented contraction during the winter, as reflected in Q1 GDP. Data for Q2 supported the consensus view that severe winter weather was responsible for the Q1 contraction -- that it was not the beginnings of a business cycle decline. However, the average of these indicators in recent months suggests that, despite the Q2 rebound in GDP, the economy remains near stall speed.”  
(Source: *Advisor Perspectives*, Doug Short, October 21, 2014.)

For more information regarding this report, please contact:

**Alan Krcmarik, Executive Fiscal Advisor** 970.962.2625 or [Alan.Krcmarik@cityofloveland.org](mailto:Alan.Krcmarik@cityofloveland.org)


**CITY OF LOVELAND**

ECONOMIC DEVELOPMENT OFFICE

 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 12  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Marcie Erion, Economic Development  
**PRESENTER:** Karin Bogren, Hach Company

**TITLE:**

A Resolution Approving an Incentive Package including Building Permit Fee and City Use Tax Waiver and Business Personal Property Tax Rebate Agreement with Hach Company

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution.

**OPTIONS:**

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

**SUMMARY:**

This is an administrative action. Hach Co. has requested an incentive package from the City that totals \$1 million for their new 86,000 square foot, \$25 million facility. The package includes a waiver of building permit fees and city use taxes along with a rebate of Business Personal Property Tax. The Loveland Development Fund and Larimer County, are contributing to the package as well. In addition, the Colorado Office of Economic Development and International Trade (OEDIT) may provide some incentives. Consistent with the approved Economic Development Incentive Policy, the item was brought before Council at the September 16, 2014 regular meeting as an informational item. At that time, City Council provided direction to staff to bring the incentive agreement for Hach Co. to Council for formal consideration.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

This action would result in foregone revenue to the City of Loveland through the waiver of Building Permit Fees and City Use Taxes as well as rebates of Business Personal Property taxes.

**BACKGROUND:**

Founded in 1947 by Clifford and Kitty Hach, the company moved to Loveland in 1978 and is a major primary employer in Loveland and the region. Hach was acquired by Danaher Corporation in 1999, which is currently #179 on the Forbes 500. Hach products serve a variety of industries including: bottled water, wastewater and municipal drinking water, power generation, brewing water quality and water analysis in food production. The products are also diverse from lab instruments and sensors to software and test kits/strips.

Hach employs around 1,000 people in Loveland at an average wage package of \$82,000. The company has outgrown its existing buildings on the 15 acre site and are exploring the development and construction of a new 86,000 square foot building to house their Research and Development Department. Because of the large presence and existing investment in Loveland, Hach/Danaher have chosen to stay in Loveland. Without the expansion in Loveland, Hach will be unable to accommodate their growth. Construction of the new facility is expected to start in 2015 with completion in 2016.

More information can be obtained at: <http://www.hach.com/about>

The expansion project in Loveland will include:

- A new 86,000 square foot Research and Development facility
- A complete remodel and reuse of its 25,000 facility in Loveland that previously housed the R&D department.
- Estimated \$25 million investment in construction and equipment
- Consolidation of 180 employees from the region to the Loveland site
- 20 jobs relocated to Loveland from out of state
- Estimated 20 new jobs over six years – jobs at an average base compensation and bonus package of \$88,000 but jobs range from manufacturing to engineering with full benefits, retirement and stock options.

The City is providing the following incentive package not to exceed \$900,000:

- Waiver of 100% of Building Permit Fees and City Materials Use Tax
- Rebate of business personal property tax at 100%.

Under the agreement, the cost to the City may be reduced by \$200,000 should the State Office of Economic Development and International Trade agree to an additional incentive.

In addition, the Loveland Development Fund and Larimer County are providing the following.

- Loveland Development Fund \$50,000
- Larimer County \$50,000

Total incentive package is valued at \$1,000,000.

Support for this incentive is consistent with the City of Loveland Economic Development Strategic Plan:

Goal #3- "Make the Right Investment Easy to Come, Stay and Grow."



Action- "Continue the use of the City of Loveland Incentive Policy."  
Action- "Develop a Business Retention Plan."

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Resolution (Exhibit A Agreement)
2. City Manager Proposal Letter April 2013
3. Letter of Request
4. Economic Impact Analysis
5. Project Checklist
6. Power Point Slides

[WWW.DANAHER.COM](http://WWW.DANAHER.COM)

[WWW.HACH.COM](http://WWW.HACH.COM)

**RESOLUTION #R-79-2014****A RESOLUTION APPROVING THE HACH COMPANY AGREEMENT FOR FEE WAIVER AND CONSTRUCTION MATERIALS USE TAX WAIVER**

**WHEREAS**, Hach Company, a Delaware corporation (the “Company”) manufactures water analysis instruments, chemistries, service and software and conducts research and development with respect to water quality testing, analysis, and treatment; and

**WHEREAS**, the Company has been headquartered in Loveland since 1978 and employs approximately 1,000 associates at its current location at 5600 Lindbergh Drive, Loveland, Colorado 80538 (“the Property”); and

**WHEREAS**, the Company desires to consolidate its domestic research and development operations in Loveland in a new 86,000 square foot research and development facility to be constructed on the Property at an estimated cost up to \$25,000,000 (the “**Project**”); and

**WHEREAS**, in connection with the Project, the Company will be required to pay the City certain fees, including building plan check fees, permit fees, and other fees in connection with the development of property (“**Fees**”), capital expansion fees (“**CEFs**”) and City use tax (“**Use Taxes**”) as a precondition to receiving from the City a building permit and/or a final certificate of occupancy for the Project; and

**WHEREAS**, pursuant to City Code Section 16.38.070, the City Council may by resolution grant an exemption from or waiver of all or a portion of the Fees if the City Council makes a finding that such credit is in the best interests of the public by encouraging activities that provide significant economic benefits; and

**WHEREAS**, pursuant to City Code Section and 3.16.590, the City Council may grant by resolution a use tax credit against the collection of the Use Taxes that would otherwise be collected on such terms and conditions as it determines is in the best interest of the City and finds that such deferral and waiver serves a public purpose, including, without limitation, providing the public with significant social, economic or cultural benefits; and

**WHEREAS**, pursuant to C.R.S. §31-15-903 and City Code Section 3.04.090, City Council may agree to refund business personal property taxes paid by the Company and received by the City with respect to the business personal property installed and/or located in the Project (the “**BPPT**”), if the City Council finds that such a refund serves a public purpose including, without limitation, providing significant social, economic or cultural benefits to the citizens of Loveland

**WHEREAS**, the Company has requested an economic incentive package from the City, Larimer County, the Loveland Development Fund, and the State of Colorado to proceed with and locate the Project on the Property, in Loveland; and

**WHEREAS**, the City desires to provide an economic incentive to the Company in the form of a waiver of Fees (but not to include CEFs), a Use Tax credit, and a refund of the BPPT as set forth in the Agreement for Fee Waiver, Construction Materials Use Tax Waiver, and Business Personal Property Tax refund attached hereto as Exhibit A and incorporated herein by this reference (the “Agreement”); and

**WHEREAS**, the City Council believes that the construction and operation of the Project in Loveland would produce significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs and increased property tax revenues to the City, and therefore the waiver of Fees, credit for Use, and refund of BPPT set forth in the Agreement is in the best interests of the public by encouraging activities that provide significant economic benefits and approved this Agreement.

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

**Section 1.** The City Council hereby finds that the assistance granted to the Company Agreement in the form of a waiver of permit fees (but not to include CEFs), a Use Tax credit and a refund of the BPPT are in the best interests of the public and the City and will serve the public purposes of providing significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased tax revenues.

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

**Section 3.** The Agreement is hereby approved and the City Manager and the City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City after such an ordinance is approved by Council and becomes effective.

**Section 4.** This Resolution shall take effect as of the date of its adoption.

ADOPTED this 4<sup>th</sup> day of November, 2014.

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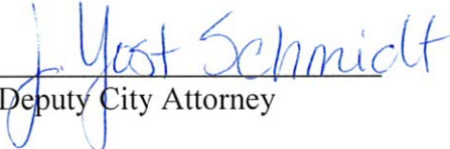
Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
Deputy City Attorney

**HACH COMPANY AGREEMENT FOR FEE WAIVER, CONSTRUCTION  
MATERIALS USE TAX WAIVER AND BUSINESS PERSONAL PROPERTY TAX  
REFUND**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of October, 2014, by and between **THE CITY OF LOVELAND, COLORADO**, a home rule municipality (the “City”), and **HACH COMPANY**, a Delaware corporation (the “Company”).

**WHEREAS**, the Company, which manufactures water analysis instruments, chemistries, service and software and conducts research and development with respect to water quality testing, analysis, and treatment, has been headquartered in Loveland since 1973 and employs approximately 1,000 associates at its current location at 5600 Lindbergh Drive, Loveland, Colorado 80538 (“the **Property**”); and

**WHEREAS**, the Company desires to consolidate its domestic research and development operations in Loveland in a new 86,000 square foot research and development facility to be constructed on the Property at an estimated cost up to \$25,000,000 (the “**Project**”); and

**WHEREAS**, in connection with the Project, the Company will be required to pay the City certain fees, including building plan check fees, permit fees, and other fees in connection with the development of property (“**Fees**”), capital expansion fees (“**CEFs**”) and City use tax (“**Use Taxes**”) as a precondition to receiving from the City a building permit and/or a final certificate of occupancy for the Project; and

**WHEREAS**, pursuant to City Code Section 16.38.070, the City Council may by resolution grant an exemption from or waiver of all or a portion of the Fees if the City Council makes a finding that such credit is in the best interests of the public by encouraging activities that provide significant economic benefits; and

**WHEREAS**, pursuant to City Code Section and 3.16.590, the City Council may grant by resolution a use tax credit against the collection of the Use Taxes that would otherwise be collected on such terms and conditions as it determines is in the best interest of the City and finds that such deferral and waiver serves a public purpose, including, without limitation, providing the public with significant social, economic or cultural benefits; and

**WHEREAS**, pursuant to C.R.S. §31-15-903 and City Code Section 3.04.090, City Council may agree to refund business personal property taxes paid by the Company and received by the City with respect to the business personal property installed and/or located in the Project (the “**BPPT**”), if the City Council finds that such a refund serves a public purpose including, without limitation, providing significant social, economic or cultural benefits to the citizens of Loveland

**WHEREAS**, the Company has requested an economic incentive package from the City, Larimer County, and the Loveland Development Fund, to proceed with and locate the Project on the Property, in Loveland; and

**WHEREAS**, the City desires to provide an economic incentive to the Company in the form of a waiver of Fees (but not to include CEFs), a Use Tax credit, and a refund of the BPPT as set forth in this Agreement; and

**WHEREAS**, by the adoption of Resolution No. \_\_\_\_\_, the City Council has made a finding that the construction and operation of the Project in Loveland would produce significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs and increased property tax revenues to the City, and therefore the waiver of Fees, credit for Use, and refund of BPPT set forth in this Agreement is in the best interests of the public by encouraging activities that provide significant economic benefits and approved this Agreement.

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

**1. Waiver of Fees and Use Taxes**

- a. On the express condition that the Company obtains a building permit for the Project on or before December 31, 2015, the Company shall receive a waiver of the Fees and Use Taxes for the Project, as authorized by City Code Sections 3.16.590 and 16.38.070, up to a cumulative total amount not to exceed Nine Hundred Thousand Dollars (\$900,000.00) (the "Waiver Amount"). In the event that the Company receives an incentive award from the State of Colorado ("State Incentive"), the Waiver Amount shall be reduced by the amount of the State Incentive. For example, if the Company receives a State Incentive of Two Hundred Thousand Dollars (\$200,000.00), the Waiver Amount will be reduced to Seven Hundred Thousand Dollars (\$700,000.00). However, the Waiver Amount shall not be reduced by more than Two Hundred Thousand Dollars (\$200,000.00).
- b. If the Company fails to obtain a building permit for the Project on or before the date set forth above, then the City's obligation to provide the Waiver Amount for the Project shall expire and the City shall have no obligation to waive any Fees or Use Taxes due with respect to the Project. Notwithstanding the foregoing, the City Manager may, in his discretion and for good cause shown, extend the deadline set forth above by which the Company must obtain a building permit for the Project, provided that any request for such extension shall be submitted by the Company in writing and signed by the City Manager.
- c. The Fees and Use Taxes waived pursuant to this paragraph 1 shall be limited to City Fees and Use Taxes and shall not include any CEFs due in connection with the Project or amounts for use taxes or fees payable to Larimer County or any other taxing jurisdiction in connection with the Project.
- d. The Company acknowledges and agrees that the actual Fees and Use Taxes that will be due for the Project have not been finally determined and have been estimated on the basis of information provided to the City by the Company. All Fees and Use

Taxes due with respect to the Project in excess of the Waiver Amount and all CEFs due with respect to the Project shall be paid by the Company.

**2. BPPT Refund.**

- a. On the express condition that (i) the Company completes construction of the Project and obtains a temporary or permanent certificate of occupancy on or before December 31, 2017 (the “Completion Date”); and (ii) the actual Fees and Uses Taxes due for the Project are less than the Waiver Amount, then the City agrees to rebate to the Company, BPPT to the extent set forth in this paragraph 2 up to the amount by which the actual Fees and Use Taxes due for the Project are less than the Waiver Amount, if any (such amount is referred to herein as the “**Remaining Waiver Amount**”). For example, if the Waiver Amount is \$900,000.00 (no State Incentive is received) and actual Fees and Use Taxes due for the Project are \$670,000.00, the Remaining Waiver Amount would be \$230,000.00 ( $\$900,000 - \$670,000 = \$230,000$ ). If, however, the actual Fees and Use Taxes due for the Project are \$905,000.00, the Remaining Waiver Amount would be zero (\$0), since the Actual Fees and Uses Taxes are more than the Waiver Amount.
- b. Commencing with the first full tax year after the Completion Date and for each consecutive tax year thereafter, the City shall rebate to the Company one hundred percent (100%) of the City’s portion of BPPT levied by Larimer County and paid by the Company, as applicable, on taxable business personal property located at or within the Project and appearing on the personal property declaration schedules submitted by the Company to the Larimer County Assessor for each applicable tax year, up to a total cumulative refund for all tax years in an amount equal to the Remaining Waiver Amount.
- c. The total amount rebated by the City with respect to any tax year shall not exceed one hundred percent (100%) of the City’s portion of the BPPT levied by Larimer County upon the Company’s taxable business personal property located at or within the Project and appearing on the personal property declaration schedules submitted by the Company to the Larimer County Assessor for the applicable tax year. The term “tax year” as used herein shall mean the year in which said personal property is assessed for tax purposes. Such personal property must be located at the Project as of January 1 of the tax year in question in order to be assessed. Personal property that is moved to or acquired at the Project subsequent to the assessment date of January 1 becomes assessable in the following tax year. Personal property taxes become due and payable on January 1 of the year following the year in which they are levied.
- d. The rebate payment for BPPT in the amount of the Remaining Waiver Amount, if any, shall be made to the Company by the City within sixty (60) days after the City Manager’s receipt of all of the following: (i) evidence reasonably satisfactory to the City Manager of the full payment by the Company of all BPPT taxes due and owing with respect to said personal property for each tax year; and

(ii) the City's actual receipt of its portion of the BPPT from Larimer County; and (iii) a fully completed and signed Form 1099; and (iv) the Company's written waiver (must be executed once a year upon payment of taxes), in a form provided by the City, of any rights to seek any abatement or refund of all or any part of said BPPT. In the event the Company decides to seek an abatement or refund of all or any portion of the BPPT, no rebate payment shall be made by the City to the Company until such abatement or refund proceeding has been finally concluded and any BPPT found to be due are paid in full.

- e. If the Company fails to obtain a permanent certificate of occupancy for the Project on or before the Completion Date, then the City's obligation to provide refund BPPT hereunder shall expire and the City shall have no further obligation to refund BPPT to the Company. Notwithstanding the foregoing, the City Manager may, in his discretion and for good cause shown, extend the Completion Date by which the Company must obtain a permanent certificate of occupancy for the Project, provided that any request for such extension shall be submitted by the Company in writing before the Completion Date and signed by the City Manager.
- f. In the event of any dispute as to the amount of any BPPT rebate payment to be made to the Company under this paragraph 2, the Company and the City shall meet and confer in good faith to resolve such dispute. In the event the parties are unable for any reason to resolve such dispute within a period of sixty (60) days after notice of a dispute has been given by one party hereunder to the other, the decision of the Loveland City Council, acting as a contracting party and not in a quasi-judicial capacity, shall be final and conclusive as to the parties' obligations under paragraph 2 of this Agreement.
- g. Acceptance by the Company of a BPPT rebate payment shall be full and final satisfaction of any obligation of the City to make said payment for the tax year for which the payment is made.
- h. The Company grants to the City the right to perform an annual physical inspection of the Project to verify assets listed by the Company on the Commercial Personal Property Declaration Schedule filed by the Company with the Larimer County Assessor for the Project for the applicable tax year.
- i. The City's obligation to refund BPPT under this paragraph 2 shall not exceed the total cumulative amount of the Remaining Waiver Amount, if any, for all tax years.

### **3. Multi-Year Fiscal Obligation**

To the extent the City's obligation to waive Fees and Use Taxes as provided in Section 1 above or to rebate BPPT under paragraph 2 above is considered a multi-year fiscal obligation under Article X, Section 20 of the Colorado Constitution and the City's Charter Section 11-6, such obligations are subject to annual appropriation by the Loveland City Council. The City



shall have no obligation to make any payment sought or to be paid on or after December 31, 2014, unless the necessary appropriation has been made by the City Council to authorize such provision or payment.

#### **4. Right of Offset**

The Company agrees that the City shall have the right to withhold and set off any amounts which may become payable to the Company by the City under this Agreement against any amounts which the Company may owe to the City, whether arising under this Agreement or otherwise. For example, but not by way of limitation, if the Company fails to pay any amounts due to the City for services not related to this Agreement, such as utility or other services, the City shall have the right to withhold payment of any amounts that may be due by the City to the Company and offset such amounts against any amount that may be due to the City by the Company.

#### **5. Applicable Law and Venue**

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

#### **6. Time is of the Essence**

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

#### **7. Assignment**

The Company shall not assign or transfer any or all of its interests, rights or obligations under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

#### **8. Construction**

This Agreement shall be construed according to its fair meaning and as if it was prepared by both of the parties hereto and shall be deemed to be and contain the entire Agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises,

understandings, statements, or representations expressed or implied, concerning this Agreement, unless set forth in writing and signed by the City and the Company.

**9. Entire Agreement**

This Agreement contains the entire agreement between the parties relating to the subject matter hereof and may not be modified or amended except by written agreement signed by both parties.

**10. Headings**

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

**11. Notices**

Any written notice given under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested, to the following addresses:

If to the City: William D. Cahill  
City Manager  
City of Loveland  
500 East Third Street  
Loveland, CO 80537

With Copy to: City Attorney  
City of Loveland  
500 East Third Street  
Loveland, CO 80537

If to the Company: Hach Company  
Attn: \_\_\_\_\_  
PO Box 389  
Loveland, CO 80539

With copy to:

**12. Binding Effect**

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

**13. No Waiver**

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

**14. Severability**

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

**15. Signatures**

For purposes of this Agreement, there may be any number of counterparts, each of which shall be deemed as originals. Facsimile and electronically transmitted signatures, for purposes of this Agreement, shall be deemed as original signatures

**16. Waiver of Confidentiality**

Under C.R.S. § 24-72-204 of the Colorado Open Records Act and under City Code Section 3.16.230, the City is required to maintain as confidential documents that are not subject to public inspection BPPT information and records for the Company that are submitted to and on file with the City. However, notwithstanding these provisions of law or any other applicable provisions of the law, by its signature below the Company hereby consents to and authorizes the City to provide information as to BPPT credited under this Agreement and net new jobs created by the Company to members of the Loveland City Council and acknowledges and agrees that such information provided to Council shall be subject to public inspection.

Dated this \_\_\_\_ day of October, 2014.

*[Signature Pages Follow]*



The “City”

CITY OF LOVELAND, COLORADO

By: \_\_\_\_\_  
William D. Cahill, City Manager

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney



**CITY OF LOVELAND**  
ECONOMIC DEVELOPMENT OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

April 19, 2013

Ms. Kelly Peters  
Northern Colorado Economic Development Corporation  
3553 Clydesdale Pkwy, Suite 230  
Loveland, Colorado 80538

**RE: Project H2O –BUSINESS PROPOSAL**

Dear Ms. Peters,

In response to the inquiry regarding a local company interested in building a new facility on their Loveland campus please accept the attached business proposal. The business proposal is intended to serve as a starting point for negotiations and the City is willing to discuss additional terms and conditions. Also, the proposal will be subject to approval by Loveland City Council.

The business proposal is based on the following information provided to the City:

- 70,000 square foot expansion of an existing facility
- \$14 million total development cost
- 100 new jobs over five years with an average salary of \$85,828

We recognize that the information may not be complete and additional information may require further negotiations.

Thank you for the opportunity to present our business proposal. We recognize that this is merely a starting point for what we hope will be a long-term partnership. We are grateful for the opportunity to help business grow in Loveland and we look forward to working with you.

Thank you.

Sincerely,

---

William D. Cahill, City Manager  
City of Loveland

## Business Proposal

The City of Loveland offers the following business proposal for consideration by Project H2O. The terms provide the framework for negotiation which may result in some modification. The final package is subject to final approval by the Loveland City Council, and any other limitations outlined in the proposal. We also acknowledge that additional negotiation on the terms and conditions will be likely.

<u>Item</u>	<u>Estimated Amount</u>
• Waive 100 percent of building permit fees and City Materials Use Tax estimated at \$300,000	<b>\$300,000</b>
• Expedited review of site plan and building permit applications	n/a
○ The City will work with applicant's design team to set clear deadlines and reasonable assumptions for submittals and review periods	
○ City's review team will work directly with the applicant's design team to ensure timely review and approvals	
• Waive 100 percent of capital expansion fees estimated at \$75,000	<b>\$75,000</b>
• \$2,000 for every net new job created and maintained for 12 months over five years, not to exceed \$200,000	<b>\$200,000</b>
• Rebate of business personal property tax at 100 percent for five years estimated at \$1250,000	<b><u>\$125,000</u></b>
<b>TOTAL</b>	<b><u>\$700,000</u></b>

Mr. Bill Cahill  
Loveland City Manager  
500 East Third Street  
Loveland, CO 80537

19 August 2014

Hach Company manufactures and distributes analytical instruments and reagents used to test the quality of water and other liquid solutions. Manufactured and distributed worldwide, Hach systems are designed to simplify analysis by offering on-line instrumentation, portable laboratory equipment, prepared reagents, easy-to-follow methods, and technical support. Hach is a wholly owned subsidiary of Danaher Corporation (DHR), a fortune 500 corporation. Hach's global headquarters have been in Loveland, Colorado since 1978 and houses research and development laboratories, instrument manufacturing operations, and the Hach Technical Training Center. Over 1000 employees are currently employed by Hach at this location.

Hach Company has grown significantly through the past several years and no longer has enough space for future growth within its current facility. Hach also needs to expand and update its research and development space to offer the desired work environment required for a world class design team.

Hach has reviewed several options including remodeling the existing facility, renting existing space at another location and building a research and development facility at our current site. Hach has determined that the most desired option to best meet our business needs is to invest in a new facility. Hach will be relocating over 130 employees to this facility from existing Loveland facilities along with consolidating 50 additional personnel from another Danaher company renting a Fort Collins facility and up to 20 personnel from out of state facilities. In addition, Hach expects to grow at a rate of 20 new associates per year for the next 6 years; resulting in an increased employee count of up to 180 employees with an average salary of \$80,000 annually.

The forecasted cost for the new facility investment is \$21 million. Hach is requesting that the City of Loveland waive/reimburse \$1 million (review after scaling to 86,000 sq ft facility from 70,000 sq ft. facility) in city fees in support of our 36 year relationship with the City of Loveland which has contributed to the City's tax base growth.

Thank you for your consideration for our request for reimbursement and support of Hach's effort to invest in our global headquarter expansion allowing for increased revenues, employees, and tax base.



EIA For Hach R & D Facility			With August 20 Revisions											
												86,000	building square foota	
<b>II.</b>												\$25,000,000	total bui]d cost	
		2014	2015	2016	2017	2018	2019	2020	2021			\$290.70	per sq.ft.	
	Property Tax			5,904	17,889	18,068	18,249	18,432	18,616	Assumptions		\$13,000,000	estimated value at co	
											\$75	per s.f.		
											86,000	s.f.		
											\$6,450,000			
											0.29	assessment rate		
			\$78,542	for 2016 to 2020								\$1,870,500	Assessed Value	
			\$97,158	for 2016 to 2021								\$1,870.50	per mil	
											9.564	City mil levy		
											\$17,889.46	City Property tax		
											77.312	total mills		
	Use Tax on Construction materials										\$144,612,096	Total Property Tax		
			\$270,000								\$9,000,000	Materials		
<b>III.</b>	Furniture													
	Sales or Use Tax on furniture													
		\$200,000	\$6,000	over five years										
	Sales Tax Computer Equipment													
		\$50,000	\$1,500	over five years										
	Sales Tax Manufacturing Equipment													
		\$0	\$0	over five years										
<b>IV.</b>	Employment	\$ 82,000	84,050	86,151	88,305	90,513								
		30	30	30	30	30				150				
	Taxable wages	2,460,000	2,521,500	2,584,538	2,649,151	2,715,380								
	Sales tax	73,800	75,645	77,536	79,475	81,461								
	Loveland Capture at 30%	22,140	45,387	69,783	95,369	122,192								
	Cumulative capture	22,140	67,527	137,310	232,679	\$354,871								
	Materials at Loveland location													
		5,000,000	-	-	-	-								
	Buy 100% in Loveland	1,000,000	-	-	-	-								
	Apply 3% use tax	30,000	-	-	-	-								
	Cumulative	30,000	30,000	30,000	30,000	30,000								
	How much subject to sales or use tax or exempt													
		6,000	6,000	6,000	6,000	\$6,000								
				Total of	\$789,110									
				Highlighted										
				above										
	<b>Visitor Information</b>													
	Total visitors	1,500	1,500	1,500	1,500	1,500								
	Day time spending	54,150	54,962	55,787	56,623	57,473								
	Lodging spending	150,000	150,000	150,000	150,000	150,000								
	Sales tax	6,125	6,216	6,310	6,404	6,500								
	Lodging Tax	4,275	4,339	4,404	4,470	4,537								
	Sales & Lodging Tax	10,400	10,555	10,714	10,875	11,038								
	Cumulative	10,400	20,955	31,669	42,543	\$53,581								

City of Loveland Economic Development Policy Project Checklist		
Hach Company		Incentive Type:
Requirement	Meets (y/n)	Date
Met with the Economic Development Manager	Y	July 30, 2014
Letter of Intent/Request Received	Y	August 20, 2014
Economic Impact Analysis Data Submitted	Y	August 20, 2014
Impact Analysis shows Positive Net New Revenue	Y	August 22, 2014
Pays 80% of Employee Health Ins. Premium	Y	August 20, 2014
Offers Group Health Ins. Coverage to Dependents	Y	August 20, 2014
Performance Agreement	Y	August 20, 2014
Minimum investment of \$500,000	Y	August 20, 2014
Net New Jobs to Loveland	up to 190	August 20, 2014
Project Budget Submitted	Y	August 20, 2014
<b>Study Session</b>		
<b>Council Meeting and Approval</b>		Info only September
Average Annual Wages Company wide	Meets (y/n)	
110% of Larimer County Ave Annual Wage	n/a	
120% of Larimer County Ave Annual Wage	n/a	
130% of Larimer County Ave Annual Wage	n/a	
140% of Larimer County Ave Annual Wage	n/a	
150% or > Larimer County Ave Annual Wage	n/a	Y
Encouraged but not required	Meets (y/n)	
Located in an Enterprise Zone	N	
Located in Downtown Loveland	N	
Reuse of an existing vacant facility	N	
Clean Energy Company	N	
Health Care	N	
Aerospace/Aviation	N	
Bio-Science	N	
Arts/Sculpture Related	N	
Rocky Mountain Innovation Initiative Client	N	
<b>Proposed Incentive</b>		

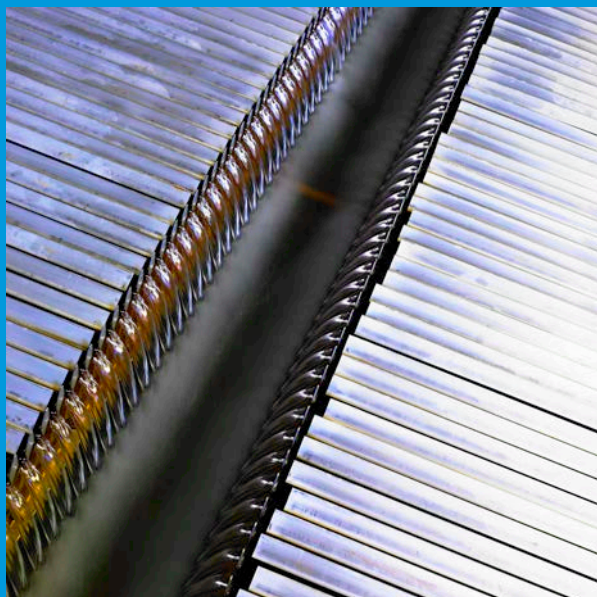
<b>August 20, 2014</b>
<b>Fee/tax waivers and business personal property tax rebate</b>
<b>Details</b>
Return of investment in 5 years
Issuance of Building permit by 2016, rebate of BPP tied to property tax payments by Hach
\$21 million project budget
Consolidation of 70 from other facilities, addition of 20 new jobs/yr/six years
\$21 million project budget
16
<b>Details</b>
if yes must enter wage amount
<b>Average wage of \$82,000/yr</b>
<b>Details</b>
if yes enter address
if yes enter address
if yes enter address
<b>Up to but not to exceed \$700,000</b>



Be Right™

# HACH COMPANY

## Water Quality Group



# HACH

- Manufacture water analysis instruments, chemistries, service and software.
- Serve the industrial and municipal markets.
- Global reach with sales, support, manufacturing and R&D.
- Founded in 1947 by Clifford and Kitty Hach in Ames Iowa.
- Acquired by Danaher Corporation in 1999.
  - Combined with Dr. Lange, based in Berlin, Germany.
- Headquartered in Loveland, CO since 1973.
- 3,900 Associates
  - 1,700 Americas, locally 1,000
  - 1,600 Europe
  - 500 Asia

# HACH GEOGRAPHIC FOOTPRINT



## HACH MISSION

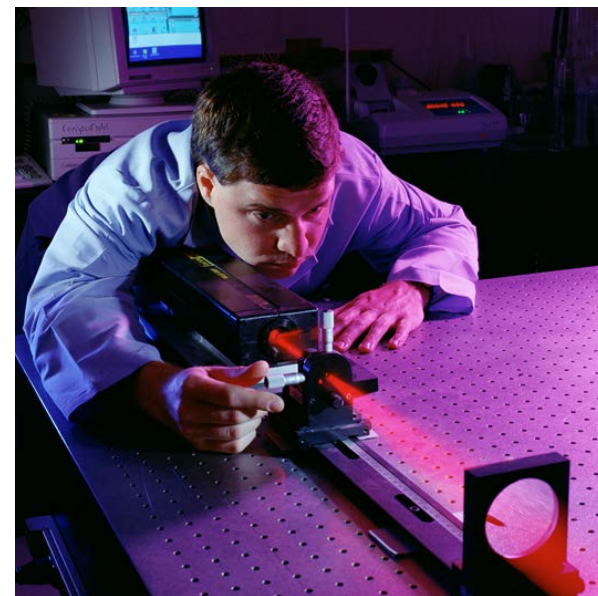
Ensure water quality for people around the world.

## HACH VISION

We make water analysis better – faster, simpler, greener and more informative – via unsurpassed customer partnerships, the most knowledgeable experts, and reliable, easy-to-use products.

# SUSTAINED BUSINESS PERFORMANCE

- Over 75 years of analytics expertise.
  - 1933: Dr. Lange GmbH founded in Berlin
  - 1947: Hach founded in Ames, Iowa
  - 1999: Acquired by Danaher Corporation
- Consistent Investment in R&D and technology.
  - 527 patents covering 130 patent families
  - A leader in industry firsts
- Commitment to quality, delivery and customer value.
  - Leadership in customer service, technical support and training.





# MARKET REACH

- Drinking Water
- Wastewater
- Food & Beverage
- Chemical, Petrochemical, Oil and Gas
- Engineers & Consultants
- Electronics
- Labs
- Life Sciences
- Power Utilities



# OPTIMIZATION & COMPLIANCE

Products that optimize the quality and regulatory compliance of water throughout the water cycle.



## LOCAL CUSTOMERS

City of Loveland  
 City of Fort Collins  
 Soldier Canyon Filter Plant  
 Anheuser Busch  
 New Belgium  
 Avago  
 Woodward



# OPPORTUNITY

- Invest in a business that has added 334 employees over past 13 years.
- Future growth at Loveland location limited by physical space constraints.
- Propose building an 86,000 sq. ft. R&D center to support future growth.
- Estimated total cost of up to \$25,000,000.
- Consolidation of 180 existing R&D employees into new facility.
- Addition of 20 R&D positions transferred from out of state.
- Average salary of an R&D associate is \$88,000.
- Estimate 120 new jobs over 6 years at an average salary of \$82,000.

**Hach is requesting \$1,000,000 in assistance to support this investment.**



## CITY OF LOVELAND

### ECONOMIC DEVELOPMENT OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 13  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Economic Development Department  
**PRESENTER:** Mike Scholl, Economic Development Manager

#### TITLE:

1. A Resolution Authorizing the City Manager to sign an Economic Incentive Agreement with Evergreen Development based on the Attached Term Sheet
2. An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for an Incentive Agreement with Evergreen Development Company

#### RECOMMENDED CITY COUNCIL ACTION:

1. Approve the resolution.
2. Conduct a public hearing and approve the ordinance on first reading.

#### OPTIONS:

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

#### SUMMARY:

These are administrative actions. Evergreen Development Company, a large regional developer (<http://evgre.com/>) with successful projects in six different states, has asked the City for assistance with the \$9.7 million infill development project at the corner of 34 and 287 (see attached map). Evergreen has the parcels under control and they expect to close contingent on the incentive agreement being approved and the ability to complete design review without major issues. Our design review team has worked proactively with Evergreen over the last three months and the review process has moved forward smoothly.

Evergreen is seeking a \$2.2 development grant from the City that would be repaid with interest through the normal collection of sales tax from their anchor tenant, Sprouts. Based on the projections provided by the tenant, the loan would be repaid within six years. They have also requested a waiver of the Construction Materials Use Tax not to exceed \$97,000. To address any potential shortfall, Evergreen has agreed to provide a completion guarantee and guarantee a minimum loan payment to the City until the debt is repaid.

The resolution would authorize the City Manager to sign an agreement based on the approved term sheet included in the packet. The 2<sup>nd</sup> reading of the appropriation will occur only after the agreement has been finalized, signed and shared with Council.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The development grant would be from existing capital funds and repaid through the collection of sales tax at three percent interest. The City will also forgo \$97,000 in revenue from the Materials Use Tax.

**BACKGROUND:**

At the September 23, 2014 Council Study Session, staff was given direction to bring back a Development Agreement with Evergreen Development Company for a Sprouts grocery store at the corner of US 287 and Hwy 34. The resolution would allow the City Manager to enter into an agreement based on the approved term sheet. The agreement would be conditioned on the approval of the 2<sup>nd</sup> reading of the appropriation ordinance.

Evergreen first approached the City regarding the site at Hwy 34 and US 287 nine months ago. A conditional commitment letter was provided to demonstrate the City's willingness to work with them on the development project. The preliminary incentive proposal was based on estimates of the cost of land assemblage that were prepared by Evergreen. After entering into negotiations to acquire the parcels necessary for the project, it became clear the cost of the assemblage was substantially higher than first estimated. As a result, Evergreen asked that the proposed development deal be modified to reflect the economic conditions.

The development agreement calls for a \$2.2 million grant to be repaid through the collection of sales tax over ten years at three percent interest. The City also will receive 40 percent of the sale proceeds after repayment of debt and equity should the building be sold within ten years. The developer is providing both a completion guarantee and a guarantee on the sales tax to cover the full repayment.

**REVIEWED BY CITY MANAGER:**

*William A. Cabill*

**LIST OF ATTACHMENTS:**

1. Resolution

2. Approved Term Sheet
3. Ordinance
4. Map

**RESOLUTION #R-80-2014****A RESOLUTION APPROVING THE TERMS AND CONDITIONS OF AN INCENTIVE TO EVERGREEN-EISENHOWER & LINCOLN, L.L.C. FOR DEVELOPMENT OF A SPECIALTY GROCERY STORE AT EAST EISENHOWER BOULEVARD AND HIGHWAY 287 AND DIRECTING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT FOR SUCH AN INCENTIVE**

**WHEREAS**, Evergreen-Eisenhower, L.L.C., an Arizona limited liability company (“Evergreen”) intends to develop a 26,040 square foot specialty grocery store (the “Project”) for a well-known national tenant (“Grocer”) on a 2.3 acre site located at the northeast corner of E. Eisenhower Blvd. and Highway 287 (the “Site”) located in Loveland, Colorado; and

**WHEREAS**, Evergreen has requested that the City provide an incentive in an amount not to exceed \$2.2 million for improvements related to the development of the Project (the “Incentive”), a waiver of building plan check fees, permit fees, and other fees in connection the Project ( the “Fees”) and a credit against City construction materials use tax (“Use Taxes”) not to exceed a total amount of \$97,000 (collectively, the “Waiver”) on the terms and conditions set forth on the Term Sheet dated October 30, 2014 signed by Evergreen and attached hereto as **Exhibit A** and incorporated herein by reference (the “Term Sheet”); and

**WHEREAS**, pursuant to Section 16.38.070 of the Loveland Municipal Code (“Code”), the City Council may by resolution grant an exemption from or waiver of all or a portion of the Fees if the City Council makes a finding that such credit is in the best interests of the public by encouraging activities that provide significant economic benefits; and

**WHEREAS**, pursuant to Code Section 3.16.590, the City Council may grant by resolution a use tax credit against the Use Taxes that would otherwise be collected on such terms and conditions as it determines are in the best interest of the City and finds that such credit and waiver serves a public purpose, including, without limitation, providing the public with significant social, economic or cultural benefits; and

**WHEREAS**, Code Section 3.04.090 authorizes Council to appropriate funds for all purposes to the full extent authorized by the Colorado Constitution and the City Charter, which includes appropriating funds to serve the public purposes of producing significant economic, cultural and social benefits for the citizens of Loveland and encouraging and facilitating economic development within the City; and

**WHEREAS**, Council desires to approve the Term Sheet, including the Incentive and the Waiver of Fees and Use Taxes, to facilitate the Project as hereafter set forth; and

**WHEREAS**, the funding for the Incentive is subject to appropriation by the City Council, in its discretion, by adoption of an ordinance (the “Appropriation Ordinance”); and

**WHEREAS**, by adoption of this Resolution and adoption of an Appropriation Ordinance, it is City Council’s intention and desire that the City Manager proceed to complete negotiation and execution of an Incentive Agreement on terms and conditions consistent with the Term Sheet and in accordance with the direction hereinafter provided in this Resolution.

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

**Section 1.** The City Council finds and determines that assistance in the form of the Incentive and the Waiver on the terms and conditions set forth in the Term Sheet are in the best interests of the City and the public and serve the public purposes of producing significant economic, cultural, and social benefits to the citizens of Loveland, primarily in the form of (i) economic development, (ii) elimination of blight which constitutes an economic and social liability to the community; and (iii) prevention of further physical and economic deterioration in the vicinity of the Project by stimulating redevelopment, attracting capital investment; (iv) additional jobs; and (v) increased tax revenues.

**Section 2.** The City Council approves the Term Sheet and the terms and conditions set forth therein for the provision of the Incentive and Waiver.

**Section 3.** The City Manager is hereby directed and authorized, in consultation with the City Attorney, to negotiate and execute, on behalf of the City, an Incentive Agreement providing the Incentive and the Waiver for the Project on terms and conditions consistent with the Term Sheet, provided that the form and substance of the resulting Incentive Agreement shall be acceptable to the City Manager, in his judgment, and shall be subject to Council’s approval of the Appropriation Ordinance, in its discretion.

**Section 4.** This Resolution shall be effective as of the date of its adoption.

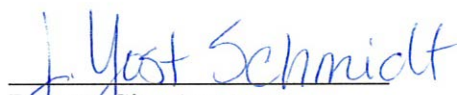
ADOPTED this 4<sup>th</sup> day of November, 2014.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



**TERM SHEET**  
**Evergreen Development/Retail Incentive Agreement**  
**October 30, 2014**

**Parties:** City of Loveland (City) &  
 Evergreen-Eisenhower & Lincoln, L.L.C. (“Evergreen”)

**Address:** **Approximately 2.3 acres located at E. Eisenhower Blvd. at 287 as depicted on the attached map (the “Site”)**

**Development Project:**

Evergreen intends to develop a 26,040 square foot full service grocery store on the Site (the “Project”) for a well-known national tenant (“Grocer”) and additional retail space for complementary retail development (“Additional Businesses”).

**Agreement:** Subject to the terms and conditions contained in the term sheet, City shall provide an incentive to the Project in an amount not to exceed \$2.2 million (the “Incentive”) for certain improvements related to the development of the Project and a waiver of building permit fees and construction materials use tax not to exceed \$97,000. The Incentive shall be repaid in full, with interest at three percent per annum, from the Project within 10 years after the date on which it is disbursed in full (the “Disbursement Date”). The Incentive shall be reduced incrementally by an amount equal to 100 percent of all City sales taxes collected from the Project on sales by the Grocer and operators of the Additional Businesses and received by the City from time to time (“Project Sales Taxes”) until the total amount of all Project Sales Taxes so paid and received by the City equals the outstanding amount of the Incentive, and all interest accrued thereon.

*Note: When the amount of Project Sales Taxes paid and received by the City equals or exceeds the amount of the Incentive and all interest accrued thereon, the deed of trust and all Incentive guarantees shall be extinguished.*

As further consideration hereunder, in the event that the Grocer permanently closes and ceases operations on the Site (a “Permanent Closure”) on or before the date that is 10 years after the Disbursement Date, and provided City, per the Loveland Municipal Code (“City Code”) in effect on the date of the Permanent Closure, continues to tax 100% the sale of groceries in all other businesses selling groceries within the City, then Evergreen shall pay to the order of City, its successors and assigns, within 180 days after the Permanent Closure, at the place and in the manner provided by City an amount equal to the amount by which the outstanding balance of the Incentive, and all interest accrued thereon as of the date of the Permanent Closure, exceeds all Project Sales Taxes received by the City as of the date of the Permanent Closure. The foregoing repayment

obligation of Evergreen shall cease and be of no further force and effect upon the date that is the earlier of (a) 10 years from and after the Disbursement Date; (b) the date that the collection of Project Sales Taxes received by the City from the Project, including Grocer and Additional Businesses, exceeds the amount of the Incentive, and all accrued interest thereon; and/or (c) the date that the City Code is changed such that there is no tax and/or a limited tax on the sale of groceries within the City.

**Developer:** Evergreen agrees to the following:

1. Complete the Project on the Site and obtain a certificate of occupancy for the Grocer's premises by December 31, 2016.
2. Obtain all necessary site plan and building permits.
3. Provide to the City a completion guaranty for the Project from a financially capable entity reasonably acceptable to the City.
4. Guaranty a minimum annual payment of Project Sales Taxes to the City to facilitate recovery of the amount of the Incentive, and all interest accrued thereon, by the City (see Incentive schedule as example). The Guaranty shall be limited such that any "new net revenue" above the "guaranteed payment" shall be applied to the outstanding Incentive balance, as adjusted from time to time, as reasonably determined by the City; provided, however, that when the amount of Project Sales Taxes paid and received by the City equals or exceeds the amount of the Incentive and all interest accrued thereon, however such Project Sales Taxes are allocated and/or applied to the Incentive within the City, the deed of trust and all Incentive guarantees shall be extinguished. If the Project Sales Taxes to the City from the Project do not exceed the amount of the Incentive and all accrued interest thereon within 10 years after the Disbursement Date (defined below), the guaranty shall require payment of the outstanding balance of the Incentive and all accrued interest thereon within 180 days after the 10th anniversary of the Disbursement Date.

**City of Loveland:** The City agrees to the following:

1. Waive the building permit fees and materials use tax in an amount not to exceed \$97,000.
2. Provide the Incentive in the amount of equal to the cost of the Project, but not more than \$2.2 million, to be disbursed as set forth below.

**Financial Assistance/Incentive:**

City agrees to provide the Project with an amount not to exceed \$2.2 million for improvements included in the Project (the "Project Improvements"). During construction, Evergreen will cause the appropriate parties to provide the City with invoices that document construction of the Project Improvements, including unit prices and associated costs. Invoices are subject to field verification by the City. Project Improvements may include:

- Land acquisition costs for areas associated with the Project Improvements
- Existing building remediation and demolition

- Repair or removal of deteriorated site improvements
- Utility and infrastructure improvements in the public right of way, including street and alley improvements
- Sidewalk, parking lot and streetscape improvements
- Incremental energy efficiency and conservation improvements for fixed building systems in excess of basic levels (HVAC, mechanical etc.)
- Façade improvements for all visible portions of the building facing a public right of way and such other improvements benefiting certain public and visible aspects of the Project
- Building improvements
- Additional improvements as may be agreed upon by the parties

**Rights of Access/Field Verification:**

For purposes of assuring compliance with the Agreement, representatives from Evergreen and the City shall have reasonable rights of access without charges or fees at normal construction hours during the period of construction. Access shall include the right of inspection and field verification of Project Improvements for which invoices are submitted. Representatives of the City shall be identified in writing to the Evergreen.

**Incentive Disbursement Schedule:**

In order to obtain the funds under the Incentive, City and Evergreen shall cause the contractor to submit a Request for Advance (as defined below) to City not less than 15 days prior to the date the funds specified therein are due and payable and specifying (a) the amount requested, and (b) all Project Costs (as defined below) to be paid with such advance. City shall have no obligation to make advances of the Incentive proceeds more often than once in each calendar month. City shall make direct payments to the contractor up to the maximum amount of the Incentive, it being the intent of the parties that the Incentive is an incentive to be provided by payment of a portion of the costs of the Project. Evergreen and contractor shall enter into the construction contract for completion of the Project, which contract shall require that contractor provide a W-9 to City prior to any payment by the City, and the terms of the construction contract shall recognize that although the City agrees to disburse the Incentive in payment of costs incurred under the construction contract, the contractor is not entitled to an tax exemptions for the work being performed. The work under the construction contract is work for the Project and not performed on behalf of the City and Evergreen and City will agree upon reasonable indemnification provisions addressing the same. Any disbursement of Incentive proceeds must be made for payment of the Project Costs for the completion of Project Improvements. At least 15 days prior to, and as a condition of disbursing any portion of the Incentive requested under a Request for Advance the appropriate parties shall furnish to City the following documents:

- A. A disbursement request (“Request for Advance”) which shall specify the amount of the requested disbursement, direct City to disburse such funds in accordance

with the Agreement, and certify to City, as of the date of the applicable Request for Advance, that:

- the total amount of each Request for Advance represents the actual amount payable to the contractor and/or subcontractors who have performed work on the Site for the Project Improvements and indicating what payment requests, if any, have been received from the contractor or the subcontractors but have not yet been approved by Evergreen for payment;
  - no default, or condition or event which, with the giving of notice or passage of time, or both, would constitute a default, exists under the Agreement;
  - Evergreen has received no notice and has no knowledge of any liens or claims of lien either filed or threatened against the Site;
  - all amounts shown as previous payments on the current disbursement request have been paid to the parties entitled to such payment;
  - approval by Evergreen of all work and materials included in a Request for Advance; and
  - that all work and materials furnished for the Site through the date of the Request for Advance conform with the plans and specifications.
- B. A certificate as to completion and payment authorization in form reasonably approved by City, properly executed by the contractor or the subcontractors seeking payment and the architect;
- C. Evidence satisfactory to City that the following conditions are true:
- Evergreen and the architect shall provide evidence that all proceeds of the Incentive disbursed to date have been applied to payment of the costs of Project Improvements included in the Project; and
  - Evergreen and the architect shall provide evidence that the Project is being constructed in accordance with the approved plans and specifications and with applicable law.

For purposes hereof, "Project Costs" means all hard and soft costs related to the Project Improvements included in the development, redevelopment and construction of the Site for the Grocer and Additional Businesses.

Disbursement of the available proceeds of the Incentive shall be limited to an amount equal to the percentage thereof required by the terms of the construction contracts of the materials and labor incorporated in the Project from time to time. No retainage shall be required and/or permitted hereunder by City.

In the event City fails to comply with the terms and provisions of the Agreement, Evergreen shall have all rights and remedies available at law or in equity.

Completion shall be determined by the issuance of a "Certificate of Occupancy or Letter of Completion, as applicable, "by the City's Building Division.

**Right of Review:**

The City requests that prior to approval a site plan that approximates the final design be approved and included as an exhibit to the Agreement. The site plan, including, but not limited to, building design, orientation, location of loading dock facilities, access routes, parking, and traffic direction and control, shall be subject to the commercially reasonable, good faith approval of the City, which approval shall not be constrained by or substitute for land use and regulatory approvals required under the Loveland Municipal Code; provided, however, that the City shall in all instances take into consideration the financial viability of the Project , the approval of the Grocer and commercially reasonable retail standards with regard to such approval. The Agreement does not constitute final approval of the site plan, building or other permit. The plan should include landscaping, parking, the location of the loading docks, and other right of way improvements and access points.

**Adequate Community Facilities (ACF) Exception:**

The City will agree to provide an exception to the ACF standards, subject to such process and determinations as may be required by the City Code.

**Sale; Sale Proceeds:**

In consideration of the City's contribution to the Project, upon: (i) sale of all of the Site or that portion of the Site containing the Grocer (as opposed to a sale of a portion of the Site containing the Additional Businesses) to an unrelated third party buyer; or (ii) refinancing of the Project, then, if such third party sale or refinancing occurs prior to the date that is 10 years after the Disbursement Date, after repayment of all debt and equity and an 15% IRR to Evergreen and its equity investors (the "Evergreen Profit"), the City shall receive 40% of the net sales proceeds (after customary closing costs, costs of sale, commissions, etc...), if any, from the sale ("Net Sales Proceeds"). City and Evergreen hereby covenant and agree that if the deed of trust and/or Incentive guaranties have not otherwise been released as of such third-party sale, City shall release the deed of trust and the Incentive guaranties shall be limited at such time to an amount equal to the Incentive, plus accrued interest, less (a) all Project Sales Taxes received to date, and (b) the amount of Net Sales Proceeds. In such event, such remaining guaranty shall, at the option of the Evergreen, either be from Evergreen or from such third-party purchaser, provided that the financial wherewithal of such third-party purchaser as to the limited guaranty amount is reasonably approved by City after

review of such evidence reasonably satisfactory to City. Notwithstanding anything contained herein to the contrary, the foregoing provisions shall not apply to any mini permanent financing or other financing intended solely to refinance the construction loan and related loan costs for the Project.

**Financial Review:**

The City reserves the right to review and audit Evergreen’s books related to the Project and financial statements at any time with a 30 day notice not more than annually.

**Casualty Loss:**

The owner of the Site will agree to insure and rebuild the Project in the event of a casualty (fire, natural disaster etc.).

**Recordable Documents:**

The City’s right to Net Sales Proceeds shall be set forth in a separate written agreement by and between Evergreen and the City and the parties shall record a memorandum of such agreement on the Site. In addition, Incentive guarantees and other amounts due under the Agreement shall be secured by deed of trust on the property. The City will agree subordinate its deed of trust to approved construction and permanent financing for the project. The City will release the deed of trust upon repayment of the outstanding balance of the Incentive, and all interest accrued thereon or upon the sale of the Project to a third party buyer.

**Assignment:**

Subject to the terms hereof, Evergreen shall have the ability to assign or transfer any or all of its interests, rights, or obligations under this Agreement subject to prior notification to the City Council to a related affiliate.

**Incentive Schedule:**

*Assumptions*

Incentive Amount: \$2,200,000  
 Interest Rate: 3.00%  
 Incentive Amortization (yrs): 10

	<b>Guaranteed Payment</b>
<b>Year 1</b>	\$254,920
<b>Year 2</b>	\$254,920
<b>Year 3</b>	\$254,920
<b>Year 4</b>	\$254,920

<b>Year 5</b>	\$254,920
<b>Year 6</b>	\$254,920
<b>Year 7</b>	\$254,920
<b>Year 8</b>	\$254,920
<b>Year 9</b>	\$254,920
<b>Year 10</b>	\$254,920
<b>Year 11</b>	\$0
<b>Year 12</b>	\$0
<b>Year 13</b>	\$0
<b>Year 14</b>	\$0
<b>Year 15</b>	\$0
<b>TOTAL</b>	\$2,549,200

**Prohibited Uses:**

No portion of the Site or any building, structure or improvement presently or subsequently erected on the Site, shall be used for any of the following uses for the term of the Agreement: (a) indoor housing or raising of animals; (b) skateboard park; (c) retail motor vehicle sales, rental or repair; (d) check cashing or payday Incentive businesses; (e) manufacturing or processing of an end product from a natural raw material source, whether animal, mineral or vegetable (f) tattoo parlors; (g) self-storage units; (h) gun stores; (i) recycling collection and / or processing facilities; (j) retail car wash; (k) clubs or lodges; (l) crematorium; (m) junkyard; (n) jails, detention and penal centers and facilities; (o) retail gas station; (p) long-term care facilities; (q) dairy processing plant; (r) laundry and dry-cleaning plants; and (s) retail laundry and dry-cleaning establishments.

**Additional Provisions:**

Evergreen agrees to forgo any future reimbursement for the improvements to the right turn lane on Highway 34.

By signature below, the parties acknowledge agreement to the foregoing terms and conditions, which are intended to provide a basis for preparation of, but not shall not currently constitute, a legally binding agreement:

**EVERGREEN-EISENHOWER & LINCOLN, L.L.C.**, an Arizona limited liability company

**By: Evergreen Development Company-2014, L.L.C.**, an Arizona limited liability company

**Its: Manager**

**By: Evergreen Devco, Inc.**, a California corporation



Digitally signed by Tyler Carlson  
DN: cn=Tyler Carlson, o, ou,  
email=tcarlson@evgre.com, c=US  
Date: 2014.10.30 10:24:12 -06'00'

By: \_\_\_\_\_

Its: **Principal** \_\_\_\_\_

**CITY OF LOVELAND, COLORADO**

By: \_\_\_\_\_  
William D. Cahill, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney



FIRST READING      November 4, 2014

SECOND READING      \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2015 CITY OF LOVELAND BUDGET FOR THE EVERGREEN INCENTIVE.**

**WHEREAS**, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2015; and

**WHEREAS**, the City Council desires to authorize an interfund loan and the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2015, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That reserves in the amount of \$2,200,000 from the following Internal Service and Capital Expansion Fee Funds are available for appropriation: \$500,000 from the Fleet Replacement Fund; \$250,000 from the Parks Capital Expansion Fee Fund; \$250,000 from the Recreation Capital Expansion Fee Fund; \$250,000 from the Open Space Capital Expansion Fee Fund; \$250,000 from the General Government Capital Expansion Fee Fund; \$250,000 from the Library Capital Expansion Fee Fund; \$250,000 from the Cultural Services Capital Expansion Fee Fund; \$200,000 from the Streets Capital Expansion Fee Fund. The funding from the listed Internal Service and Capital Expansion Fee Funds is transferred as an interfund loan and will be repaid in full, including interest at the rate of 3% per annum, but not less than the average interest rate being earned on the City’s investment portfolio for the preceding twelve months, adjusted annually, over ten years from disbursement, with the first payment due in 2017. The transferred funds from the listed Internal Service and Capital Expansion Fee Funds are not needed for any capital projects while these monies are being repaid as herein provided and such Internal Service and Capital Expansion Fee Funds will continue to grow at the same rate of return as it would have earned if otherwise invested. Revenues in the total amount of \$2,200,000 are hereby appropriated for the Evergreen Incentive. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Parks Capital Expansion Fee Fund 260**

<b>Revenues</b>		
Fund Balance		250,000
<b>Total Revenue</b>		<b>250,000</b>
<b>Appropriations</b>		
260-00-000-0000-47106	Transfer to Economic Incentives Fund	250,000
<b>Total Appropriations</b>		<b>250,000</b>

**Supplemental Budget  
Recreation Capital Expansion Fee Fund 261**

<b>Revenues</b>		
Fund Balance		250,000
<b>Total Revenue</b>		<b>250,000</b>
<b>Appropriations</b>		
261-00-000-0000-47106	Transfer to Economic Incentives Fund	250,000
<b>Total Appropriations</b>		<b>250,000</b>

**Supplemental Budget  
Open Space Capital Expansion Fee Fund 263**

<b>Revenues</b>		
Fund Balance		250,000
<b>Total Revenue</b>		<b>250,000</b>
<b>Appropriations</b>		
263-00-000-0000-47106	Transfer to Economic Incentives Fund	250,000
<b>Total Appropriations</b>		<b>250,000</b>

**Supplemental Budget  
Library Capital Expansion Fee Fund 266**

<b>Revenues</b>		
Fund Balance		250,000
<b>Total Revenue</b>		<b>250,000</b>
<b>Appropriations</b>		
266-00-000-0000-47106	Transfer to Economic Incentives Fund	250,000
<b>Total Appropriations</b>		<b>250,000</b>

**Supplemental Budget  
Cultural Services Capital Expansion Fee Fund 267**

<b>Revenues</b>		
Fund Balance		250,000
<b>Total Revenue</b>		<b>250,000</b>
<b>Appropriations</b>		
267-00-000-0000-47106	Transfer to Economic Incentives Fund	250,000
<b>Total Appropriations</b>		<b>250,000</b>

**Supplemental Budget  
General Government Capital Expansion Fee Fund 268**

<b>Revenues</b>		
Fund Balance		250,000
<b>Total Revenue</b>		<b>250,000</b>
<b>Appropriations</b>		
268-00-000-0000-47106	Transfer to Economic Incentives Fund	250,000
<b>Total Appropriations</b>		<b>250,000</b>

**Supplemental Budget  
Street Capital Expansion Fee Fund 269**

<b>Revenues</b>		
Fund Balance		200,000
<b>Total Revenue</b>		<b>200,000</b>
<b>Appropriations</b>		
269-00-000-0000-47106	Transfer to Economic Incentives Fund	200,000
<b>Total Appropriations</b>		<b>200,000</b>

**Supplemental Budget  
Economic Incentives Fund 106**

<b>Revenues</b>		
106-00-000-0000-37260	Transfer from Parks CEF Fund	250,000
106-00-000-0000-37261	Transfer from Recreation CEF Fund	250,000
106-00-000-0000-37263	Transfer from Open Space CEF Fund	250,000
106-00-000-0000-37266	Transfer from Library CEF Fund	250,000
106-00-000-0000-37267	Transfer from Cultural Services CEF Fund	250,000
106-00-000-0000-37268	Transfer from General Government CEF Fund	250,000
106-00-000-0000-37269	Transfer from Streets CEF Fund	200,000
106-00-000-0000-37500	Transfer from Fleet Fund	500,000
<b>Total Revenue</b>		<b>2,200,000</b>
<b>Appropriations</b>		
106-18-180-1500-43155	Economic Incentives	2,200,000
<b>Total Appropriations</b>		<b>2,200,000</b>

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

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

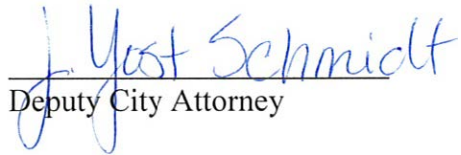
ADOPTED this \_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
Deputy City Attorney

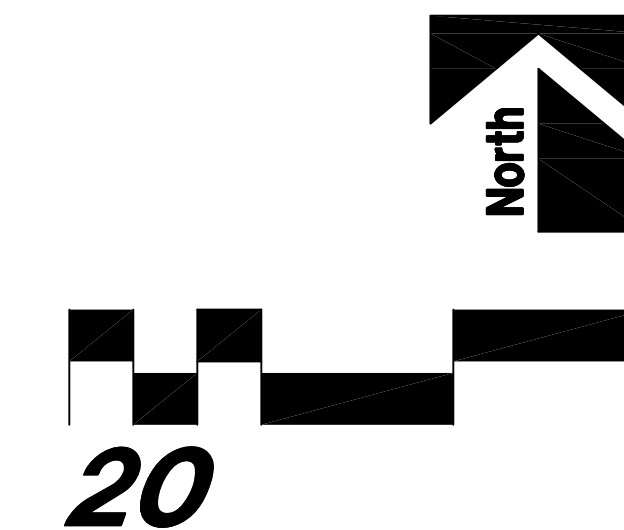
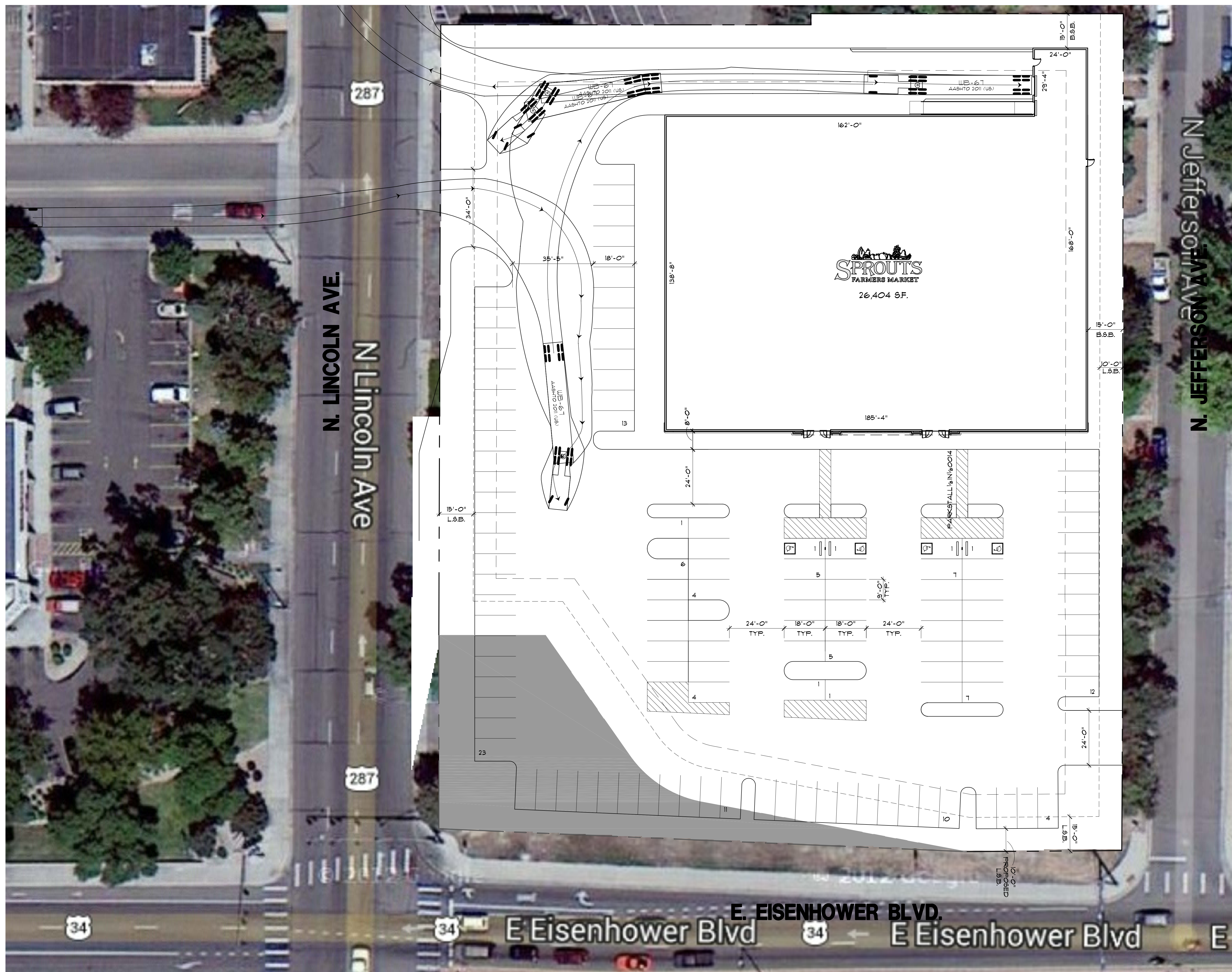
NET SITE AREA:  
 SPROUTS.....100,084 S.F. (2.30 ACRES)

BUILDING AREA:  
 SPROUTS.....26,404 S.F.

BUILDING COVERAGE:.....26.4%

PARKING REQUIRED (1/300 S.F. - RETAIL)  
 SPROUTS.....88 SPACES

PARKING PROVIDED:  
 SPROUTS.....114 SPACES (4.31/1,000 S.F.)



ALL BUILDINGS, IMPROVEMENTS, THEIR OCCUPANTS AND THE USES AS SHOWN ON THIS PLAN ARE PRELIMINARY AND SUBJECT TO MODIFICATION AT THE OWNER'S DISCRETION WITHOUT NOTICE.

THIS PRELIMINARY SITE PLAN IS BASED ON INFORMATION FURNISHED TO AAD:FITCH, INC. AND IS SUBJECT TO VERIFICATION BY LEGALS, SURVEYS AND GOVERNING AGENCIES ETC.

DATE: FEBRUARY 19, 2014  
 JOB#: TBD

AAD:FITCH, Inc.

**FITCH**

16435 North Scottsdale Rd., Suite 195  
 Scottsdale, Arizona 85254  
 T+1 480 998 4200 F+1 480 998 7223  
 www.FITCH.com

**PRELIMINARY SITE PLAN - Scheme 9**

**NEC LINCOLN AVE. and EISENHOWER BLVD.  
 LOVELAND, CO**

**CITY OF LOVELAND**

ECONOMIC DEVELOPMENT OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 14  
**MEETING DATE:** 11/4/2014  
**TO:** City Council  
**FROM:** Betsy Hale, Economic Development Director  
**PRESENTER:** Betsy Hale, Economic Development Director

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**TITLE:**

1. Motion to Appoint a City Representative to the Loveland Downtown Partnership Board
2. Motion to Disband the Loveland Downtown Team, an Ad Hoc Working Group Created by the Loveland City Council, in Recognition of the Formation of the Loveland Downtown Partnership to Champion Redevelopment of Downtown Loveland

**RECOMMENDED CITY COUNCIL ACTION:**

1. Approve the motion.
2. Approve the motion.

**OPTIONS:**

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

**SUMMARY:**

These are both administrative actions. The first action designates a City representative to the Loveland Downtown Partnership Board of Directors (LDP). The representative may be a member of the Loveland City Council or an employee of the City designated by the City Council to represent the City. The second action disbands the Loveland Downtown Team (LDT) which is an ad hoc group focused on downtown revitalization. The Loveland Downtown Partnership will continue these efforts.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible
-

**BACKGROUND:**

The Loveland Downtown Partnership was incorporated in September 2014. Article 2.1(c) of the Bylaws, adopted by LDP, states one of the members of the Board of Directors shall be a member of the Loveland City Council or an employee of the City appointed by the Loveland City Council. The City representative will be a non-voting member of the LDP Board of Directors.

The Loveland Downtown Team was created to focus on downtown revitalization. The LDT successes include implementing a façade improvement program and standardizing the naming conventions for alleys in the downtown area. The City recognizes the valuable contribution of the LDT members and thanks them for their service.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

None