City of Loveland

CITY COUNCIL

Civic Center ● 500 East Third Street ● Loveland, Colorado 80537
(970) 962-2303 ● FAX (970) 962-2900 ● TDD (970) 962-2620
www.cityofloveland.org

PROCLAMATION

WHEREAS the City of Loveland recognizes the importance of recreation and active living by providing opportunities for walking, biking and enjoying the outdoors and

WHEREAS the City started the development of the recreation trail system in 1990 and over the last 21 years has constructed 17.5 miles of trail; and

WHEREAS More than 280,000 people used the City of Loveland trail system in 2010; and

WHEREAS the City received more than $600,000 in Federal funding for the new underpass at North US 287 and 64th Street to improve safety and connectivity of the trail system and the City has spent Conservation Trust (Colorado Lottery) dollars to fund the construction of the trail system; and

WHEREAS To recognize the significance of the City recreation trail system and the American Hiking Society's National Trails Day annual trail awareness program to celebrate the 200000+ miles of trails in our country.

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim that June 7, 2011

NATIONAL TRAILS DAY

in Loveland, Colorado, and in so doing, urges all citizens to join in a national celebration to protect healthy living, encourage the protection of outdoor spaces and educate adults and youth on the importance of trails.

Signed this 17th day of May, 2011

Cecil A. Gutierrez,
Mayor

City of Loveland

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PROCLAMATION

WHEREAS The Congress and President of the United States have designated May 15 as Peace Officers' Memorial Day, and the week in which May 15 falls as National Police week; and

WHEREAS the members of the law enforcement agency of the Loveland Police Department play an essential role in safeguarding the rights and freedoms of the City of Loveland; and

WHEREAS it is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

WHEREAS the men and women of the law enforcement agency of Loveland Police Department unceasingly provide a vital public service;

NOW, THEREFORE, we, the City Council of the City of Loveland, call upon all citizens of Loveland and upon all patriotic, civil and educational organizations to observe the week of May 15-21, 2010, as Police Week with appropriate ceremonies and observances in which all of our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

We further call upon all citizens of Loveland to observe Thursday, May 15th, as

PEACE OFFICERS' MEMORIAL DAY

in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.

In witness thereof, I have hereunto set my hand and caused the Seal of Loveland to be affixed.

Signed this 17th day of May, 2011

Cecil A. Gutierrez
Mayor

Rocky Mountain National Park
Spring 2011 Briefing
East Side
May

Visitation

In 2010, Rocky Mountain National Park reached the 3 million mark for the first time since 2007 with 3,128,445 million visitors.

The Top 10 Days in 2010 were:

1.	Sep. 25	31,031	*fee free day*
2.	Sep. 5	25,461	
3.	Aug. 14	24,109	*fee free day*
4.	Sep. 26	23,913	
5.	Aug. 15	23,746	*fee free day*
6.	July 18	22,988	
7.	July 25	22,731	
8.	Sep. 6	22,639	
9.	Oct. 2	22,547	
10.	July 17	22,472	

Five days out of the top ten days occurred during and after Labor Day weekend.

2011 Fee Free Dates:

- This year's Fee Free Days are: (January 15-17), National Park Week (April 16-24), the first day of summer (June 21), National Public Lands Day (September 24), and the weekend of Veterans Day (November 11-13).

Mountain Pine Beetle Mitigation:

- Focus is on mitigating hazard trees and hazard fuels in visitor use areas (roadways, trailheads, campsites, buildings, etc.). From 2010 through this spring in 2011 we have cut approximately 85,000 hazard trees in front country areas of the park. Hazard tree removal projects in 2010 required temporary site closures or traffic delays to ensure visitor safety and efficient project completion. Hazard tree removal operations will continue along road corridors on the west side of the park through most of May. For more information on project dates, possible temporary and short term travel closures for public safety, and locations of hazard tree work, please refer to the Rocky Mountain National Park website and follow the links to the forest health page (www.nps.gov/romo).

- Glacier Basin Campground: For the 2011 season, the campground will have roughly half of the campsites available through the National Reservation System with the rest available through a first-come, first-serve system. The first-come, first-serve sites are the sites with

remaining stands of trees. By not currently taking reservations on these sites, park staff can manage and have the flexibility to address hazardous trees in the remaining stands as needed in order to preserve some of the remaining stands. Park staff will continue to monitor and treat the area for beetle infestations. For the 2012 season, the campground will be completely closed due to its proximity to the construction along the lower Bear Lake Road (Bear Lake Road Phase II). Aspenglen and Moraine Park Campgrounds are also on the reservation system.

- Other Beetle Mitigation Work: Work continues beyond the trailheads to mitigate hazard trees at designated campsites for backcountry/wilderness users. The park will continue to carefully and selectively use an insecticide, Carbaryl, to protect high value trees on both the east and west sides of the park. When sprayed on the trunk of a pine tree, Carbaryl acts as a repellant to keep the bark beetles from attacking the tree. High value trees are in front country locations such as campgrounds, historic landscapes, picnic areas, and visitor centers. They are important for shade, visual screening, cultural significance, and outstanding visual quality. To date, we have observed nearly 100 percent success from spraying. These site specific treatments will continue until the bark beetle outbreak has subsided.

- Research: A USGS scientist will study the effects of mountain pine beetle induced tree mortality on water quality. The objectives will be to 1) quantify impacts by analyzing nitrogen, carbon, and phosphorus in streams and lakes relative to the timing and intensity of beetle induced tree mortality, 2) evaluate effects of management actions, including tree removal and insecticide spraying, and 3) use a hydrobiogeochemical model to simulate nitrogen, carbon, and phosphorus dynamics, predict future trends of their concentrations in surface water, and evaluate the relative importance of atmospheric nitrogen versus beetle induced nitrogen on surface water chemistry.

- Pile burning: This winter, fire staff have burned approximately 300 slash piles along road corridors and other areas on the west side of the park (Columbine Boundary, Betty Dick, Timber Creek amphitheater, sections of CR 491, sections of CR 49 and sections of Trail ridge road in the Kawuneeche Visitor Center (KVC) area) and in select areas on the east side of the park near Lily Lake, Wild Basin, and Leifer Cabin. The material that was burned came from beetle killed trees and hazard fuel reduction projects. In early spring, additional piles will likely be burned in the following areas: Moraine Park Administration Site and Old Fall River Road.

- Prescribed Burning: The primary goal of planned prescribed burns is to reduce the threat of wildland fire to adjacent communities and park infrastructure. Using management-ignited fires can reduce or eliminate hazard fuels that can contribute to wildfires. This spring and summer we intend to conduct broadcast burns in the following locations: South Lateral Moraine, North Lateral Moraine, and northeast of Deer Ridge Junction. The primary purpose of planned, prescribed burns is to reduce the threat that wildland fires pose to life and property by reducing the available fuel load. Burning is dependent on favorable fuel moisture, smoke dispersion, and weather so the frequency, timing, and volume of burning can range from 12 days of ignitions spread out over the course of 4 weeks, to as little as two days of ignition over the course of one week.

- Recreation Fee Funds Authorized: From October 2008 through September 2013, approximately $4.8 million has been made available from the park's Recreation Fee accounts to mitigate hazard trees in the park. Through mitigation, visitor access will be maintained, visitor and employee safety enhanced, and park capital assets protected.

Road Construction:

- Trail Ridge Road 2010 Resurfacing: During the summer of 2010, a major resurfacing project was completed from the Colorado River Trailhead to Rainbow Curve (the switchbacks and the alpine section). The project involved the resurfacing of all major overlook parking areas, pull offs and the parking lot at Alpine Visitor Center

- Bear Lake Road Reconstruction Phase II: Road construction on the remaining 5.1 miles of Bear Lake Road could start as early as November 2011, but not later than April 2012. Two years will be allowed for the completion of the work. Visitors can expect 20 minute delays at any one location with a total of 40 minute delays through the whole project. Night closures will be allowed for construction of retaining walls 10PM - 6AM (8PM - 6AM in winter). Weekend work will be allowed except on holiday weekends. Due to the night closures, the Glacier Basin Campground will be closed for the summer of 2012. The length of the initial project is 2.6 miles and the work will take place from the Park and Ride to the Big Thompson River bridge. An additional 2.5 miles from the bridge to the intersection with Trail Ridge Road may also be accomplished if funding is available.

Other Projects:

- Picnic Table Replacement: Sustainable concrete picnic tables will be installed at Aspenglen Campground, D loop in Glacier Basin Campground, at picnic sites in the Wild Basin corridor, and in Moraine Park/Cub Lake corridor.

- Utility Line Replacement: 50+ year old sewer lines will be replaced in the headquarters area and in the Glacier Basin Campground. Water distribution lines will be replaced in the Aspenglen Campground.

- Beaver Meadows Visitors Center Rehab: Also known as park HQ, located on Highway 36 near Estes Park, will have the public areas closed starting after Columbus Day in October 2011, to install an ADA accessible elevator (lift) between floors, remodel bathrooms, and make other improvements to the 44 year old building. The building is a National Historic Landmark and will continue to house park offices during the rehabilitation. A temporary building will be placed in the parking lot to serve as a reception area, information station for visitors, and offer educational materials for sale. Work should be completed and the lobby reopen to the public by May 1, 2012.

Elk & Vegetation Management Plan:

- Over the course of the next few years expect to see additional fencing constructed and limited culling for population control. The following activities have taken place or are planned on the east side of the park:

    - Elk exclosures constructed to restore aspen and willow communities:
        - 2008 approximately 70 acres of willow protected, 2009 ~44 acres of aspen protected, 2010 ~75 acres of aspen and willow protected.
        - In 2011 plans call for protecting ~16 acres of willow in the Kawuneeche Valley on the west side and a couple of small (less than 3 acres) aspen stands on the east side.
        - The fences are temporary and will come down when restoration goals are met; each site will be evaluated every 5 years.

    - Culling for CWD and fertility control research – year 3 (effectiveness results to be shared later in 2011; female elk culled undergo a full necropsy):
        - 20 female elk were culled for research (of 33 total) during the winter of 08/09.
        - 25 female elk (of 48 total) were culled winter of 09/10.
        - 34 female elk (of 50 total) were culled winter of 10/11.

    - Limited culling of female elk for population control:
        - 13 female elk were culled (of 33 total) during the winter of 08/09.
        - 23 female elk were culled winter of 09/10 (of 48 total).
        - 16 elk culled winter 10/11 (of 50 total).
        - Meat was tested for CWD.
        - In 10/11, 14 carcasses were donated to the public by CDOW through a lottery system.
        - One tested CWD-detected and was used to support the CDOW mountain lion research project.

Permits and Fees:

- Entrance Fees: No Changes in 2011.

    - Annual Pass: The RMNP annual pass remains $40 for 2011.

    - Daily/7-day Pass: Remains $20 in 2011.

    - Joint Pass with Arapahoe National Recreation Area: Remains at $50 in 2011.

- Overnight Backcountry Use Permits: Remains at $20.

- Commuter Permit: In order to improve the administration of a long-standing policy allowing local area residents to pass through the park for commuting purposes at no charge, the park is planning to modernize and streamline the practice that will continue to facilitate non-recreational travel through the park (Trail Ridge Road) for local area residents. Referred to previously as the "Tri-County Waiver," now referred to as the "Commuter Permit," this privilege is currently applicable to residents (or property owners) within Larimer, Boulder and Grand counties who reside within 50 miles of a park entrance. Federal regulations do not allow fee waivers for commuting purposes. In order to accommodate local residents who use Trail Ridge Road for non-recreational purposes the park is implementing the Commuter Permit. This new process will also help minimize misuse. There will be an administrative fee for the permit of $20 and the permits will be valid for three years. Eligible residents will be able to apply for these permits on-line. This new process should enable permit holders to pass more quickly through the entrance stations.

2010 Visitor Shuttle Operations:

- Visitor Transportation System: The shuttle system continued to see increased ridership in 2010. The hiker shuttle, which originates at the Estes Park Visitors Center, was up by 14% last year, while the Bear Lake route showed an increase of 17% over 2009. In response to heavy weekend visitation occurring during the fall season, shuttle bus services again were extended into fall 2010 on an as-needed and weather-permitting basis. In 2011 the park intends to participate in a pilot Intelligent Transportation Systems (ITS) project with the Town of Estes Park. The project will encourage visitors to both the park and town to utilize the town's new satellite park facility along HWY 36 and use the shuttle systems that serve the town and the park as an alternative transportation means.

Trails:

- Continental Divide Trail: In the fall of 2010 a new one mile segment of trail was completed within the park to connect the Bowen-Baker area to the Onahu Trail. This included the construction of a 31 foot multi-use trail bridge. The new Continental Divide Trail route will be available for public use within the National Forest and the National Park this summer.

- Alpine Ridge Trail at Alpine Visitor Center: The installation of rock/log checks and improved and stable tread material was completed in the summer of 2010. A sustainable step system will be installed during the 2011 work seasons. The trail will reopen in 2012.

- Lake Haiyaha: The rehab of the Lake Haiyaha loop trail continued in 2010 with an anticipated completion date of fall 2011. This project is being funded by the Rocky Mountain Nature Association.

- Longs Peak Trail: The rehab of the upper section of the Longs Peak trail continued in 2010. This work has been ongoing since 2008 with the anticipated completion in the fall of 2011. This project is funded by recreation fees.

Grand Ditch:

- Restoration Activities: The park is preparing an Environmental Impact Statement to guide the restoration of the 2003 breach of the Grand Ditch. Parsons was awarded the contract to assist with writing the EIS and public scoping meetings have occurred in June and October of 2010. Restoration will focus on restoring healthy trajectories for both hydrological function (e.g. surface and groundwater dynamics) and ecological community evolution (e.g. riparian, wetland, and upland habitat). Five alternatives are currently being considered that include combinations of the following along a gradient from no action to intense manipulation: Allowing natural (passive) restoration to occur where appropriate; stabilizing steep, unstable slopes with an engineered solution; removing deposited sediment and redistributing it through the impacted area or elsewhere; removing dead timber from the impacted area and/or using it in the restoration process; regarding and recontouring areas to restore appropriate morphology and function; native plant restoration with appropriate, locally gathered plant materials; may require the use of motorized equipment such as chainsaws, heavy lift helicopters, and earthmoving equipment; may require temporary fencing to protect native plant restoration areas. A draft of the EIS will be completed during the winter of 2011/2012.

Highway 7 Recreation Improvements Plan:

- The plan is a partnership between Rocky Mountain National Park and the Boulder Ranger District of the U.S. Forest Service. Based on input received from the public and our inability to control parking along the county road leading to the Longs Peak Trailhead, the redesign of the Longs Peak Trailhead is on hold until new alternatives for managing visitor use can be developed and public scoping has been conducted. A Finding of No Significant Impact (FONSI) is being prepared for the proposed improvements at Lily Lake.

Aircraft Arrival and Departure Procedures for Denver Area Airports:

- The Federal Aviation Administration (FAA) is preparing an Environmental Assessment (EA) to evaluate the potential impacts of new air traffic procedures for three metro Denver airports, including Denver International Airport (DIA). A major air traffic route crosses over the park and accommodates over 80 aircraft per day on approach to Denver from the west and northwest. Current air traffic procedures create noise impacts as pilots deploy speed brakes mounted on the wings and adjust throttle settings to match required altitude and airspeed on the approach over the park. The new procedures would use satellite-based navigation and a Flight Management System (FMS) onboard all modern aircraft to fly a narrow designated route and to descend on an optimal vertical path to the runway. This Optimized Profile Descent (OPD), managed by the onboard FMS, would eliminate the use of speed brakes, which will reduce noise and conserve fuel. Park staff and the NPS Natural Sounds Program staff have been participating in public scoping for the EA. As a result, the study area for the EA has been expanded to include the entire park, the park has an

opportunity to define the appropriate location for the Denver approach flight path over the park, and baseline noise data will be collected and noise modeling will be performed for the preferred flight path.

Web Cams:

- We have a webcam pointed at Longs Peak from headquarters, another at the Continental Divide from Glacier Basin Campground and one on the west side looking up the Kawuneeche (Colorado River) Valley. Go to nps.gov/romo and open Photos and Multimedia tab and then Webcams.

New Technology:

- The park continues to explore ways to utilize new technology to improve opportunities to stay connected with the park. Our website (nps.gov/romo) has nearly 2400 pages and is the most popular way for our visitors to gather park information. You may follow us on Twitter at RMNPOfficial or on Facebook at Rocky Mountain National Park.

Visitor Surveys:

- Last summer, in cooperation with the University of Idaho, a survey of park visitors was conducted the week of July 18. Almost 1100 surveys were handed out randomly to visitors at three entrance stations. This is the first major visitor survey in the park since 1995 and will hopefully show current use, trends, concerns, and demographics. Economic impact information will be collected as well. Preliminary results of the survey have been presented to the park for review and final results should be available by early summer. In addition, during the week of February 19, a survey of winter visitors was conducted when over 800 surveys were handed out at three entrance stations over nine days, including Presidents Day. Results are expected in late summer.

Community Fire Assistance

(to assist in preparing Community Wildfire Protection Plans and conduct educational activities)

FY03 -	Estes Park: $25,000		
FY04 -	Estes Park: $15,000		
FY05 - Allenspark: $4,000	Estes Park: $12,000		Grand Lake: $16,000
FY06 - Allenspark: $8,000	Estes Park: $15,000		Grand Lake: $15,000
FY07 - Allenspark: $2,000*	Estes Park: $2,000	Glen Haven: $10,000	Grand Lake: $4,000
FY08 - Allenspark: $10,000	Estes Park: $10,000		
FY09 – no funds awarded			
FY10 - Allenspark: $10,000	Estes Park: $5,000		

*Allenspark was awarded $2,000 in FY07, but did not obligate funds

Rural Fire Assistance

(training and equipment)

FY01 - Allenspark: $6,250	Estes Park: $10,000	Glen Haven: $6,250	Grand Lake: $6,250
FY02 -	Estes Park: $9,000	Glen Haven: $9,000	
FY03 - Allenspark: $4,000	Estes Park: $14,000	Glen Haven: $9,000	Grand Lake: $12,000
FY04 - Allenspark: $3,500	Estes Park: $7,000	Glen Haven: $11,000	Grand Lake: $4,400
FY05 - Allenspark: $5,000	Estes Park: $8,000	Glen Haven: $5,000	Grand Lake: $12,000
FY06 -	Estes Park: $7,500	Glen Haven: $10,400	Grand Lake: $11,700
FY07 - no funds awarded			
FY08 - Allenspark: $9,700	Estes Park: $9,028	Glen Haven: $5,000	Grand Lake: $3,816
FY09 -	Estes Park: $10,900	Glen Haven: $6,000	Grand Lake: $8,400
FY10 - Allenspark: $9,000	Estes Park: $7,000	Glen Haven: $3,800	Grand Lake: $7,200

A total of $163,000 in Community Assistance funds has been awarded FY03-FY10. A total of $251,094 in Rural Fire Assistance funds has been awarded FY01- FY10. A grand total of $414,094 has been awarded through both programs FY01-FY010.

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

PLEDGE OF ALLEGIANCE

ROLL CALL — Roll was called and the following responded: McEwen, Solt, McKean, Johnson, Klassen, Rice, Heckel, Shaffer and Gutierrez.

1. CITY MANAGER

Discussion and consideration of any needed action concerning the ACE Manufacturing and Innovation Park

City Manager Cahill gave an update on the contract negotiations regarding the Agilent property. Due diligence period expires on May 31, 2011 and the closing date is June 23, 2011. The City is in a negotiation period with CAMT. No Council action was required.

CITY COUNCIL NEW BUSINESS

ADJOURNMENT — Having no further business to come before Council, the April 26, 2011 Special Meeting was adjourned at 6:41p.m.

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:41 p.m. on the above date. Councilors present: Gutierrez, Solt, Johnson, Klassen, McEwen, Rice, McKean, Heckel and Shaffer. City Manager, Bill Cahill was also present.

1. CITY MANAGER

North Front Range Metropolitan Planning Organization's ("NFRMPO") 2035 Regional Transportation Plan Update

Regional Transportation Planning Director for NFRMPO, Suzette Mallette presented an update on the 2035 Regional Transportation Plan. The North Front Range MPO is a federally designated Metropolitan Planning Organization that is responsible for long range regional transportation planning. One of the requirements of an MPO is the creation of a comprehensive long range regional transportation plan (RTP). By meeting federal requirements, it creates the opportunity for federal transportation funds to be programmed to projects in the region. Mrs. Mallet reviewed the plan's effects on Loveland and the upcoming open house scheduled for public comment. Council thanked Ms. Mallet for the presentation.

2. CITY MANAGER'S OFFICE

Capital Expansion Fee Review – Project Report

Executive Fiscal Advisor, Alan Krcmarik presented this item to Council. The presentation reviewed comments provided by representatives of the development community and the Boards and Commissions regarding the City's Capital Expansion Fees (CEF) program. There was not a consensus on the direction the City should take. Staff identified a possible change in the CEF fee structure, which would be relatively small changes in more equitably charging residential construction for impacts. Capital Expansion Fees are an important funding source for capital improvements for several City services. For the 2011 to 2015 period, over $16 million is anticipated to be collected for projects. For the ten year period, the total is nearly $29 million. Council discussion concerned the balance of collecting the fees and the effect on the future buildout of Loveland and the current economic climate for local companies building in Loveland. Council directed staff to place on an upcoming agenda the consideration of extending the CEF reduction of 8.62% for 2011 and wait to perform a full evaluation of CEF's as part of the budget process scheduled in 2012.

The study session was adjourned at 8:59 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

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

PLEDGE OF ALLEGIANCE

ROLL CALL — Roll was called and the following responded: Gutierrez, McKean, Klassen, Heckel, Rice, McEwen, Johnson, Shaffer and Solt. .

PROCLAMATION — Councilor Rice read a proclamation declaring May 1 - 7, 2011, as "Municipal Clerks Week". The proclamation was received by Loveland City Clerk Teresa Andrews.

PROCLAMATION

WHEREAS The Office of the Municipal Clerk, a time honored and vital part of local government exists throughout the world, and

WHEREAS The Office of the Municipal Clerk is the oldest among public servants, and

WHEREAS The Office of the Municipal Clerk provides the professional link between the citizens, the local governing bodies and agencies of government at other levels, and

WHEREAS Municipal Clerks have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all.

WHEREAS The Municipal Clerk serves as the information center on functions of local government and community.

WHEREAS Municipal Clerks continually strive to improve the administration of the affairs of the Office of the Municipal Clerk through participation in education programs, seminars, workshops and the annual meetings of their state, province, county and international professional organizations.

WHEREAS It is most appropriate that we recognize the accomplishments of the Office of the Municipal Clerk.

NOW, THEREFORE, we the City Council of Loveland, do hereby recognize the week of May 1 through May 7, 2011, as

MUNICIPAL CLERKS WEEK

and further extend appreciation to our Municipal Clerk Team and to all Municipal Clerks for the vital services they perform and their exemplary dedication to the communities they represent.

Signed this 3rd day of May, 2011
Cecil A. Gutierrez
Mayor

PROCLAMATION — Councilor McKean read a proclamation declaring May 15 – 21, 2011 as "National Public Works Week". The proclamation was received by Public Works Director Keith Reester. Keith also mentioned the 8th Annual Public Works Day celebration will be Tuesday, May 10th at the Fairgrounds Park, 700 S. Railroad Avenue from 9:00 am - 1:00 pm.

PROCLAMATION

WHEREAS, public works services provided in our community are an integral part of our citizen's everyday lives; and

WHEREAS, having the support of an understanding and informed citizenry is vital to the efficient operations of the various public works systems and programs such as stormwater, streets, transit, solid waste, fleet, development review, traffic, facilities and public buildings; and

WHEREAS, the health and safety and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities and services, as well as their planning, design, construction, is vitally dependent upon the efforts and skill of public works officials; and

WHEREAS, this year's observance of Public Works Week celebrates the theme, "Public Works: Serving you and your community", recognizing the valuable work carried out by our highly capable and reliable public works professionals, engineers and administrators and acknowledging their contributions to an improved quality of life in this community.

NOW, THEREFORE, we, the City Council of the City of Loveland do hereby proclaim May 15-21, 2011 as

NATIONAL PUBLIC WORKS WEEK

in the City of Loveland, and we call upon all citizens to acquaint themselves with the issues involved in providing our public works and to recognize the contributions which public works officials make every day to our health, safety, comfort and quality of life.
Signed this 3rd day of May, 2011
Cecil A. Gutierrez, Mayor

PROCLAMATION

Councilor Johnson read a proclamation declaring the May, 2011 as "Archeology & Historic Preservation Month". The proclamation was received by Robin Ericson, Chair of the Historic Preservation Commission. Eric Campbell from Home Depot presented plaques to John and Peggy Maslik, 544 East 4th Street, the Wilson House and to Pamela Hagbarth, 901 North Jefferson Avenue, the Lloyd House.

PROCLAMATION

WHEREAS, historic preservation helps provide a deeper understanding of the diversity of our uniquely local and American heritage; and

WHEREAS, historic preservation is an effective tool for revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability of communities across America; and

WHEREAS, Colorado Archeology & Historic Preservation Month 2011 provides an opportunity for citizens of all ages and from all walks of life to make the connection between historic preservation and the aesthetic, environmental and economic well-being of their communities; and

WHEREAS, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and

WHEREAS, "Celebrating America's Treasures" is the theme for Archeology & Historic Preservation Month 2011; and

WHEREAS, fifteen heritage-related events, ranging from farm and food activities, vintage baseball, a market and celebration of our agricultural heritage, presentations, a historic homes tour and a bicycle tour, will be held by the Loveland community in May 2011 and are listed on the City's website; and

NOW, THEREFORE, we, the City Council of the City of Loveland, do hereby proclaim May 2011, as

ARCHEOLOGY & HISTORIC PRESERVATION MONTH

and call upon the people of Loveland to recognize and participate in this special observance. In recognition of Archeology & Historic Preservation Month, we would like to honor all the buildings and sites in Loveland that are on the National Register of Historic Places, Colorado State Register of Historic Places, and Loveland Register of Historic Places.
Signed this 3rd day of May, 2011
Cecil A. Gutierrez, Mayor

PROCLAMATION

Mayor Gutierrez read a proclamation recognizing Ralph Mullinix's outstanding service to the City of Loveland. Director of Water & Power Ralph Mullinix accepted the proclamation.

PROCLAMATION

WHEREAS, in December 1972, Ralph K. Mullinix became a City of Loveland employee beginning at the City's water treatment plant as an Equipment Operator II; and

WHEREAS, in 1977 after serving almost five years Ralph was promoted to the position of Water and Wastewater Department Director; and

WHEREAS, from May 1990 to January 1991, Ralph served as Interim Fire Operations Manager; and

WHEREAS, from December 1992 to August 1993 Ralph served as Interim City Manager; and

WHEREAS, in December 1993 Ralph additionally became director of the City's electric utility when the Water/Wastewater and Light & Power Departments merged; and

WHEREAS, as director of these utilities Ralph provided guidance and supported the members of the Loveland Water Board, the Loveland Utility Advisory Board, and the Loveland Utilities Commission; and

WHEREAS, Ralph has taken a lead role in many important projects and processes on behalf of the utilities, the City organization, and the community through Loveland's greatest period of population and economic growth, such as development of the Water/Wastewater Financial Master Plan; the formation of the stormwater utility; economic development; development of the City's Raw Water Master Plan and Water Conservation Plan; construction of the initial Green Ridge

Glade Reservoir and the expansion of Green Ridge Glade Reservoir, and other enhancements to the City's raw water supply; representation of the City's interests on the Platte River Power Authority Board for seventeen years; service on the McKee Hospital Board and on the High Plains Arts Council; and

WHEREAS, Ralph's loyalty, dedication, and service to the City of Loveland throughout his career has been of the highest level and quality; and

WHEREAS, because of Ralph's wisdom, environmental stewardship, insight and cost-saving efforts for Loveland, the citizens of Loveland have been well served; and

WHEREAS, Ralph has used his outstanding leadership skills for the betterment of the community, to wit as Chairman of the Platte River Power Authority Board of Directors for thirteen years, on the McKee Medical Center Board of Directors for thirteen years, and as a member and Chairman of the High Plains Art Council Board of Directors; and

WHEREAS, Ralph now ends his career at the City of Loveland, leaving to visit Central America, the Caribbean, the Balkans and other interesting locales both far and near; to spend quality time navigating his newly remodeled kitchen and tend to his Xeriscape garden; and to go angling, hunting or cycling with his family and many friends.

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

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

Section 2. This Proclamation shall go into effect as of the date of its adoption.

SIGNED this 3rd day of May, 2011.
Cecil A. Gutierrez
Mayor

PROCEDURAL INFORMATION

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

CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to speak on any of the items or public hearings listed on the Consent Agenda. Councilor Johnson moved to approve the Consent Agenda. The motion was seconded by Councilor Klassen and a roll call vote was taken with all councilors present voting in favor thereof.

1. MINUTES

a) Minutes for the April 12, 2011 special meeting were approved.
b) Minutes for the April 12, 2011 study session were approved.
c) Minutes for the April 19, 2011 regular meeting were approved.

2. DEVELOPMENT SERVICES

Rezone of Property – 1629 West 8th Street
Ordinance #5572

Quasi-judicial Action: "AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS

FOR CERTAIN PROPERTY LOCATED IN THE NORTH TAFT AVENUE FIRST ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO" was approved and ordered published on second reading.

3. DEVELOPMENT SERVICES

Temporary Disconnect – Myers Group Partnership #949 Second Subdivision

Ordinance #5573 Legislative Action: "AN ORDINANCE APPROVING THE DISCONNECTION OF A CERTAIN PARCEL IN THE MYERS GROUP PARTNERSHIP # 949 ADDITION FROM THE CITY OF LOVELAND BOUNDARIES" was approved and ordered published on second reading.

4. DEVELOPMENT SERVICES

Historic Landmark Designation – 1005 North Garfield Avenue

Ordinance #5574 Legislative Action: "AN ORDINANCE OF THE CITY COUNCIL DESIGNATING AS A HISTORIC LANDMARK THE REMINGTON HOUSE LOCATED AT 1005 NORTH GARFIELD AVENUE IN LOVELAND, COLORADO" was approved and ordered published on second reading.

5. FINANCE

Reappropriation of 2010 Funds (General Fund & Airport)

a) Ordinance #5575 Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET TO REAPPROPRIATE REMAINING FUNDS FOR PROJECTS APPROVED BUT NOT COMPLETED IN 2010 AND NEW PROJECTS" was approved and ordered published on second reading.

b) Ordinance #5576 Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 FT. COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET TO APPROPRIATE FUNDS FOR PROJECTS APPROVED BUT NOT COMPLETED IN 2010 AND FOR COMPENSATION TO THE PUBLIC WORKS DIRECTOR FOR EXTRA DUTIES" was approved and ordered published on second reading.

At 6:45 p.m. City Council adjourned and reconvened as the Board of Commissioners for the Loveland Urban Renewal Authority (LURA)

6. FINANCE

Reappropriation of 2010 Funds

Ordinance #5577 Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 LOVELAND URBAN RENEWAL AUTHORITY BUDGET FOR THE FACADE GRANT PROGRAM" was approved and ordered published on second reading.

At 6:45 p.m. the Board of Commissioners for the Loveland Urban Renewal Authority (LURA) adjourned and reconvened as City Council.

7. FINANCE

Employee Merit-Based Recognition Program

a) Ordinance #5578 Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR THE EMPLOYEE MERIT-BASED RECOGNITION PROGRAM" was approved and ordered published on second reading.

b) Ordinance #5579 — Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 FT. COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET FOR THE EMPLOYEE MERIT-BASED RECOGNITION PROGRAM" was approved and ordered published on second reading.

a) Ordinance #5580 — Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 LOVELAND-LARIMER BUILDING AUTHORITY BUDGET FOR THE EMPLOYEE MERIT-BASED RECOGNITION PROGRAM" was approved and ordered published on second reading.

8. POLICE

Municipal Code Amendment - Panhandling

1ST Rdg Ord & P.H. — Legislative Action: A public hearing was held and "AN ORDINANCE AMENDING CITY CODE SECTION 9.30.030 CONCERNING PANHANDLING AND SOLICITATIONS ON OR NEAR PUBLIC STREETS AND HIGHWAYS" was approved and ordered published on first reading.

9. PUBLIC WORKS

Traffic Signal Installation Contract Award

Motion — Administrative Action: A motion awarding the 2011-2012 Traffic Signal Installation Contract to W.L. Contractors, Inc. in the amount of $1,196,635 and authorizing the City Manager to approve the contract was approved.

10. PUBLIC WORKS

Contract Amendment #2 – City Property N. Taft Avenue

1st Rdg Ord & P.H. — Administrative Action: A public hearing was held and "AN ORDINANCE APPROVING AMENDMENT NUMBER TWO TO CONTRACT TO BUY AND SELL CITY PROPERTY LOCATED AT 905, 915, 925, 933 AND 935 N. TAFT AVENUE" was approved and ordered published on first reading.

11. CITY CLERK

Motion — Administrative Action: A motion setting special meetings for Tuesday, May 10, 2011 and May 24, 2011 at 6:30 p.m. in the City Council Chambers 500 E. 3rd Street, Loveland, Colorado with the purpose being discussion and consideration of any necessary items and possibly holding an Executive Session concerning matters related to the ACE Manufacturing and Innovation Park was approved.

12. DEVELOPMENT SERVICES

Ordinance #5581 — Legislative Action: "AN ORDINANCE AMENDING TITLES 16 AND 18 OF THE LOVELAND MUNICIPAL CODE BY REVISING PROVISIONS OF TITLES 16 AND 18 WHICH RETAIN THE ZONING BOARD OF ADJUSTMENT HEARING OFFICER AND ENACTING AN NEW CHAPTER 18.80 REGARDING APPEAL PROVISIONS" was approved and ordered published on first reading.

END OF CONSENT AGENDA

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports — None

b) Business from Council

McKean — Councilor McKean stated there be a Ward III meeting on Monday, May 9th from 5:00 to 8:00 p.m. at the Life Spring Church at 743 S. Dotsero. Council directed staff to place the study session as the first order of business on the May 10th meeting agenda.

Klassen — Councilor Klassen stated he, Council Johnson and City Manager Cahill attended the elected officials' meeting in Greeley. Police Chief Hecker provided an update on the Law Day program.

Rice — Councilor Rice mentioned a Neighbor Heal Project. Staff willo look into this program and report back to Council at a future date.

Shaffer — Councilor Shaffer, Councilor McKean and Mayor Gutierrez attended Max Moree's Eagle Scout ceremony. As Councilors Shaffer and Heckel are not available to attend the next meeting of the North Front Range Metropolitan Planning Organization, a motion was made to designate Mayor Gutierrez as an alternate for the meeting. All councilors present voted in favor thereof.

Gutierrez — Mayor Gutierrez attended several events: the Clean Energy Expo 2011, the "Hero's Among Us" event, an event for the Community Kitchen, and an event benefitting Disabled Resources. The Mayor announced the Cinco de Mayo celebration will be Saturday, May 6, at the Civic Center, 500 East 3rd Street. Mayor Gutierrez mentioned he, Betsey Hale and City Manager Cahill spoke about the ACE Manufacturing and Innovation Park on the "Loveland's Talking" program on Channel 16.
Staff was directed to schedule an Executive Session on May 17, 2011 for Council to conduct a six month evaluation for City Manager, Bill Cahill.

c) City Manager Report — None

d) City Attorney Report — None

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

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

13. DEVELOPMENT SERVICES
TIMKA FIRST ADDITION ANNEXATION & ZONING

Legislative and Quasi-judicial Actions: City Planner Brian Burson introduced this item to Council. Public Works Director Ralph Mullinix and Development Services Director Greg George also spoke on the annexation. Jesse Maven, 2164 E. Hwy 402, spoke about road and sewer concerns. Ken Merritt also spoke about the annexation. The legislative action is the consideration of an ordinance, on second reading, annexing the Timka First Addition to the City of Loveland, subject to an annexation agreement. The quasi-judicial action is the consideration of an ordinance, on second reading, zoning the Timka First Addition as I-Developing Industrial District.

a) Ordinance #5582 — Councilor Johnson made a motion to approve and ordered published on second reading "AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS "TIMKA FIRST ADDITION" TO THE CITY OF LOVELAND" with amendments to Exhibit

A, specifically #9 and #13 which read as follows: #9…. In addition, before the issuance of any such building permit and/or approval of a site specific development application, the Developer shall provide documentation satisfactory to the City that the Developer will share equitably in the maintenance costs for any adjacent county right-of-way that provides access to the Property. #13…. In addition, before the City shall be required to issue any building permit and/or approve any site development application for any development on the Property, the Developer shall, if required by the City in its sole discretion, extend any City wastewater main necessary to serve the Property in accordance with the City's then existing standards or enter into an incomplete improvements agreement in accordance with the City's then existing Code provisions. Councilor Heckel seconded the motion and a roll call vote was taken with all Councilor present voting in favor thereof.

b) Ordinance #5583

Councilor Johnson made a motion to approve and ordered published on second reading "AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR " TIMKA FIRST ADDITION" TO THE CITY OF LOVELAND". Councilor Heckel seconded the motion and a roll call vote was taken with all Councilor present voting in favor thereof.

14. BUSINESS DEVELOPMENT

Amendment to 2010 Lodging Tax Grant – Chamber of Commerce

Staff removed this item from the agenda.

15. BUSINESS DEVELOPMENT

2011 Lodging Tax Grant Awards

Resolution #R-29-2011

Administrative Action: Business Development Manager Betsey Hale and Linda Huey, vice chair of the Community Marketing Commission, introduced this item to Council. This is an administrative action. The Resolution awards Lodging Tax Grants, approves the form of the Grant Contract and authorizes the City Manager to execute Grant contracts in the amounts and to the specified recipients. The action will award $60,000 in lodging tax revenues appropriated for expenditure in the 2011 City budget. Councilor Johnson made a motion to approve Resolution #R-29-2011 awarding 2011 Lodging Tax Grants and authorizing contracts for City of Loveland Lodging Tax Grant Funds. Councilor Heckel seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

RESOLUTION #R-29-2011

A RESOLUTION AWARDING 2011 LODGING TAX GRANTS AND AUTHORIZING CONTRACTS FOR CITY OF LOVELAND LODGING TAX GRANT FUNDS

WHEREAS, the City imposes a lodging tax pursuant to Chapter 3.24 of the Loveland Municipal Code (the "Lodging Tax") for the purpose of promoting tourism, conventions and related activities within the City by marketing the City and sponsoring community events, both in support of this purpose (the "Dedicated Purpose"); and

WHEREAS, the Community Marketing Commission ("Commission") serves as an advisory body to the City Council concerning the City's use of the revenues received from the Lodging Tax for the Dedicated Purpose pursuant to Section 2.60.075 of the Loveland Municipal Code; and

WHEREAS, applications for grants funded by the Lodging Tax (the "Lodging Tax Grants") have been received and evaluated by the Commission; and

WHEREAS, the Commission has made a recommendation to Council to: (i) fund 2011 Lodging Tax Grants in the amounts (the "Grants") to the recipients (the "Grant Recipients") for the projects (the "Projects") identified on Exhibit A attached hereto and incorporated herein by this reference; and (ii) authorize the City Manager to enter into a grant agreement with each Grant Recipient substantially in the form attached hereto as Exhibit B attached hereto and incorporated herein by this reference (the "Lodging Tax Grant Contract(s)"); and

WHEREAS, City Council desires to award Grants to the Grant Recipients for the Projects and authorize the City Manager to enter into the Lodging Tax Grant Contracts.

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

Section 1. That the City Council hereby finds that the Grants and Projects satisfy the requirements regarding use of the Lodging Tax for the Dedicated Purpose as set forth in Section 3.24.105 of the Loveland Municipal Code.

Section 2. That the Grants to the Grant Recipients in the Grant Amounts and for the Projects identified on Exhibit A attached hereto and incorporated herein by this reference, are hereby approved.

Section 3. That the form of the Lodging Tax Grant Contract attached hereto as Exhibit B and incorporated herein by this reference is hereby approved and the City Manager is hereby authorized to administer the terms and conditions of the Lodging Tax Grant Contract, with such advice of the Commission as may be requested.

Section 4. That the City Manager and the City Clerk are hereby authorized to execute the Lodging Tax Grant Contracts with the Grant Recipients for the Grant Amounts on behalf of the City. The City Manager, in consultation with the City Attorney, may amend the Lodging Tax Grant Contracts in form or substance as deemed necessary to effectuate the purposes of this Resolution or protect the interests of the City.

Section 5. That this Resolution shall go into effect as of the date and time of its adoption.

ADOPTED this 3rd day of May, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibits A and B are available in the City Clerk's Office

16. CITY MANAGER

City Council's Annual Advance Report

Motion

Administrative Action: City Manager Bill Cahill introduced this item to Council. This is an administrative action accepting and approving the Report of the City Council's Annual Advance held on February 5, 2011. Councilor Johnson moved to accept and approve the report of the City Council's Annual Advance held on February 5, 2011. Councilor Shaffer seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

17. FINANCE

March 2011 Finance Report

This is an information only item. No action is required. Assistant City Manager and Finance Director Renee Wheeler introduced this item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the three months ending March 31, 2011. Citywide Revenue (excluding internal transfers) of $44,327,134 is 101.7% of year to date (YTD) budget or $723,085 over the budget. Sales Tax collections year to date are 102.4% of the YTD budget or $192,827 over budget. Building Material Use Tax is 41.8% of YTD budget, or $254,766 under budget. The year to date Sales and Use Tax collections were 98.8% of YTD budget or $103,980 under YTD budget. When the combined sales and use tax for the current year are compared to 2010 the same period last year, they are lower by .3% or $24,279.

18. City Manager's Office

Investment Report March 2011

This is an information only item. No Council action is required. Executive Fiscal Advisor Alan Krcmarik introduced this item. The budget estimate for investment earnings for 2011 is $3,163,130. For the first quarter, the amount posted to the investment account is $877,669 including realized gains. The actual year-to-date earnings are higher than the year-to-date projection by $86,886. Based on the March monthly statement, the estimated annualized yield is about 2.03%, just over the annual target rate.

19. CITY MANAGER

Discussion and consideration of any needed action concerning the ACE Manufacturing and Innovation Park

No action was considered at this meeting. City Manager Cahill stated he received signed copies of the agreement with Agilent.

ADJOURNMENT

Having no further business to come before Council, the May 3, 2011 Regular Meeting was adjourned at 10:10 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

CITY OF LOVELAND
POLICE DEPARTMENT
810 East 10th Street • Loveland, Colorado 80537
(970) 667-2151 • FAX (970) 962-2917 • TDD (970) 962-2620

AGENDA ITEM: **2**

MEETING DATE: May 17, 2011

TO: City Council

FROM: Captain Rob McDaniel, Police Department

PRESENTER: Chief Luke Hecker

TITLE: Consideration on Second Reading: An Ordinance Amending City Code Section 9.30.030 Concerning Panhandling and Solicitations on or Near Public Streets and Highways

DESCRIPTION: This is a legislative action intended to further regulate the physical presence of panhandlers and solicitors on and around public roadways, which presence creates public safety issues for the panhandlers, solicitors and motorists. City Council unanimously approved the ordinance on first reading on May 3, 2011.

BUDGET IMPACT:

☐ Yes ☒ No

SUMMARY: Panhandling, as a speech-related activity, is protected by the First Amendment of the United States Constitution. However, the courts have recognized that reasonable time, manner and place restrictions may be imposed by state and local governments to regulate panhandling and similar activities. City Code Chapter 9.30 currently imposes such time, manner and place restrictions on panhandling in the City, including the provisions of Code Section 9.30.030 which regulate persons "who solicit employment, business, contributions, or sales of any kind" on or near city streets or highways.

The Loveland Police Department has received increasing complaints concerning panhandlers and solicitors conducting their activities on and around Eisenhower, U.S. 287 and other major arterial streets in the City. In responding to these complaints, it has been observed that Code Section 9.30.030, as currently written, is inadequate to prohibit some of the conduct complained of even though the conduct clearly constituted a public safety issue, not only for the panhandler or solicitor, but also for passing motorists. Therefore, it is being proposed that Code Section

9.30.030 be amended to clarify that it applies: (1) not only to solicitations but also to “panhandling,” as this word is defined in Section 9.30.010B.; and (2) to panhandlers and solicitors entering onto all traveled portions of the street or highway, including bike lanes, street gutters and vehicle parking areas.

It should be noted that in paragraph B. of Section 9.30.030 all panhandling and soliciting near an interstate or state highway system is prohibited because of the obvious safety concerns related to the high traffic volume and speed on these highways. However, as Section 9.30.030 now reads as amended by this Ordinance, persons holding signs on sidewalks to advertise nearby businesses would not be prohibited since they are not “directly” soliciting business from passing motorists. Also, panhandling and soliciting in or near all other City streets would continue to be permitted so long as it is conducted in compliance with the requirements of Section 9.30.030

LIST OF ATTACHMENTS:

Copy of the Ordinance

RECOMMENDED CITY COUNCIL ACTION:

Move to approve Ordinance on second reading.

REVIEWED BY CITY MANAGER:

FIRST READING: May 3, 2011

SECOND READING: May 17, 2011

ORDINANCE No. _____

AN ORDINANCE AMENDING CITY CODE SECTION 9.30.030 CONCERNING PANHANDLING AND SOLICITATIONS ON OR NEAR PUBLIC STREETS AND HIGHWAYS

WHEREAS, City Code Chapter 9.30 currently imposes time, manner and place restrictions on panhandling in the City; and

WHEREAS, included in this Chapter is Section 9.30.030 which regulates persons "who solicit employment, business, contributions, or sales of any kind" on or near City streets or highways; and

WHEREAS, the Loveland Police Department has received increasing complaints concerning panhandlers and solicitors conducting their activities on and around Eisenhower, U.S. 287 and other major arterial streets in the City; and

WHEREAS, in responding to these complaints, it has been observed that Code Section 9.30.030, as currently written, is inadequate to regulate some of the panhandling and soliciting conduct complained of even though the conduct clearly constituted a public safety issue, not only for the panhandler or solicitor, but also for passing motorists; and

WHEREAS, this Ordinance amends Code Section 9.30.030 to regulate such conduct; and

WHEREAS, the City Council hereby finds that the amendments in this Ordinance to Code Section 9.30.030 are necessary for the public's health, safety and welfare.

NOW, THEREFORE, BE I T O RDAINED B Y T HE CI TY CO UNCIL O F T HE CITY OF LOVELAND, COLORADO as follows:

Section 1. That Loveland Municipal Code Section 9.30.030 is hereby amended to read in full as follows:

9.30.030 Panhandling and Solicitations on or Near Public Streets and Highways

A. It shall be unlawful for any persons to panhandle or to solicit employment, business, contributions, or sales of any kind, or collect monies for the same, directly from the occupant of any vehicle traveling upon any public street or highway when:
   1. such panhandling, solicitation or collection involves the person performing the activity to enter onto the traveled portion of a public street or highway to complete the transaction, including, without limitation, entering onto bike lanes, street gutters or vehicle parking areas; or

2. such panhandling, solicitation or collection involves the person performing the activity being located upon any median area of the traveled portion of a public street or highway which separates traffic lanes for vehicular travel; or
3. the person performing the activity is located such that vehicles cannot move into a legal parking area to safely complete the transaction.

B. Notwithstanding the provisions of paragraph A. above, it shall be unlawful for any person to panhandle or to solicit or attempt to solicit employment, business, or contributions of any kind directly from the occupant of any vehicle on any highway included in the interstate or state highway system, including any entrance to or exit from such highway.

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

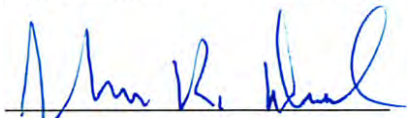
Dated this _____ day of _____, 2011.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:



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: **3**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Ken Cooper, Public Works – Facilities Management

PRESENTER: Ken Cooper

TITLE: AN ORDINANCE APPROVING AMENDMENT NUMBER TWO TO CONTRACT TO BUY AND SELL CITY PROPERTY LOCATED AT 905, 915, 925, 933 AND 935 N. TAFT AVENUE

DESCRIPTION: This is an administrative matter to consider an ordinance on second reading approving a contract extension to sell approximately 5.2 acres of City-owned property located at 905, 915, 925, 933, and 935 N. Taft Ave., which are parcels acquired for the Taft Ave. widening project. The original contract between the City and developer Joe Shrader was approved on December 1, 2009.

BUDGET IMPACT:

☒ Yes ☐ No

SUMMARY:

On May 3, 2011, City Council approved on first reading an extension to an existing contract between local developer Joe Shrader and the City. The contract is for the developer to purchase a 5.2 acre tract of land on the west site of N. Taft Ave, just north of 8th Street. The contract was originally approved by Council in December, 2009.

The original contract required the developer to obtain City approval of a final subdivision plat no later than January 1, 2012, with closing to occur 90 days after this approval. This contract extension, if approved, moves that date of required City approval to April 30, 2012, with closing to occur 90 days after City approval.

The addresses for the properties being purchased are 905, 915, 925, 933, and 935 N. Taft Ave. Together, they comprise about 5.2 acres and were purchased by the City for the Taft Ave.

widening project. The properties were annexed into the City of Loveland and the houses there were razed. During annexation, the 5.2 acre property was zoned R2 – Developing Two Family Residential.

In 2009, local developer Joe Shrader offered the City $2.10 per square foot to purchase the remaining 5.2 acres and planned to develop it into low-density residential housing. In total, the purchase offer was $473,846. Sale of the property and a contract was approved by City Council on December 1, 2009 by adoption of Ordinance 5477. Unfortunately, the buyer has experienced a number of issues which have slowed his ability to complete the final subdivision plat in a timely manner. These issues include:

- The buyer could not produce a project plan which met the original expectation for low-density housing, while also meeting the economic requirements needed for a lender to support such a plan. Instead, the buyer has been working with City Development Services to achieve higher density housing. A draft of that plan is attached.
- The 5.2 acre site is especially flat, requiring unexpected design and engineering costs to adequately drain the site upon construction.

The buyer is asking for the City to extend the terms of the contract, allowing the final plat to instead be approved no later than April 30, 2012. Closing would still occur 90 days after final plat approval.

If approved by Council, the monies collected from the real estate sale will be used to reimburse Public Works Capital Expansion Fees originally used to purchase the properties for the Taft Ave. widening project.

LIST OF ATTACHMENTS: Map Showing Location of Property
Ordinance Approving Amendment Number Two to Contract
Exhibit A to Ordinance – Original Contract with Amendment
Exhibit B to Ordinance – Amendment Number Two to Contract
Exhibit C – Draft of Higher-density Housing Plan for the Property

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RECOMMENDED CITY COUNCIL ACTION: Approve the Ordinance Approving Amendment Number Two to Contract to Buy and Sell City Property Located at 905, 915, 925, 933, and 935 N. Taft Ave.

REVIEWED BY CITY MANAGER:

MAP OF PROPERTY

Computer File Information					Sheet Revisions		
Creation Date: 04/18/08	Initials: SRA		R1				
Last Modification Date:	Initials:		R2				
Full Path: V:\Public Works\Civil Engineering\CIPs\EN0104 Taft (Big Thompson River to Gard Pl)\A-C-H\Wsn_Copper-Cals			R3				
Drawing File Name:	COL-Owned		R4				
Acad Ver:C3D 2008	Scale: 1" = 50'	Units: ENGLISH	R4				

CITY OF LOVELAND

PUBLIC WORKS ENGINEERING
410 East Fifth Street
Loveland, Colorado 80537
Phone: (970) 962-2627
FAX: (970) 962-2908
www.ci.loveland.co.us/PublicWorks/PWMain/PWHomePage.htm

As Constructed

No Revisions:

Revised:

Void:

TAFT AVENUE & W 8TH STREET
905-935 N. Taft Ave
PROPERTY EXHIBIT

Sheet Subset:

Subset Sheets:

Project No./Code: EN0104

Sheet Number: 1

FIRST READING **May 3, 2011**

SECOND READING **May 17, 2011**

ORDINANCE NO. _____

AN ORDINANCE APPROVING AMENDMENT NUMBER TWO TO CONTRACT TO BUY AND SELL CITY PROPERTY LOCATED AT 905, 915, 925, 933 AND 935 N. TAFT AVENUE

WHEREAS, between 2003 and 2004, the City purchased five parcels along the west side of N. Taft Avenue just north of 8th street, to allow the expansion of Taft Avenue; and

WHEREAS, approximately 5.2 acres of the five parcels purchased by the City were not required to complete the expansion of Taft Avenue and Council approved the sale of that 5.2 acres of real property located at 905, 915, 925, 933 and 935 N. Taft Avenue (the "Property") to Joseph Shrader ("Shrader") on December 1, 2009 pursuant to Ordinance 5477; and

WHEREAS, the City and Shrader executed that certain Contract to Buy and Sell Real Estate dated December 14, 2009 and Amendment Number One to Contract to Buy and Sell Real Estate dated December 20, 2010 attached hereto as **Exhibit A** and incorporated herein by this reference (collectively, the "Contract"), pursuant to which Shrader agreed to purchase the Property from the City; and

WHEREAS, pursuant to Section 25.1 of the Contract, Shrader's obligation to purchase the Property is contingent upon final approval by the City of a final subdivision plat no later than January 1, 2012; and

WHEREAS, Shrader has determined that higher density is necessary to support subdivision and development of the Property in an economically feasible manner and is pursing City approval of a higher density housing plan for the Property, and has therefore requested that the deadline for approval of a final subdivision plat for the Property set forth in in the Contract be extended to April 30, 2012, with closing to occur ninety (90) days after final approval, all as more fully set forth in Amendment Number Two to Buy and Sell Real Estate attached hereto as **Exhibit B** and incorporated herein by this reference ("Amendment Number Two").

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

Section 1. That Amendment Number Two, attached hereto as **Exhibit B** and incorporated herein by this reference, is hereby approved.

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

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

ADOPTED this 17th day of May, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt

Deputy City Attorney

EXHIBIT A

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS1-8-07) (Mandatory 1-08)

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

CONTRACT TO BUY AND SELL REAL ESTATE (ALL TYPES OF PROPERTIES) with Closing Instructions

Date: , 2009

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

2. DEFINED TERMS.

2.1. Buyer. Buyer, Joseph Shrader, or assigns, will take title to the real property described below as ☐ **Joint Tenants** ☐ **Tenants In Common** ☑ **Other** to be determined.

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

See Exhibit A attached hereto

known as No. 905, 915, 925, 935, 933 N. Taft Avenue (Street Address) Loveland (City) CO (State) 80537 (Zip),

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

2.3. Dates and Deadlines.

Item No.	Reference	Event	Date or Deadline
1	§ 4.2.1	Alternative Earnest Money Deadline	10 days after approval under Section 25.1
2	§ 5.1	Loan Application Deadline	N/A
3	§ 5.2	Loan Conditions Deadline	N/A
4	§ 5.3	Buyer's Credit Information Deadline	N/A
5	§ 5.3	Disapproval of Buyer's Credit Information Deadline	N/A
6	§ 5.4	Existing Loan Documents Deadline	N/A
7	§ 5.4	Existing Loan Documents Objection Deadline	N/A
8	§ 5.4	Loan Transfer Approval Deadline	N/A
9	§ 6.2.2	Appraisal Deadline	N/A
10	§ 7.1	Title Deadline	December 15, 2009
11	§ 8.1	Title Objection Deadline	15 days after title deadline
12	§ 7.3	Survey Deadline	N/A
13	§ 8.3.2	Survey Objection Deadline	N/A
14	§ 7.2	Document Request Deadline	5 days after title deadline
15	§ 7.4.4	CIC Documents Deadline	N/A
16	§ 7.4.5	CIC Documents Objection Deadline	N/A
17	§ 8.2	Off-Record Matters Deadline	December 15, 2009
18	§ 8.2	Off-Record Matters Objection Deadline	December 30, 2009
19	§ 8.6	Right of First Refusal Deadline	N/A
20	§ 10.1	Seller's Property Disclosure Deadline	N/A
21	§ 10.2	Inspection Objection Deadline	N/A
22	§ 10.3	Inspection Resolution Deadline	N/A
23	§ 10.5	Property Insurance Objection Deadline	N/A
24	§ 12	**Closing Date**	See 25.2
25	§ 17	Possession Date	Same as closing date
26	§ 17	Possession Time	5:00 p.m. MDT
27	§ 31	**Acceptance Deadline Date**	
28	§ 31	**Acceptance Deadline Time**	Noon MDT

2.4. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" or the word "Deleted" means not applicable and when inserted on any line in **Dates and Deadlines** (§ 2.3), means that the corresponding provision of the Contract to which reference is made is deleted. The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

3. INCLUSIONS AND EXCLUSIONS.

3.1. Inclusions. The Purchase Price includes the following items (Inclusions):

3.1.1. Fixtures. If attached to the Property on the date of this Contract, lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV antennas, inside telephone wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers including _____ remote controls; and ☐ N/A.

3.1.2. ~~Personal Property.~~ ~~The following are included if on the Property whether attached or not on the date of this Contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys. If checked, the following are included:~~ ☐ ~~Water Softeners~~ ☐ ~~Smoke/Fire Detectors~~ ☐ ~~Security Systems~~ ☐ ~~Satellite Systems (including satellite dishes).~~

3.1.3. Other Inclusions.

None

The Personal Property to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A. Conveyance shall be by bill of sale or other applicable legal instrument.

3.1.4. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows:

N/A

The Trade Fixtures to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A. Conveyance shall be by bill of sale or other applicable legal instrument.

3.1.5. Parking and Storage Facilities. ☐ **Use Only** ☐ **Ownership** of the following parking facilities: _____; and ☐ **Use Only** ☐ **Ownership** of the following storage facilities: N/A.

3.1.6. Water Rights. The following legally described water rights:

None

Any water rights shall be conveyed by ☐ N/A **Deed** ☐ **Other** applicable legal instrument. If well rights are to be transferred to Buyer, Seller agrees to supply the required information to Buyer for Buyer to submit, and also, if required, a Change in Ownership form as promulgated by the Colorado State Engineer's office. The Well Permit # is N/A.

3.1.7. Growing Crops. With respect to growing crops, Seller and Buyer agree as follows:

N/A

3.2. Exclusions. The following items are excluded: N/A.

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	$ 473,846.00	[redacted]
2	§ 4.2	Earnest Money	[redacted]	$ 5,000.00
3	§ 4.5	New Loan	[redacted]	
4	§ 4.6	Assumption Balance	[redacted]	
5	§ 4.7	Seller or Private Financing	[redacted]	
6				
7				
8	§ 4.3	Cash at Closing	[redacted]	468,846.00
9		**TOTAL**	$ 473,846.00	$ 473,846.00

4.2. Earnest Money. The Earnest Money set forth in this section, in the form of check, is part payment of the Purchase Price and shall be payable to and held by City of Loveland (Earnest Money Holder), ~~in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit shall be tendered with this Contract unless the parties mutually agree to an Alternative Earnest Money Deadline (§ 2.3) for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction shall be transferred to such fund.~~

4.2.1. Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the time of tender of the Contract is as set forth as the **Alternative Earnest Money Deadline** (§ 2.3).

4.3. Cash at Closing. All amounts paid by Buyer at Closing, including Cash at Closing, plus Buyer's closing costs, shall be in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds). Buyer represents that Buyer ☑ **Does** ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.4. Seller Concession. Seller, at Closing, shall pay or credit, as directed by Buyer, a total amount of $ N/A to assist with Buyer's closing costs, loan discount points, loan origination fees, prepaid items (including any amounts that Seller agrees to pay because Buyer is not allowed to pay due to FHA, CHFA, VA, etc.), and any other fee, cost, charge, expense or expenditure related to Buyer's New Loan or other allowable Seller concession (collectively, Seller Concession). The Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract. If the amount of Seller Concession exceeds the aggregate of what is allowed, Seller shall not pay or be charged such excess amount.

4.5. New Loan.

4.5.1. Buyer, except as provided in § 4.4, if applicable, shall timely pay Buyer's loan costs, loan discount points, prepaid items and loan origination fees, as required by lender.

4.5.2. Buyer may select financing appropriate and acceptable to Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 or § 25, Additional Provisions.

4.5.3. Loan Limitations. Buyer may purchase the Property using any of the following types of loan: ☑ **Conventional** ☑ **FHA** ☑ **VA** ☑ **Bond.**

4.5.4. Good Faith Estimate – Monthly Payment and Loan Costs. Buyer is advised to review the terms, conditions and costs of Buyer's New Loan carefully. If Buyer is applying for a residential loan, the lender generally must provide Buyer with a good faith estimate of Buyer's closing costs within three days after Buyer completes a loan application. Buyer should also obtain an estimate of the amount of Buyer's monthly mortgage payment. If the New Loan is unsatisfactory to Buyer, then Buyer may terminate this Contract pursuant to § 5.2 no later than **Loan Conditions Deadline** (§ 2.3).

4.6. Assumption. Buyer agrees to assume and pay an existing loan in the approximate amount of the Assumption Balance set forth in § 4.1, presently payable at $ N/A per _____ including principal and interest presently at the rate of ___% per annum, and also including escrow for the following as indicated: ☐ **Real Estate Taxes** ☐ **Property Insurance Premium** ☐ **Mortgage Insurance Premium** and ☐ _____.

Buyer agrees to pay a loan transfer fee not to exceed $ N/A. At the time of assumption, the new interest rate shall not exceed ___% per annum and the new payment shall not exceed $ N/A per _____ principal and interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the Assumption Balance, which causes the amount of cash required from Buyer at Closing to be increased by more than $ N/A, then ☐ **Buyer May Terminate** this Contract effective upon receipt by Seller of Buyer's written notice of termination or ☐ _____.

Seller ☐ **Shall** ☐ **Shall Not** be released from liability on said loan. If applicable, compliance with the requirements for release from liability shall be evidenced by delivery ☐ on or before Loan Transfer Approval Deadline ☐ at Closing of an appropriate letter of commitment from lender. Any cost payable for release of liability shall be paid by _____ in an amount not to exceed $_____.

4.7. Seller or Private Financing. Buyer agrees to execute a promissory note payable to N/A, as ☐ **Joint Tenants** ☐ **Tenants In Common** ☐ **Other** _____, on the note form as indicated:
☐ **(Default Rate)** NTD81-10-06 ☐ **Other** _____ secured by a _____ (1st, 2nd, etc.) deed of trust encumbering the Property, using the form as indicated:
☐ **Strict Due-On-Sale** (TD72-10-06) ☐ **Creditworthy** (TD73-10-06) ☐ **Assumable – Not Due On Sale** (TD74-10-06)
☐ **Other** _____.

The promissory note shall be amortized on the basis of ___ ☐ **Years** ☐ **Months**, payable at $_____ per _____ including principal and interest at the rate of ___% per annum. Payments shall commence _____ and shall be due on the _____ day of each succeeding _____. If not sooner paid, the balance of principal and accrued interest shall be due and payable _____ after Closing. Payments ☐ **Shall** ☐ **Shall Not** be increased by _____ of estimated annual real estate taxes, and ☐ **Shall** ☐ **Shall Not** be increased by _____ of estimated annual property insurance premium. The loan shall also contain the following terms: (1) if any payment is not received within ____ calendar days after its due date, a late charge of ___% of such payment shall be due; (2) interest on lender disbursements under the deed of trust shall be ___% per annum; (3) default interest rate shall be ___% per annum; (4) Buyer may prepay without a penalty except _____; and (5) Buyer ☐ **Shall** ☑ **Shall Not** execute and deliver, at Closing, a Security Agreement and UCC-1 Financing Statement granting the holder of the promissory note a _____ (1st, 2nd, etc.) lien on the personal property included in this sale.

Buyer ☐ **Shall** ☐ **Shall Not** provide a mortgagee's title insurance policy, at Buyer's expense.

~~**5. FINANCING CONDITIONS AND OBLIGATIONS.**~~

~~**5.1. Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, shall make a verifiable application by **Loan Application Deadline** (§ 2.3).~~

~~**5.2. Loan Conditions.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional upon Buyer determining, in Buyer's subjective discretion, that the availability, terms, conditions, and cost of such New Loan are satisfactory to Buyer. This condition is for the benefit of Buyer. If such New Loan is not satisfactory to Buyer, Seller must receive written notice to terminate from Buyer, no later than **Loan Conditions Deadline** (§ 2.3), at which time this Contract shall terminate. **IF SELLER DOES NOT RECEIVE TIMELY WRITTEN NOTICE TO TERMINATE, THIS CONDITION SHALL BE DEEMED WAIVED, AND BUYER'S EARNEST MONEY SHALL BE NONREFUNDABLE, EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT** (e.g., Appraisal, Title, Survey).~~

~~**5.3. Credit Information and Buyer's New Senior Loan.** If Buyer is to pay all or part of the Purchase Price by executing a promissory note in favor of Seller, or if an existing loan is not to be released at Closing, this Contract is conditional (for the benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval shall be at Seller's subjective discretion. In such case: (1) Buyer shall supply to Seller by **Buyer's Credit Information Deadline** (§ 2.3), at Buyer's expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit condition and Buyer's New Senior Loan, defined below, if any; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; (3) any such information and documents received by Seller shall be held by Seller in confidence, and not released to others except to protect Seller's interest in this transaction; (4) in the event Buyer is to execute a promissory note secured by a deed of trust in favor of Seller, this Contract is conditional (for the benefit of Seller) upon Seller's approval of the terms and conditions of any New Loan to be obtained by Buyer if the deed of trust to Seller is to be subordinate to Buyer's New Loan (Buyer's New Senior Loan). Additionally, Seller shall have the right to terminate, at or before Closing, if the Cash at Closing is less than as set forth in § 4.1 of this Contract or Buyer's New Senior Loan changes from that approved by Seller; and (5) if Seller does not deliver written notice of Seller's disapproval of Buyer's financial ability and creditworthiness or of Buyer's New Senior Loan to Buyer by **Disapproval of Buyer's Credit Information Deadline** (§ 2.3), then Seller waives the conditions set forth in this section as to Buyer's New Senior Loan supplied to Seller. If Seller delivers written notice of disapproval to Buyer on or before said date, this Contract shall terminate.~~

~~**5.4. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller shall deliver copies of the loan documents (including note, deed of trust, and any modifications) to Buyer by **Existing Loan Documents Deadline** (§ 2.3). For the benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. If written notice of objection to such loan documents,~~

~~signed by Buyer, is not received by Seller by Existing Loan Documents Objection Deadline (§ 2.3), Buyer accepts the terms and conditions of the documents. If the lender's approval of a transfer of the Property is required, this Contract is conditional upon Buyer's obtaining such approval without change in the terms of such loan, except as set forth in § 4.6. If lender's approval is not obtained by Loan Transfer Approval Deadline (§ 2.3), this Contract shall terminate on such deadline. If Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.5, this Contract may be terminated at Seller's option.~~

6. APPRAISAL PROVISIONS.

6.1. Property Approval. If the lender imposes any requirements or repairs (Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller may terminate this Contract (notwithstanding § 10 of this Contract) by written notice to Buyer on or before three calendar days following Seller's receipt of the Requirements. The right to terminate in this § 6.1 shall not apply if on or before five calendar days prior to **Closing Date** (§ 2.3): (1) the parties enter into a written agreement; or (2) the Requirements are completed by Seller; or (3) the satisfaction of the Requirements is waived in writing by Buyer.

6.2. Appraisal Condition.

☑ **6.2.1. Not Applicable.** This § 6.2 shall not apply.

☐ **6.2.2. Conventional/Other.** Buyer shall have the sole option and election to terminate this Contract if the Purchase Price exceeds the Property's valuation determined by an appraiser engaged by _____. This Contract shall terminate by Buyer delivering to Seller written notice of termination and either a copy of such appraisal or written notice from lender that confirms the Property's valuation is less than the Purchase Price, received on or before **Appraisal Deadline** (§ 2.3). If Seller does not receive such written notice of termination on or before **Appraisal Deadline** (§ 2.3), Buyer waives any right to terminate under this section.

☐ **6.2.3. FHA.** It is expressly agreed that, notwithstanding any other provisions of this Contract, the Purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the Purchaser (Buyer) has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender, setting forth the appraised value of the Property of not less than $_____. The Purchaser (Buyer) shall have the privilege and option of proceeding with the consummation of the Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The Purchaser (Buyer) should satisfy himself/herself that the price and condition of the Property are acceptable.

☐ **6.2.4. VA.** It is expressly agreed that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to complete the purchase of the Property described herein, if the Contract Purchase Price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The purchaser (Buyer) shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

6.3. Cost of Appraisal. Cost of any appraisal to be obtained after the date of this Contract shall be timely paid by ☐ **Buyer** ☐ **Seller**.

7. EVIDENCE OF TITLE, SURVEY AND CIC DOCUMENTS.

7.1. Evidence of Title. On or before **Title Deadline** (§ 2.3), Seller shall cause to be furnished to Buyer, at Seller's expense, a current commitment for owner's title insurance policy (Title Commitment) in an amount equal to the Purchase Price, or if this box is checked, ☐ **An Abstract** of title certified to a current date. At Seller's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. If a title insurance commitment is furnished, it ☑ **Shall** ☐ **Shall Not** commit to delete or insure over the standard exceptions which relate to:

(1) parties in possession,
(2) unrecorded easements,
(3) survey matters,
(4) any unrecorded mechanics' liens,
(5) gap period (effective date of commitment to date deed is recorded), and
(6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by ☑ **Buyer** ☐ **Seller**.

Note: The title insurance company may not agree to delete or insure over any or all of the standard exceptions. Buyer shall have the right to review the Title Commitment pursuant to § 8.1.

7.2. Copies of Exceptions. On or before **Title Deadline** (§ 2.3), Seller, at Seller's expense, shall furnish to Buyer and Stephen Howard, (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a Title Commitment is required to be furnished, and if this box is checked ☑ **Copies of any Other Documents** (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Even if the box is not checked, Seller shall have the obligation to furnish these documents pursuant to this section if requested by Buyer any time on or before **Document Request Deadline** (§ 2.3). This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The abstract or Title Commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (Title Documents).

7.3. Survey. ~~On or before Survey Deadline (§ 2.3), ☐ Seller ☐ Buyer shall order and cause Buyer (and the issuer of the Title Commitment or the provider of the opinion of title if an abstract) to receive a current ☐ Improvement Survey Plat ☐ Improvement Location Certificate ☐ _____ (the description checked is known as Survey). An amount not to exceed $_____ for Survey shall be paid by ☐ Buyer ☐ Seller. If the cost exceeds this amount, ☐ Buyer ☐ Seller shall pay the excess on or before Closing. Buyer shall not be obligated to pay the excess unless Buyer is informed of the cost and delivers to Seller, before Survey is ordered, Buyer's written agreement to pay the required amount to be paid by Buyer.~~

7.4. Common Interest Community Documents. The term CIC Documents consists of all owners' associations (Association) declarations, bylaws, operating agreements, rules and regulations, party wall agreements, minutes of most recent annual owners' meeting and minutes of any directors' or managers' meetings during the 6-month period immediately preceding the date of this Contract, if any (Governing Documents), most recent financial documents consisting of (1) annual balance sheet, (2) annual income and expenditures statement, and (3) annual budget (Financial Documents), if any (collectively CIC Documents).

☑ **7.4.1. Not Applicable.** This § 7.4 shall not apply.

7.4.2. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

☐ **7.4.3. Not Conditional on Review.** Buyer acknowledges that Buyer has received a copy of the CIC Documents. Buyer has reviewed them, agrees to accept the benefits, obligations and restrictions that they impose upon the Property and its owners and waives any right to terminate this Contract due to such documents, notwithstanding the provisions of § 8.5.

7.4.4. CIC Documents to Buyer.

☐ **7.4.4.1. Seller to Provide CIC Documents.** Seller shall cause the CIC Documents to be provided to Buyer, at Seller's expense, on or before **CIC Documents Deadline** (§ 2.3).

☐ **7.4.4.2. Seller Authorizes Association.** Seller authorizes the Association to provide the CIC Documents to Buyer, at Seller's expense.

7.4.4.3. Seller's Obligation. Seller's obligation to provide the CIC Documents shall be fulfilled upon Buyer's receipt of the CIC Documents, regardless of who provides such documents.

7.4.5. Conditional on Buyer's Review. If the box in either § 7.4.4.1 or § 7.4.4.2 is checked, the provisions of this § 7.4.5 shall apply. Written notice of any unsatisfactory provision in any of the CIC Documents, in Buyer's subjective discretion, signed by Buyer, or on behalf of Buyer, and delivered to Seller on or before **CIC Documents Objection Deadline** (§ 2.3), shall terminate this Contract.

Should Buyer receive the CIC Documents after **CIC Documents Deadline** (§ 2.3), Buyer shall have the right, at Buyer's option, to terminate this Contract by written notice delivered to Seller on or before ten calendar days after Buyer's receipt of the CIC Documents. If Buyer does not receive the CIC Documents, or if such written notice to terminate would otherwise be required to be delivered after **Closing Date** (§ 2.3), Buyer's written notice to terminate shall be received by Seller on or before three calendar days prior to **Closing Date** (§ 2.3). If Seller does not receive written notice from Buyer within such time, Buyer accepts the provisions of the CIC Documents, and Buyer's right to terminate this Contract pursuant to this section is waived, notwithstanding the provisions of § 8.5.

NOTE: If no box in this § 7.4 is checked, the provisions of § 7.4.4.1 shall apply.

8. TITLE AND SURVEY REVIEW.

8.1. Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title, form or content of Title Commitment or of any other unsatisfactory title condition shown by the Title Documents, notwithstanding § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before **Title Objection Deadline** (§ 2.3), or within five calendar days after receipt by Buyer of any change to the Title Documents or endorsement to the Title Commitment together with a copy of the document adding any new Exception to title. If Seller does not receive Buyer's notice by the date specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

8.2. Matters Not Shown by the Public Records. Seller shall deliver to Buyer, on or before **Off-Record Matters Deadline** (§ 2.3) true copies of all leases and surveys in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal and options) not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to investigate if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, boundary line discrepancy or water rights). Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection, notwithstanding § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before **Off-Record Matters Objection Deadline** (§ 2.3). If Seller does not receive Buyer's notice by said deadline, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

8.3. Survey Review.

☑ **8.3.1. Not Applicable.** This § 8.3 shall not apply.

☐ **8.3.2. Conditional on Survey.** If the box in this § 8.3.2 is checked, Buyer shall have the right to inspect the Survey. If written notice by or on behalf of Buyer of any unsatisfactory condition shown by the Survey, notwithstanding § 8.2 or § 13, is received by Seller on or before **Survey Objection Deadline** (§ 2.3) then such objection shall be deemed an unsatisfactory title condition. If Seller does not receive Buyer's notice by **Survey Objection Deadline** (§ 2.3), Buyer accepts the Survey as satisfactory.

8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

In the event the Property is located within a special taxing district and Buyer desires to terminate this Contract as a result, if written notice, by or on behalf of Buyer, is received by Seller on or before **Off-Record Matters Objection Deadline** (§ 2.3), this Contract shall terminate. If Seller does not receive Buyer's notice by such deadline, Buyer accepts the effect of the Property's inclusion in such special taxing district and waives the right to terminate for that reason.

8.5. Right to Object, Cure. Buyer's right to object shall include, but not be limited to, those matters set forth in § 13. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition or commitment terms as provided in §§ 8.1, 8.2, 8.3 and 8.4, Seller

shall use reasonable efforts to correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title condition is not corrected to Buyer's satisfaction on or before Closing, this Contract shall terminate; provided, however, Buyer may, by written notice received by Seller on or before Closing, waive objection to such items.

8.6. Right of First Refusal or Contract Approval. If there is a right of first refusal on the Property, or a right to approve this Contract, Seller shall promptly submit this Contract according to the terms and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract shall terminate. If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract shall remain in full force and effect. Seller shall promptly notify Buyer of the foregoing. If expiration or waiver of the right of first refusal or Contract approval has not occurred on or before **Right of First Refusal Deadline** (§ 2.3), this Contract shall terminate.

8.7. Title Advisory. The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including without limitation, boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **The surface estate may be owned separately from the underlying mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the Property, which interests may give them rights to enter and use the Property.** Such matters may be excluded from or not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract [e.g., **Title Objection Deadline** (§ 2.3) and **Off-Record Matters Objection Deadline** (§ 2.3)].

9. LEAD-BASED PAINT. Unless exempt, if the improvements on the Property include one or more residential dwellings for which a building permit was issued prior to January 1, 1978, this Contract shall be void unless a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller and the required real estate licensees, which must occur prior to the parties signing this Contract. Buyer acknowledges timely receipt of a completed Lead-Based Paint Disclosure (Sales) form signed by Seller and the real estate licensees.

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, BUYER DISCLOSURE AND SOURCE OF WATER.

10.1. Seller's Property Disclosure Deadline. On or before **Seller's Property Disclosure Deadline** (§ 2.3), Seller agrees to deliver to Buyer the most current version of the Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to the best of Seller's actual knowledge, current as of the date of this Contract.

10.2. Inspection Objection Deadline. Buyer shall have the right to have inspections of the physical condition of the Property and Inclusions, at Buyer's expense. If the physical condition of the Property or Inclusions is unsatisfactory in Buyer's subjective discretion, Buyer shall, on or before **Inspection Objection Deadline** (§ 2.3):

10.2.1. notify Seller in writing that this Contract is terminated, or

10.2.2. deliver to Seller a written description of any unsatisfactory physical condition which Buyer requires Seller to correct (Notice to Correct).

If written notice is not received by Seller on or before **Inspection Objection Deadline** (§ 2.3), the physical condition of the Property and Inclusions shall be deemed to be satisfactory to Buyer.

10.3. Inspection Resolution Deadline. If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline** (§ 2.3), this Contract shall terminate one calendar day following **Inspection Resolution Deadline** (§ 2.3), unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract, is responsible for payment for all inspections, tests, surveys, engineering reports, or any other work performed at Buyer's request (Work) and shall pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer shall not permit claims or liens of any kind against the Property for Work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney and legal fees. The provisions of this section shall survive the termination of this Contract.

10.5. Insurability. This Contract is conditional upon Buyer's satisfaction, in Buyer's subjective discretion, with the availability, terms and conditions of and premium for property insurance. This Contract shall terminate upon Seller's receipt, on or before **Property Insurance Objection Deadline** (§ 2.3), of Buyer's written notice that such insurance was not satisfactory to Buyer. If said notice is not timely received, Buyer shall have waived any right to terminate under this provision.

10.6. Buyer Disclosure. Buyer represents that Buyer ☐ **Does** ☑ **Does Not** need to sell and close a property to complete this transaction. **Note:** Any property sale contingency should appear in **Additional Provisions** (§ 25).

10.7. Source of Potable Water (Residential Land and Residential Improvements Only). Buyer ☐ **Does** ☐ **Does Not** acknowledge receipt of a copy of **Seller's Property Disclosure** or **Source of Water Addendum** disclosing the source of potable water for the Property. Buyer ☐ **Does** ☐ **Does Not** acknowledge receipt of a copy of the current well permit. ☑ There is **No Well.**

Note to Buyer: **SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**

11. METHAMPHETAMINE LABORATORY DISCLOSURE (Residential Property Only). The parties acknowledge that Seller is required to disclose whether Seller knows that the Property, if residential, was previously used as a methamphetamine laboratory. No disclosure is required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used as a methamphetamine laboratory. If Buyer's test results indicate that the Property has been used as a methamphetamine laboratory, but has not been remediated to meet the standards established by rules of the State Board of Health promulgated pursuant to § 25-18.5-102, C.R.S., Buyer shall promptly give written notice to Seller of the results of the test, and Buyer may terminate this Contract.

12. CLOSING. Delivery of deed from Seller to Buyer shall be at closing (Closing). Closing shall be on the date specified as the **Closing Date** (§ 2.3) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by mutual agreement.

13. TRANSFER OF TITLE. Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient bargain and sale deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

13.1. those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with **Title Review** (§ 8.1),

13.2. distribution utility easements (including cable TV),

13.3. those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with **Matters Not Shown by the Public Records** (§ 8.2) and **Survey Review** (§ 8.3),

13.4. inclusion of the Property within any special taxing district, and

13.5. other NONE.

14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

15. CLOSING COSTS, DOCUMENTS AND SERVICES.

15.1. Good Funds. Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

15.2. Closing Information and Documents. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

15.3. Closing Services Fee. The fee for real estate Closing services shall be paid at Closing by ☐ **Buyer** ☐ **Seller** ☑ **One-Half by Buyer and One-Half by Seller** ☐ **Other** _____.

15.4. Closing Instructions. The Colorado Real Estate Commission's Closing Instructions ☐ **Are** ☑ **Are Not** executed with this Contract. Upon execution, ☐ **Seller** ☐ **Buyer** shall deliver such Closing Instructions to the Closing Company.

15.5. Status Letter and Transfer Fees. Any fees incident to the issuance of Association's statement of assessments (Status Letter) shall be paid by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller.** Any fees incident to the transfer from Seller to Buyer assessed by the Association (Association's Transfer Fee) shall be paid by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller.**

15.6. Local Transfer Tax. ☐ **The Local Transfer Tax** of .01% of the Purchase Price shall be paid at Closing by ☑ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller.**

15.7. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction shall be paid when due by ☑ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller.**

16. PRORATIONS. The following shall be prorated to **Closing Date** (§ 2.3), except as otherwise provided:

16.1. Taxes. Personal property taxes, if any, and general real estate taxes for the year of Closing, based on ☐ **Taxes for the Calendar Year Immediately Preceding Closing** ☑ **Most Recent Mill Levy and Most Recent Assessed Valuation** ☑ **Other** see Section 25.6.

16.2. Rents. Rents based on ☐ **Rents Actually Received** ☐ **Accrued.** Security deposits held by Seller shall be credited to Buyer. Seller shall assign all leases to Buyer and Buyer shall assume such leases.

16.3. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in advance shall be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association shall not be credited to Seller except as may be otherwise provided by the Governing Documents. Any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon shall be the obligation of Seller. Any other special assessment assessed prior to **Closing Date** (§ 2.3) by the Association shall be the obligation of ☐ **Buyer** ☐ **Seller.** Seller represents that the Association Assessments are currently payable at $ N/A per _____ and that there are no unpaid regular or special assessments against the Property except the current regular assessments and _____. Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before **Closing Date** (§ 2.3) a current Status Letter.

16.4. Other Prorations. Water and sewer charges, interest on continuing loan, and N/A.

16.5. Final Settlement. Unless otherwise agreed in writing, these prorations shall be final.

17. POSSESSION. Possession of the Property shall be delivered to Buyer on **Possession Date** at **Possession Time** (§ 2.3), subject to the following leases or tenancies:

None

If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of $ 100.00 per day (or any part of a day) from **Possession Date** and **Possession Time** (§ 2.3) until possession is delivered.

Buyer ☐ **Does** ☑ **Does Not** represent that Buyer will occupy the Property as Buyer's principal residence.

18. ASSIGNABILITY AND INUREMENT. This Contract ☐ **Shall** ☑ **Shall Not** be assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

19. INSURANCE; CONDITION OF, DAMAGE TO PROPERTY AND INCLUSIONS AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

19.1. Casualty Insurance. In the event the Property or Inclusions are damaged by fire or other casualty prior to Closing in an amount of not more than ten percent of the total Purchase Price, Seller shall be obligated to repair the same before **Closing Date** (§ 2.3). In the event such damage is not repaired within said time or if the damage exceeds such sum, this Contract may be terminated at the option of Buyer by delivering to Seller written notice of termination on or before Closing. Should Buyer elect to carry out this Contract despite such damage, Buyer shall be entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from such damage to the Property and Inclusions, plus the amount of any deductible provided for in such insurance policy. Such credit shall not exceed the Purchase Price. In the

event Seller has not received such insurance proceeds prior to Closing, then Seller shall assign such proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such insurance policy, but not to exceed the total Purchase Price.

19.2. Damage, Inclusions and Services. Should any Inclusion or service (including systems and components of the Property, e.g. heating, plumbing) fail or be damaged between the date of this Contract and Closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion or service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion, service or fixture is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions. The risk of loss for damage to growing crops by fire or other casualty shall be borne by the party entitled to the growing crops as provided in § 3.1.7 and such party shall be entitled to such insurance proceeds or benefits for the growing crops.

19.3. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

20. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer and Seller acknowledge that the respective broker has advised that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

21. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

21.1. If Buyer is in Default:

☑ **21.1.1. Specific Performance.** Seller may elect to treat this Contract as canceled, in which case all Earnest Money (whether or not paid by Buyer) shall be forfeited by Buyer, paid to Seller and retained by Seller; and Seller may recover such damages as may be proper; or Seller may elect to treat this Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or both.

☐ **21.1.2. Liquidated Damages.** All Earnest Money (whether or not paid by Buyer) shall be forfeited by Buyer, paid to Seller, and retained by Seller. Both parties shall thereafter be released from all obligations hereunder. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 19, 21.3, 22 and 23), said forfeiture shall be SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

21.2. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

21.3. Cost and Expenses. In the event of any arbitration or litigation relating to this Contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

22. MEDIATION. If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered by one party to the other at the party's last known address. This section shall not alter any date in this Contract, unless otherwise agreed.

23. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder shall release the Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money (notwithstanding any termination of this Contract), Earnest Money Holder shall not be required to take any action. Earnest Money Holder, at its option and sole discretion, may (1) await any proceeding, (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within 120 calendar days of Earnest Money Holder's notice to the parties, Earnest Money Holder shall be authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interpled the monies at the time of any Order, Earnest Money Holder shall disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of **Mediation** (§ 22).

24. TERMINATION. In the event this Contract is terminated, all Earnest Money received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10.4, 22 and 23.

25. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

See attached

26. ATTACHMENTS. The following are a part of this Contract:
Exhibit A - legal description

Note: The following disclosure forms **are attached** but are **not** a part of this Contract:

27. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith, including but not limited to exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations** (§ 5) and **Property Disclosure, Inspection, Indemnity, Insurability, Buyer Disclosure and Source of Water** (§ 10).

28. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL. This agreement constitutes the entire Contract between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Contract that, by its terms, is intended to be performed after termination or Closing shall survive the same.

29. FORECLOSURE DISCLOSURE AND PROTECTION. Seller acknowledges that, to Seller's current actual knowledge, the Property ☐ **Is** ☑ **Is Not** in foreclosure. In the event this transaction is subject to the provisions of the Colorado Foreclosure Protection Act (the Act) (i.e., generally the Act requires that the Property is residential, in foreclosure, and Buyer does not reside in it for at least one year), a different contract that complies with the provisions of the Act is required, and this Contract shall be void and of no effect unless the Foreclosure Property Addendum is executed by all parties concurrent with the signing of this Contract. The parties are further advised to consult with their own attorney.

30. NOTICE, DELIVERY, AND CHOICE OF LAW.

30.1. Physical Delivery. Except for the notice requesting mediation described in § 22, delivered after Closing, and except as provided in § 30.2, all notices must be in writing. Any notice to Buyer shall be effective when physically received by Buyer, any individual buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer. Any notice to Seller shall be effective when physically received by Seller, any individual seller, any representative of Seller, or Brokerage Firm of Broker working with Seller.

30.2. Electronic Delivery. As an alternative to physical delivery, any signed document and written notice may be delivered in electronic form by the following indicated methods only: ☐ **Facsimile** ☐ **Email** ☑ **No Electronic Delivery**. Documents with original signatures shall be provided upon request of any party.

30.3. Choice of Law. This Contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state for property located in Colorado.

31. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 30 on or before **Acceptance Deadline Date** (§ 2.3) and **Acceptance Deadline Time** (§ 2.3). If accepted, this document shall become a contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

Date:	12-8-09	Date:	
Buyer's Name:	Joseph Shrader	Buyer's Name:	
	Joseph Shrader Buyer's Signature		Joseph Shrader Buyer's Signature
Address:	267 N. County Road 23E Loveland, CO 80537	Address:	
Phone No.:	(970) 593-9514	Phone No.:	
Fax No.:		Fax No.:	
Email Address:		Email Address:	

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Date:	December 14, 2009	Date:	
Seller's Name:	City of Loveland, Colorado	Seller's Name:	
	Don F Williams Seller's Signature DON F. WILLIAMS, CITY MGR		Seller's Signature
Address:	500 E. THIRD ST. LOVELAND, CO 80537	Address:	
Phone No.:		Phone No.:	
Fax No.:		Fax No.:	
Email Address:		Email Address:	

APPROVED AS TO FORM
By: J. Westschmidt
DEPUTY CITY ATTORNEY

CITY OF LOVELAND SEAL COLORADO

ATTEST: Teresa A. Andrews
CITY CLERK

32. COUNTER; REJECTION. This offer is ☐ **Countered** ☐ **Rejected.**
Initials only of party (Buyer or Seller) who countered or rejected offer _____

END OF CONTRACT TO BUY AND SELL REAL ESTATE

BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.
(To be completed by Broker working with Buyer)

Broker ☐ **Does** ☐ **Does Not** acknowledge receipt of Earnest Money deposit specified in § 4 and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 22.

Broker is working with Buyer as a ☐ **Buyer's Agent** ☐ **Seller's Agent** ☐ **Transaction-Broker** in this transaction. ☐ This is a **Change of Status.**

Brokerage Firm's compensation or commission is to be paid by ☐ **Listing Brokerage Firm** ☐ **Buyer** ☐ **Other** _____.

Date: _____
Brokerage Firm's Name: _____
Broker's Name: _____

_____
Broker's Signature

Address: _____
_____
Phone No.: _____
Fax No.: _____
Email Address: _____

BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.
(To be completed by Broker working with Seller)

Broker ☐ **Does** ☐ **Does Not** acknowledge receipt of Earnest Money deposit specified in § 4 and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 22.

Broker is working with Seller as a ☐ **Seller's Agent** ☐ **Transaction-Broker** in this transaction. ☐ This is a **Change of Status.**

Brokerage Firm's compensation or commission is to be paid by ☐ **Seller** ☐ **Buyer** ☐ **Other** _____.

Date _____
Brokerage Firm's Name:: _____
Broker's Name: _____

_____
Broker's Signature

Address: _____
_____
Phone No.: _____
Fax No.: _____
Email Address: _____

The following Closing Instructions are **not** part of the Contract to Buy and Sell Real Estate.

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CL8-8-07) (Mandatory 1-08)

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

CLOSING INSTRUCTIONS

Date: _____

1. PARTIES, PROPERTY. _____, Seller, and _____, Buyer, engage _____, Closing Company, who agrees to

provide closing and settlement services in connection with the Closing of the transaction for the sale and purchase of the Property known as No. _____, Street Address, City, State, Zip and more fully described in the Contract to Buy and Sell Real Estate, dated _____, including any counterproposals and amendments (Contract)

2. INFORMATION, PREPARATION. Closing Company is authorized to obtain any information necessary for the Closing. Closing Company agrees to prepare, deliver, and record those documents (excluding legal documents) that are necessary to carry out the terms and conditions of the Contract.

3. CLOSING FEE. Closing Company will receive a fee not to exceed $ 250.00 for providing these closing and settlement services.

4. RELEASE, DISBURSEMENT. Closing Company is not authorized to release any signed documents or things of value prior to receipt and disbursement of Good Funds, except as provided in §§ 8 and 9.

5. DISBURSER. Closing Company shall disburse all funds, including real estate commissions, except those funds as may be separately disclosed in writing to Buyer and Seller by Closing Company or Buyer's lender on or before Closing. All parties agree that no one other than the disburser can assure that payoff of loans and other disbursements will actually be made.

6. SELLER'S NET PROCEEDS. Seller will receive the net proceeds of Closing as indicated:
☐ **Cashier's Check**, at Seller's expense ☑ **Funds Electronically Transferred** (wire transfer) to an account specified by Seller, at Seller's expense
☐ **Closing Company's** trust account check.

7. CLOSING STATEMENT. Closing Company will prepare and deliver an accurate, complete and detailed closing statement to Buyer and Seller at time of Closing.

8. FAILURE OF CLOSING. If Closing or disbursement does not occur on or before Closing Date set forth in the Contract, Closing Company, except as provided herein, is authorized and agrees to return all documents, monies, and things of value to the depositing party, upon which Closing Company will be relieved from any further duty, responsibility or liability in connection with these Closing Instructions. In addition, any promissory note, deed of trust or other evidence of indebtedness signed by Buyer shall be voided by Closing Company, with the originals returned to Buyer and a copy to Buyer's lender.

9. EARNEST MONEY DISPUTE. Closing Company shall comply with the provisions of § 23 of the Contract incorporated herein by reference.

10. SUBSEQUENT AMENDMENTS. Any amendments to, or termination of, these Closing Instructions must be in writing and signed by Buyer, Seller and Closing Company.

11. WITHHOLDING. The Internal Revenue Service and the Colorado Department of Revenue may require Closing Company to withhold a substantial portion of the proceeds of this sale when Seller either (a) is a foreign person or (b) will not be a Colorado resident after Closing. Seller should inquire of Seller's tax advisor to determine if withholding applies or if an exemption exists.

12. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

13. COUNTERPARTS. This document may be executed by each party, separately, and when each party has executed a copy, such copies taken together shall be deemed to be a full and complete contract between the parties.

14. BROKER'S COPIES. Closing Company shall provide, to each broker in this transaction, copies of all signed documents that such brokers are required to maintain pursuant to the rules of the Colorado Real Estate Commission.

15. NOTICE, DELIVERY AND CHOICE OF LAW.

15.1. Physical Delivery. Except as provided in § 15.2, all notices must be in writing. Any notice to Buyer shall be effective when physically received by Buyer, any individual buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer. Any notice to Seller shall be effective when physically received by Seller, any individual seller, any representative of Seller, or Brokerage Firm of Broker working with Seller. Any notice to Closing Company shall be effective when physically received by Closing Company, any individual of Closing Company, or any representative of Closing Company.

15.2. Electronic Delivery. As an alternative to physical delivery, any signed documents and written notice may be delivered in electronic form by the following indicated methods only: ☐ **Facsimile** ☑ **Email** ☐ **No Electronic Delivery**. Documents with original signatures shall be provided upon request of any party.

15.3. Choice of Law. This contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state for property located in Colorado.

Date:	12 - 8 - 09	Date:	
Buyer's Name:	Joseph Shrader	Buyer's Name:	

Joseph Shuler
Buyer's Signature

Address:

Phone No.:
Fax No.:
Email Address:

Buyer's Signature

Address:

Phone No.:
Fax No.:
Email Address:

Date:
Seller's Name:

Date:
Seller's Name:

Seller's Signature

Address:

Phone No.:
Fax No.:
Email Address:

Seller's Signature

Address:

Phone No.:
Fax No.:
Email Address:

Date:
Closing Company's Name:

Authorized Signature Title

Address:

Phone No.:
Fax No.:
Email Address:

(TO BE COMPLETED ONLY BY BROKER AND CLOSING COMPANY)

_____ (Broker) ☐ **Working with Seller**

☐ **Working with Buyer** engages Closing Company as Broker's scrivener to complete, for a fee not to exceed $ _____ at the sole expense of Broker, the following legal documents:

☐ **Deed** ☐ **Bill of Sale** ☐ **Colorado Real Estate Commission approved Promissory Note** ☐ **Colorado Real Estate Commission approved Deed of Trust**. Closing Company agrees to prepare, on behalf of Broker, the indicated legal documents pursuant to the terms and conditions of the Contract.

The documents stated above shall be subject to Broker's review and approval and Broker acknowledges that Broker is responsible for the accuracy of the above documents.

Date:
Brokerage Firm's Name:
Broker's Name:

Broker's Signature

Date:
Closing Company's Name:

Authorized Signature Title

ATTACHMENT TO CONTRACT TO BUY AND SELL REAL ESTATE

25.1 This contract shall be contingent on final approval by the City of Loveland of a final subdivision plat for the property on or before June 15, 2011. Buyer shall submit a preliminary subdivision plat to the City by January 1, 2011 and pursue approval of the final subdivision plat for the property with reasonable diligence. If final approval has not been obtained June 15, 2011, the parties agree to extend the contract for the additional time needed to obtain such approval or until Buyer makes a good faith determination that he cannot feasibly develop the property in a way that the City will approve, but in no event shall the deadline for approval of a final subdivision plat be extended beyond January 1, 2012.

25.2 Subject to the provisions of §25.1, the closing date shall be the 90th day after final approval by the City of Loveland of a final subdivision plat for the property.

25.3 The purchase price includes 5 water taps which shall be transferred to Buyer with the property free and clear of any encumbrance or assessment. Any transfer fee normally assessed by the City shall be paid by Buyer.

25.4 The earnest money held by the City pursuant to §4.2 shall accrue no interest and shall be credited to Buyer at Closing.

25.5 Notwithstanding any provisions of §4.5, which permits the Buyer to use any of the types of loans indicated to finance the purchase of the property, the Buyer's obligation to purchase the property is not conditioned upon the application for or availability of any loan or financing.

25.6 The property is current exempt from real property taxes so no proration of property taxes shall be required. Buyer shall take title subject to real property taxes for the year in which closing occurs.

EXHIBIT A

Description:

A portion of the Northeast 1/4 of Section 15, Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado being more particularly described as follows:

Considering the East line of the Northeast 1/4 of Section 15, Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado as bearing N 00°56'37" W with all bearing contained herein relative thereto.

COMMENCE at the Southeast Corner of the Northeast 1/4 of Section 15, Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado;
thence N 00°56'37" W, on the East line of the Northeast 1/4 of Section 15, a distance of 371.19 feet;
thence S 89°03'23" W a distance of 103.91 feet to the POINT OF BEGINNING, said point being on the West right-of-way of North Taft Avenue and on the South line of that parcel described at Reception No. 2004-0050232, Larimer County, Colorado;
thence S 89°02'13" W, on said South line, a distance of 556.09 feet to the East line of Romar Addition, City of Loveland, Colorado;
thence on said East line of Romar Addition the following two (2) courses and distances:

1.) thence N 00°57'22" W a distance of 132.00 feet;
2.) thence N 00°54'57" W a distance of 336.10 feet to the South right-of-way line of the Atkins Branch of the Colorado and Southern Railroad;

thence S 78°39'32" E, on said South right-of-way line, a distance of 565.06 feet to the aforesaid West right-of-way of North Taft Avenue;
thence S 01°34'28" E, on said West right-of-way, a distance of 347.71 feet to the Point of Beginning.

Containing 5.19 acres, more or less, and being subject to all easements and rights of way of record.

EXHIBIT B

AMENDMENT NUMBER TWO TO CONTRACT TO BUY AND SELL REAL ESTATE

This Amendment Number Two to Contract Buy and Sell Real Estate ("Amendment") is entered into as of this ___ day of May, 2011 by and between **JOSEPH SHRADER**, an individual ("Buyer") and **THE CITY OF LOVELAND, COLORADO,** a Colorado home-rule municipality ("Seller")

RECITALS

WHEREAS, Buyer and Seller are parties to that certain Contract to Buy and Sell Real Estate dated December 14, 2009 and Amendment Number One to Contract to Buy and Sell Real Estate dated December 20, 2010 (collectively, the "Contract") pursuant to which Buyer has agreed to buy and Seller has agreed to sell that certain real property described therein and generally referred to as 905, 915, 925, 935, and 933 North Taft Avenue, Loveland, Colorado (the "Property"); and

WHEREAS, the Contract was approved by the City Council of Loveland, Colorado, on December 1, 2009 pursuant to Ordinance No. 5477; and

WHEREAS, pursuant to Section 25.1 of the Contract, Buyer's obligation to purchase the Property is contingent upon final approval by the City of a final subdivision plat no later than January 1, 2012; and

WHEREAS, Buyer has determined that higher density is necessary to support subdivision and development of the Property in an economically feasible manner and is pursing City approval of a higher density housing plan for the Property, and has therefore requested that Seller extend the deadline for approval of a final subdivision plat for the Property to April 30, 2012, with closing to occur ninety (90) days after final approval; and

WHEREAS, Seller is willing to grant such request and the parties desire to confirm such extension by execution of this Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants contained herein, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. Paragraph 25.1 of the Contract is hereby deleted in its entirety and the following substituted in lieu thereof:

"25.1 This contract shall be contingent upon final approval by the City of Loveland of a final subdivision plat for the property on or before April 30, 2012. Buyer shall submit a preliminary subdivision plat to the City and pursue approval of the final subdivision plat for the property with reasonable diligence. If final approval of the final subdivision plat for the property is not obtained on or before April 30, 2012, this contract shall terminate and the parties shall have no further obligations hereunder."

2. Except as amended herein, all other terms and conditions of the Contract shall remain in full force and effect and unmodified.

IN WITNESS WHEREOF, the parties have executed this Amendment Number Two to Buy and Sell Real Estate as of the date set forth above.

BUYER:

JOSEPH SHRADER,
an individual

_____ __ _____
Date

SELLER:

CITY OF LOVELAND

_____ _____

By: William D. Cahill, City Manager Date

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

Deputy City Attorney

EXHIBIT C
HIGHER DENSITY HOUSING PLAN

CITY OF LOVELAND – CURRENT PLANNING DIVISION
(970) 962-2525

Revised August 19, 2009

CONCEPT REVIEW TEAM / PRE-APPLICATION FORM

Project Name: NORTH TAFT AVENUE SUB. Date Submitted: 04/07/10

Address or Location: TBD N. TAFT AVE / NE1/4 S15-T5N-R69W -696

Legal Description: Tract/Lot _____ Block _____ Subdivision/Addition NORTH TAFT AVENUE 1ST ADD.

Special Review: TBD Zoning: R2

Applicant Name: JOE SHRADER Phone No.: 970-593-9514

Applicant Address: 267 N. COUNTY ROAD 23E, LOVELAND, CO 80537

Contractor/~~Owner~~: INTERMILL LAND SURVEYING, INC. Phone No.: 970-669-0516
ROB PERSICHITTE

Project Time Frame: TBD
(Note any critical timing issues)

PROJECT INFORMATION

(Provide a description of the project including uses, square footage of building(s) and any unique attributes.)

PROPOSED SUBDIVISION OF A PORTION OF NORTH TAFT AVENUE FIRST ADDITION. (DUPLEXES & TRIPLEXES(?)).

Please list any specific questions that you want answered

1. REVIEW STREET LAYOUT / ACCESS POINT(S)?
2. EMERGENCY ACCESS OR STREET CONNECTION (SOUTH)?
3. CITY UTILITY AVAILABILITY / LOCATIONS?
4. DETENTION REQUIRED IN THIS AREA?
5. ROW DEDICATION (TAFT) DOCS?
6. BUFFER YARD REQUIREMENTS?

Existing Use: SF / VACANT LAND Existing Zoning: R2

Proposed Use: 2 FAMILY / 3 FAMILY Proposed Zoning: R2

Number of Lots Proposed: 24± Number of Phases: 1

Is any portion of this property located in a floodplain? ____ Yes X No

If yes, please attach a legal description of floodplain.

CITY OF LOVELAND – CURRENT PLANNING DIVISION
(970) 962-2525

Revised August 19, 2009

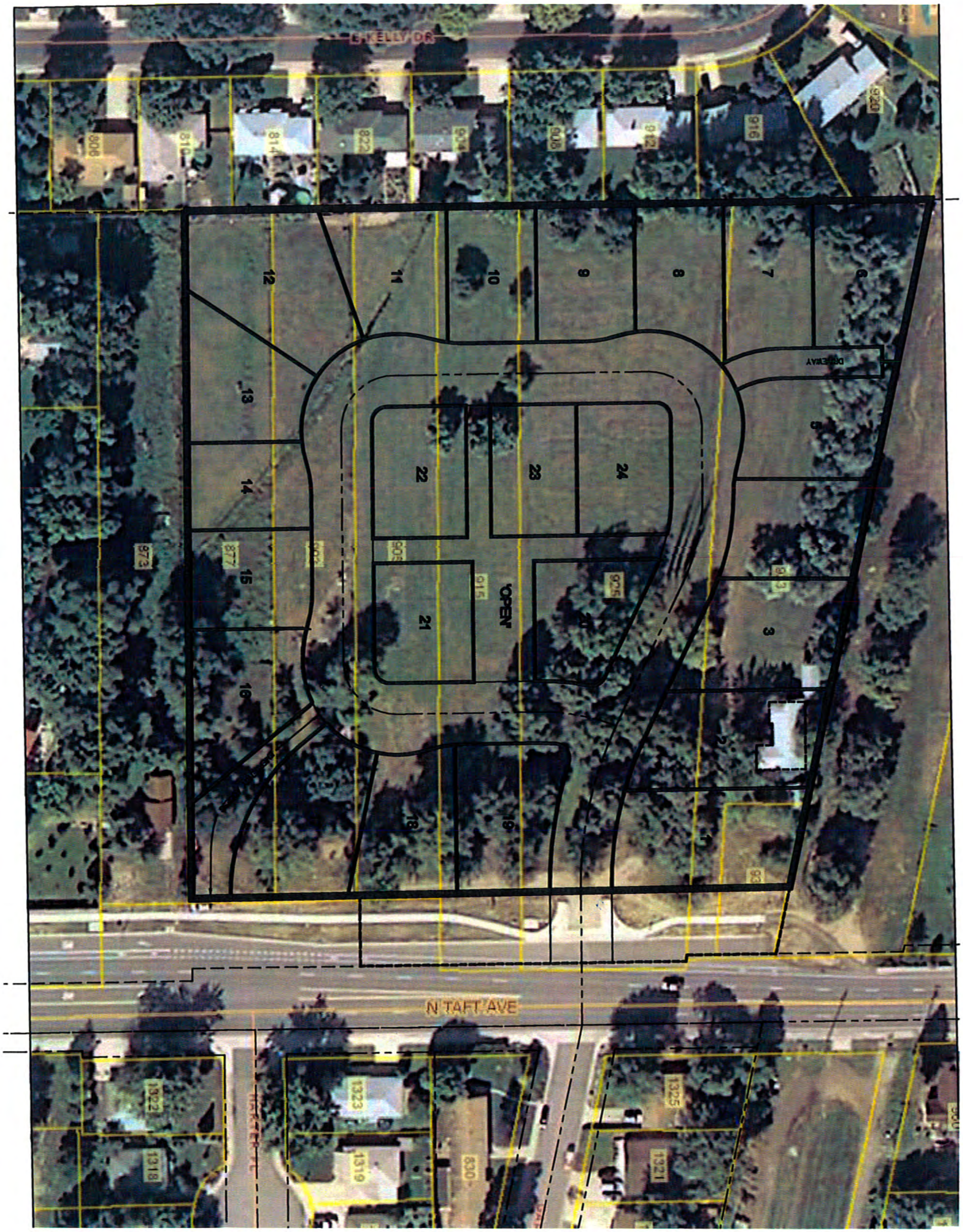
Location of Meeting: Municipal Building, 500 East Third Street, Main Floor Conference Room

Sketch Plan/Site Plan Distribution ☒ Check box if confidential; to be distributed to staff only.

Concept Review Team (for annexation, zoning, and subdivision applications):
Pre-Application (for uses-by-right and special reviews):

Current Planning
Traffic Engineering
Light and Power
Fire Prevention
Airport
Thompson R2J School District
Parks and Recreation
Water/Wastewater
Building
Storm Drainage
Community & Strategic Planning

Any questions, please call Judy at (970) 962-2525


E KELLY DR
N TAFT AVE
'OPEN'

CITY OF LOVELAND
CITY MANAGER'S OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 4

MEETING DATE: 5/17/2011

TO: City Council

FROM: City Manager

PRESENTER: Bill Cahill

TITLE:
APPOINTMENT OF MEMBER TO NORTH FRONT RANGE METROPOLITAN ORGANIZATION ("NFRMPO") AIR QUALITY TECHNICAL COMMITTEE

DESCRIPTION:
This is an administrative item appointing a citizen member to the NFRMPO Air Quality Technical Committee. The NFRMPO invited the City of Loveland and their other members to appoint a technical member to the newly forming North Front Range Air Quality Technical Committee ("AQTC".) The ACTC will provide scientific and technical information to the NFRMPO Planning Council regarding air quality issues and air pollution reduction measures.

BUDGET IMPACT:
☐ Yes ☒ No

SUMMARY:
From the NFRMPO Planning Council:

> "The NFRMPO Planning Council, in addition to its role as a regional transportation planning board, performs as the North Front Range lead air quality planning agency. As such, one of the Planning Council's big tasks starting this year will be to analyze and provide recommendations on the Front Range Ozone State Implementation Plan (i.e., the state air quality plan.) The AQTC will assist Planning Council and the NFRMPO staff with the planning effort. The AQTC will consist of member community representatives and liaisons from state and regional transportation and air quality planning agencies."

Applications were solicited until 5:00 p.m., May 3, 2011. One person submitted an application.

A committee consisting of Cecil Gutierrez, Larry Heckel, Bill Cahill, and Keith Reester interviewed Irene Fortune. Irene is recommended for appointment to the NFRMPO Air Quality Technical Committee.

Irene is a two-term member of the City of Loveland Transportation Advisory Board. She has a Bachelors degree in Chemistry with 28 years working in chemical manufacturing for two multi-national chemical manufacturing companies. She is also an active leader for the League of Women Voters.

LIST OF ATTACHMENTS:
None

RECOMMENDED CITY COUNCIL ACTION:
Motion to appoint Irene Fortune as the City of Loveland Representative to the North Front Range Air Quality Technical Committee.

REVIEWED BY CITY MANAGER:

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

AGENDA ITEM: 5

MEETING DATE: 5/17/2011

TO: City Council

FROM: Steve Adams, Water & Power

PRESENTER: Steve Adams

TITLE:
Appointment of Steve Adams to Serve as the Appointed Director from Loveland on the Platte River Power Authority Board of Directors

DESCRIPTION:
This is an administrative action to appoint Steve Adams, Interim Director of Water & Power, to serve as the Appointed Director from Loveland on the Platte River Power Authority ("PRPA") Board of Directors. Steve Adams will fill the vacancy created when Ralph Mullinix retired, and he will serve in this capacity until December 31, 2013, or a new Director of Water & Power is hired and appointed to serve as Loveland's Appointed Director to the PRPA Board of Directors.

BUDGET IMPACT:

☐ Yes ☒ No

SUMMARY:
The Amended and Restated Organic Contract between the Town of Estes Park and the Cities of Fort Collins, Longmont, and Loveland ("Organic Contract") created PRPA. Section 2.3.2(ii) of the Organic Contract provides that the governing body of each municipality shall appoint one member to the PRPA Board of Directors "to be selected for judgment, experience, and expertise which make that person particularly qualified to serve as a Director of an electric utility." Section 2.3.3(ii) provides that the Appointed Director shall serve for a term of four years. Section 2.3.5 provides that vacancies created by retirement shall be filled by a successor Appointed Director to be appointed by the governing body of the municipality.

It has been the custom and practice of the City of Loveland to appoint the Director of Water & Power to serve as the City's Appointed Director to the PRPA Board of Directors. Ralph Mullinix, former Director of Water & Power, served in this capacity from January, 1994 until his retirement on May 6, 2011. Since Mr. Mullinix's retirement, Steve Adams has served as Interim Director of Water & Power. As Interim Director of Water & Power, current Water Utilities Manager, and past Interim Power Operations Manager, Steve Adams possesses the requisite judgment,

experience, and expertise to serve as the City's Appointed Director to the PRPA Board of Directors. Staff therefore recommends that Steve Adams be appointed to complete Mr. Mullinix's four-year term on the PRPA Board of Directors until such time as a new Director of Water & Power is hired and appointed to serve as the City's Appointed Director.

LIST OF ATTACHMENTS:
Mayor's Certificate Confirming Steve Adams' Appointment as a Director of Platte River Power Authority

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RECOMMENDED CITY COUNCIL ACTION:
Adopt a motion appointing Steve Adams to serve as the Appointed Director from Loveland on the Platte River Power Authority Board of Directors commencing May 18, 2011 and expiring December 31, 2013, and authorizing the Mayor to sign the Mayor's Certificate Confirming Appointment of Director of Platte River Power Authority.

REVIEWED BY CITY MANAGER:

MAYOR'S CONFIRMATION CERTIFICATE CONFIRMING THE APPOINTMENT OF MR. STEVE ADAMS TO THE PLATTE RIVER POWER AUTHORITY BOARD OF DIRECTORS

I, Cecil Gutierrez, hereby certify that I am the duly elected and qualified Mayor of the City of Loveland, Colorado ("Loveland") and that the City Council of Loveland has appointed Steve Adams to serve as the Appointed Director from Loveland on the Board of Directors of Platte River Power Authority, said appointment to commence May 18, 2011, and expire December 31, 2013.

IN WITNESS WHEREOF, I have executed this Certificate this 17th day of May 2011.

_____
Mayor, City of Loveland

Attest:

_____
City Clerk

City of Loveland

DEVELOPMENT SERVICES
ADMINISTRATION
500 East Third Street, Suite 210 • Loveland, CO 80537
(970) 962-2346 • Fax (970) 962-2903 • TDD (970) 962-2620
www.cityofloveland.org

AGENDA ITEM: 6

MEETING DATE: 5/17/2011

TO: City Council

FROM: Greg George, Development Services

PRESENTER: Greg George

TITLE:

AN ORDINANCE AMENDING TITLE 6 OF THE LOVELAND MUNICIPAL CODE REGARDING ANIMALS BY ADDING A NEW SECTION 6.16.170 TO REQUIRE PROPER TETHERING OF ANIMALS AND A NEW SUBSECTION G. TO SECTION 6.20.010 TO REQUIRE ADEQUATE FENCING FOR ANIMALS.

DESCRIPTION:

A public hearing to consider a legislative action to adopt an ordinance on first reading amending Title 6 of the Loveland Municipal Code to include additional provisions to: (i) prohibit the tethering of an animal in an manner that is likely to cause bodily injury to the animal; and (ii) require that fences intended to enclose an animal be properly and adequately constructed to secure the animal within the fenced area and that the fence be kept in good repair.

BUDGET IMPACT:

○ Yes ● No

SUMMARY:

The Larimer County Humane Society is responsible for enforcing Title 6 under a contract with the City. Based on the experience of its animal control officers in enforcing Title 6, the Humane Society is recommending the amendments regarding tethering and adequate fencing of animals to ensure the health, safety, and general welfare of animals in the City. An e-mail from Bill Porter, Director of Animal Protection and Control, Larimer Humane Society, explaining why the amendments are necessary is included as Attachment A. Although Bill's e-mail includes comments concerning the prohibition of roosters, that amendment is not be proposed at this time.

LIST OF ATTACHMENTS:

- Ordinance amending Title 6 of the Loveland Municipal Code

A. E-mail from Bill Porter, Director of Animal Protection and Control, Larimer Humane Society

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for Council action:

Move to adopt on first reading AN ORDINANCE AMENDING TITLE 6 OF THE LOVELAND MUNICIPAL CODE REGARDING ANIMALS BY ADDING A NEW SECTION 6.16.170 TO REQUIRE PROPER TETHERING OF ANIMALS AND A NEW SUBSECTION G. TO SECTION 6.20.010 TO REQUIRE ADEQUATE FENCING FOR ANIMALS.

REVIEWED BY CITY MANAGER:

FIRST READING: May 17, 2011

SECOND READING: _____

ORDINANCE No. _____

AN O RDINANCE AMENDING TITLE 6 OF TH E LO VELAND M UNICIPAL C ODE REGARDING A NIMALS B Y ADDING A N EW S ECTION 6.1 6.170 T O R EQUIRE PROPER TET HERING O F A NIMALS AND A NE W SUBSECTION G . TO S ECTION 6.20.010 TO REQUIRE ADEQUATE FENCING FOR ANIMALS

WHEREAS, Title 6 of the City Code regulates the maintenance and keeping of animals within the City; and

WHEREAS, the Larimer County Humane Society ("Humane Society"), under a contract with the City, is responsible for enforcing this Code Title; and

WHEREAS, the Humane Society, based upon its experience enforcing Title 6, proposes amendments to the City Code as necessary to ensure the health, safety and general welfare of City residents and animals within the City; and

WHEREAS, the Humane Society recognizes that in order to prevent improper treatment of animals up to and including death there is a need to amend the City Code to regulate the manner in which animals are tethered; and

WHEREAS, the Human Society also recognizes that in order to prevent animals at large there is a need to amend the City Code to require that fences intended as enclosures be adequately and securely constructed to prevent animals from escaping; and

WHEREAS, City Council finds and determines that the above-concerns expressed by the Humane Society are valid and that the proposed amendments to Title 6 of the City Code are necessary to ensure the public's health, safety and general welfare.

NOW, THEREFORE, BE I T O RDAINED B Y T HE CI TY CO UNCIL O F T HE CITY OF LOVELAND, COLORADO as follows:

Section 1. That Chapter 6.16 of the City Code is hereby amended by the addition of a new Section 6.16.170 to read in full as follows:

6.16.170 Tethering of Animals.

A. No person shall cause or permit an animal to be improperly tethered. For purposes of this Section, "improperly tethered" shall mean use of a fixed point tether in a manner that is likely to cause bodily injury to the animal or endanger the health or safety of other animals or people. As used in this Section, "tether" shall have the same meaning as "leash" or "lead" as these

words are defined in Code Section 6.04.010M. An animal control officer is empowered to make a prima facie determination as to whether an animal is improperly tethered, which determination may be based upon, but is not limited to, the consideration of the following factors:

1. using a tether made of rope, twine, cord or any other material that is insufficient to restrain the animal;

2. using a tether that:

   a. is less than ten (10) feet in length;

   b. does not have swivels on both ends;

   c. is not attached to the animal by means of a properly fitting harness or collar of at least one (1) inch in width; and/or

   d. is wrapped around the animal's neck;

3. using a tether that is too heavy or too big for the size and weight of the animal so that the animal is prohibited from moving about freely;

4. allowing an animal to be tethered in such a manner that the animal is not confined to the owner's property or so that the tether can become entangled and prevent the animal from moving about freely, lying down comfortably or having access to adequate food, water and shelter; or

5. using a chain as a primary collar rather than a collar made of nylon, cotton, leather or similar material.

Section 2. That Section 6.20.010 is hereby amended by the addition of a new subsection G. to read in full as follows:

G. It shall be unlawful for any keeper or owner who uses a fence to enclose an animal to fail to ensure that the fence is properly and adequately constructed for the purpose of securing the animal within the fenced enclosure and that the fence is kept in good repair to so secure the animal.

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

Dated this _____ day of _____, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

AN ORDINANCE AMENDING TITLE 6 OF THE LOVELAND MUNICIPAL CODE REGARDING ANIMALS BY ADDING A NEW SECTION 6.16.170 TO REQUIRE PROPER TETHERING OF ANIMALS AND A NEW SUBSECTION G. TO SECTION 6.20.010 TO REQUIRE ADEQUATE FENCING FOR ANIMALS

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

AGENDA ITEM: **7**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Greg George, Development Services Director

PRESENTER: Brian Burson, Current Planning Division

TITLE:
A RESOLUTION FINDING A CERTAIN PETITION FOR ANNEXATION KNOWN AS MOTORPLEX ENTRY ADDITION, FILED APRIL 28, 2011, TO BE IN SUBSTANTIAL COMPLIANCE WITH SECTION 30 OF ARTICLE II OF THE COLORADO CONSTITUTION AND THE REQUIREMENTS OF § 31-12-107(1), C.R.S., AND ESTABLISHING A DATE, TIME, AND PLACE FOR A HEARING TO DETERMINE WHETHER THE PROPOSED ANNEXATION COMPLIES WITH THE APPLICABLE REQUIREMENTS OF SECTIONS 31-12-104 AND 31-12-105, C.R.S., AND IS ELIGIBLE FOR ANNEXATION TO THE CITY OF LOVELAND, COLORADO

DESCRIPTION:
A legislative action to adopt a resolution that makes findings of facts regarding certain statutory requirements for the proposed Motorplex Entry Addition, and setting a public hearing of June 21, 2011.

BUDGET IMPACT:

☐ Yes ☒ No

SUMMARY:
The annexation includes a 0.26 acre (11,141 sq. ft.) property owned by the City of Loveland; the existing rights-of-way for Byrd Drive and Crossroads Boulevard, extending to the west and east sides of the I-25 interchange; and the existing right-of-way of I-25, extending northward from the interchange to Larimer County Road #30.

LIST OF ATTACHMENTS:
A. Resolution to set the public hearing date.
B. Motorplex Entry Addition vicinity map.
C. Motorplex Entry Addition annexation map.

RECOMMENDED CITY COUNCIL ACTION:
City staff recommends the following motion for City Council action:

Move to approve: A RESOLUTION FINDING A CERTAIN PETITION FOR ANNEXATION KNOWN AS MOTORPLEX ENTRY ADDITION, FILED APRIL 28, 2011, TO BE IN SUBSTANTIAL COMPLIANCE WITH SECTION 30 OF ARTICLE II OF THE COLORADO CONSTITUTION AND THE REQUIREMENTS OF § 31-12-107(1), C.R.S., AND ESTABLISHING A DATE, TIME, AND PLACE FOR A HEARING TO DETERMINE WHETHER THE PROPOSED ANNEXATION COMPLIES WITH THE APPLICABLE REQUIREMENTS OF SECTIONS 31-12-104 AND 31-12-105, C.R.S., AND IS ELIGIBLE FOR ANNEXATION TO THE CITY OF LOVELAND, COLORADO.

REVIEWED BY CITY MANAGER:

R E S O L U T I O N #R-30-2011

A RESOLUTION FINDING A CERTAIN PETITION FOR ANNEXATION KNOWN AS MOTORPLEX ENTRY ADDITION, FILED APRIL 28, 2011, TO BE IN SUBSTANTIAL COMPLIANCE WITH SECTION 30 OF ARTICLE II OF THE COLORADO CONSTITUTION AND WITH THE REQUIREMENTS OF §31-12-107(1), C.R.S.; AND ESTABLISHING A DATE, TIME, AND PLACE FOR A HEARING TO DETERMINE WHETHER THE PROPOSED ANNEXATION COMPLIES WITH THE APPLICABLE REQUIREMENTS OF SECTIONS 31-12-104 AND 31-12-105, C.R.S., AND IS ELIGIBLE FOR ANNEXATION TO THE CITY OF LOVELAND, COLORADO

WHEREAS, on April 28, 2011, a Petition for Annexation was filed with the City Clerk by persons alleging to comprise more than fifty percent (50%) of the landowners in the area described on **Exhibit A**, attached hereto and incorporated herein, who assert ownership of more than fifty percent (50%) of said area, excluding public streets and alleys; and

WHEREAS, said Petition requests the City of Loveland to annex said area; and

WHEREAS, the City Council has determined that said Petition for Annexation is in substantial compliance with Section 30(1)(b) of Article II of the Colorado Constitution and of §31-12-107(1), C.R.S.; and

WHEREAS, the City Council desires to set a date, time, and place for public hearing to determine whether the proposed annexation complies with Section 30 of Article II of the Colorado Constitution and the applicable requirements of §§31-12-104 and 31-12-105, C.R.S., and is eligible for annexation;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Loveland, Colorado, that:

1. The City Council hereby finds and determines:

(a) That a Petition for Annexation has been filed with the City Clerk signed by persons alleging to comprise more than fifty percent (50%) of the landowners

who assert ownership of more than fifty percent (50%) of the area described on **Exhibit A**, attached hereto and incorporated herein, excluding public streets and alleys;

(b) That said Petition requests the City of Loveland to annex said area; and

(c) That said Petition substantially complies with and meets the requirements of Section 30(1)(b) of Article II of the Colorado Constitution and of §31-12-107(1), C.R.S.

2. Pursuant to §31-12-108, C.R.S., a public hearing is scheduled for June 21, 2011, at the hour of 6:30 p.m., for the purpose of enabling the City Council to determine whether the area proposed to be annexed complies Section 30 of Article II of the Colorado Constitution and with the applicable requirements of §§31-12-104 and 31-12-105, C.R.S., and is eligible for annexation; whether or not an election is required under Section 30(1)(a) of Article II of the Colorado Constitution and of §31-12-107(2), C.R.S.; and whether or not additional terms and conditions are to be imposed. Said hearing shall be held at the Loveland Municipal Complex, 500 East Third Street, Loveland, Colorado.

3. The City Clerk shall give notice of said hearing in the manner prescribed by §31-12-108(2), C.R.S.

4. This Resolution shall become effective on the date and at the time of its adoption.

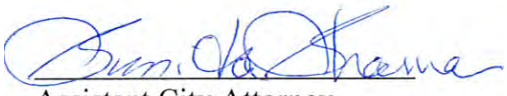
APPROVED the ____ day of _____, 2011.

ATTEST: CITY OF LOVELAND, COLORADO:

_____ _____

City Clerk Mayor

APPROVED AS TO FORM:



Assistant City Attorney

EXHIBIT A

MOTORPLEX ENTRY ADDITION

Legal Description

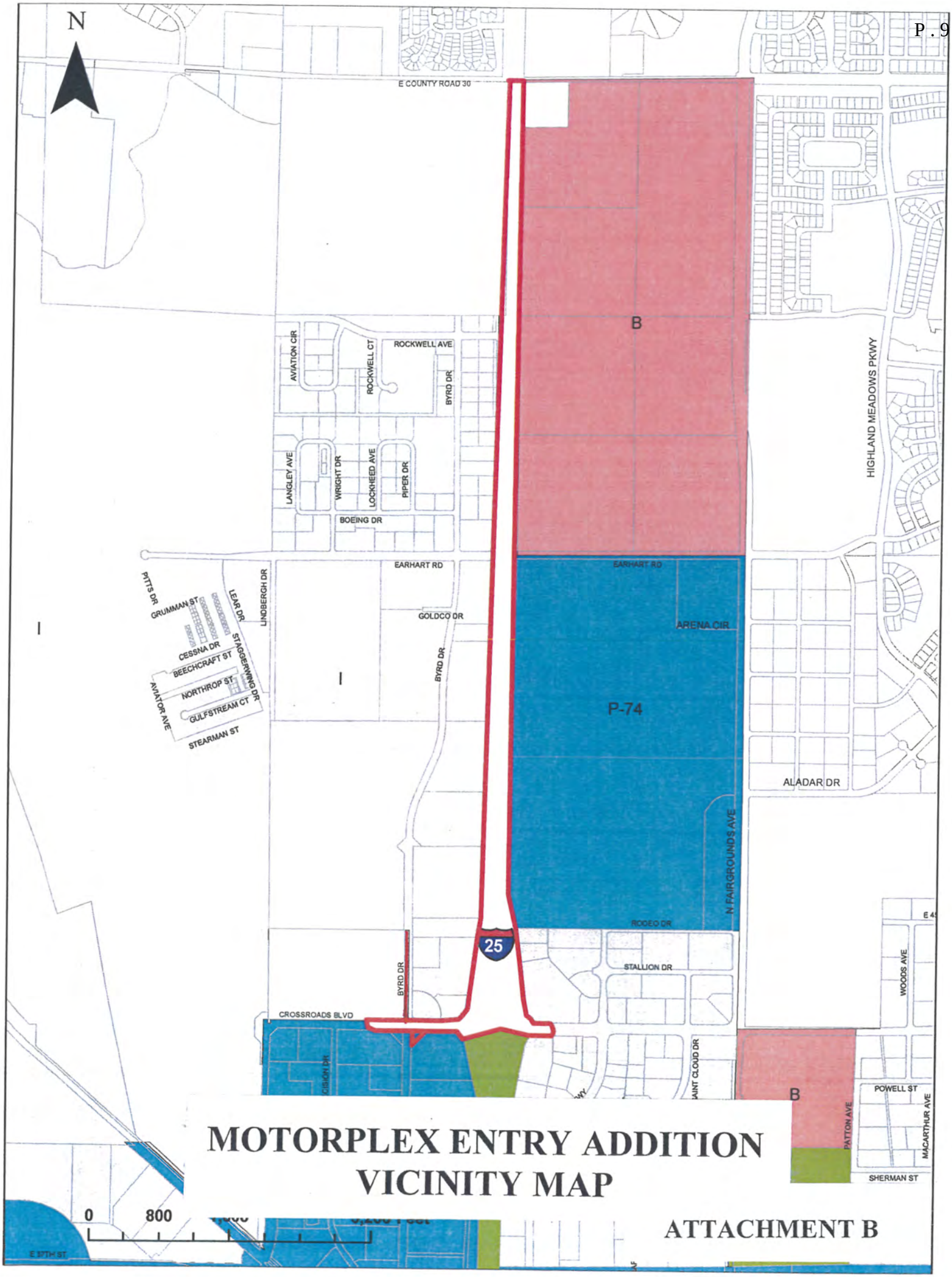
A tract of land being a portion of Section 22, 34 and Section 27, Township 6 North, Range 68 West and a portion of Section 3, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the Center Section line of said Section 34 as bearing North 00°00'26" East and with all bearings contained herein relative thereto:

BEGINNING at the South Quarter corner of said Section 34; thence South 72°23'38" West, a distance of 469.20 feet to the West right-of-way line of Interstate 25; thence along said West right-of-way line, North 51°26'18" West, a distance of 108.50 feet to the South right-of-way line of Crossroads Boulevard; thence along said South right-of-way line, North 89°55'18" West, a distance of 337.12 feet to the East corner of Outlot B, Myers Group Partnership #949, 2nd Subdivision; thence along the South and West lot lines of said Outlot B the following 5 courses and distances: South 45°02'07" West, a distance of 218.27 feet; thence North 03°53'33" East, a distance of 70.36 feet; thence North 01°59'08" East, a distance of 4.03 feet; thence North 00°04'43" East, a distance of 60.22 feet; thence North 45°02'07" East, a distance of 28.26 feet to the South right-of-way line of Crossroads Boulevard; thence along said South right-of-way line, North 89°55'18" West, a distance of 433.44 feet; thence North 65°41'48" West, a distance of 109.70 feet; thence North 00°04'42" East, a distance of 60.00 feet to the North right-of-way line of Crossroads Boulevard; thence along said North right-of-way line the following 2 courses and distances: North 65°51'12" East, a distance of 109.70 feet; thence South 89°55'18" East, a distance of 326.73 feet to the West line of a right-of-way easement as described at Reception Number 2003-0098332, Larimer County Records; thence along said West and along the North and East lines of said right-of-way easement the following 3 courses and distances: North 00°37'47" West, a distance of 997.93 feet; thence South 89°55'19" East, a distance of 40.00 feet; thence South 00°37'47" East, a distance of 997.94 feet to the North right-of-way line of Crossroads Boulevard; thence along said North right-of-way line, South 89°55'19" East, a distance of 533.35 feet to the West right-of-way line of Interstate 25; thence along said West right-of-way line the following 8 courses and distances: North 46°51'41" East, a distance of 120.35 feet; thence North 10°04'11" East, a distance of 608.30 feet; thence North 06°53'11" East, a distance of 704.20 feet; thence North 00°36'41" East, a distance of 3,769.73 feet; thence North 06°55'12" East, a distance of 90.46 feet; thence North 00°00'03" West, a distance of 150.00 feet; thence North 01°23'34" East, a distance of 150.57 feet; thence North 89°26'16" East, a distance of 32.33 feet; thence North 00°00'03" West, a distance of 4,884.25 feet; thence, North 89°02'06" East, a distance of 250.65 feet to the East right-of-way line of Interstate 25; thence along said East right-of-way line the following 6 courses

and distances: South 00°00'59" East, a distance of 2,636.85 feet; thence South 00°00'48" East, a distance of 2,639.03 feet; thence South 00°35'54" West, a distance of 3,676.16 feet; thence South 08°09'08" East, a distance of 809.43 feet; thence South 09°46'48" East, a distance of 610.00 feet; thence South 34°30'18" East, a distance of 92.13 feet to the North right-of-way line of Crossroads Boulevard; thence along said North right-of-way line, South 89°55'18" East, a distance of 150.00 feet; thence South 65°41'31" East, a distance of 109.73 feet; thence South 00°04'41" West, a distance of 60.02 feet; thence South 65°51'11" West, a distance of 109.67 feet to the South right-of-way line of Crossroads Boulevard; thence along said South right-of-way line, North 89°55'19" West, a distance of 150.00 feet; thence North 76°38'29" West, a distance of 326.73 feet to the POINT OF BEGINNING.

The above described tract of land contains 80.934 acres, more or less and is subject to all easements and rights-of-way now on record or existing.



MOTORPLEX ENTRY ADDITION VICINITY MAP

ATTACHMENT B

MOTORPLEX ENTRY ADDITION

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING A PORTION OF SECTIONS 22, 27 AND 34, TOWNSHIP 6 NORTH, RANGE 68 WEST AND A PORTION OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN.

Mayor Certificate:

This map is approved by the City Council of the City of Loveland, Larimer County, Colorado

by Ordinance No. _____ , passed on second reading on

this _____ day of _____ , 20__ , for filing with the Clerk and Recorder of Larimer County.

By: _____
Mayor

Attest: _____
City Clerk

Surveyor Certificate:

I, Gerald D. Gilliland, a registered Land Surveyor in the State of Colorado, do hereby certify that the annexation map shown hereon is a reasonably accurate depiction of the parcel of land legally described hereon and, to the extent described herein, is at least one sixth (1/6) of the peripheral boundary of said parcel is contiguous to the boundary of the City of Loveland, Colorado. The map was compiled using existing plats, deeds, legal descriptions, and other documents and is not based on a field survey nor should it be construed as a boundary survey.

Gerald D. Gilliland
L.S. No. 14823

The foregoing instrument was acknowledged before me this _____ day of

_____ , _____ , by Gerald D. Gilliland.

Witness my hand and official seal.

My commission expires _____

_____
Notary Public

DESCRIPTION:

A tract of land being a portion of Section 22, 34 and Section 27, Township 6 North, Range 68 West and a portion of Section 3, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the Center Section line of said Section 34 as bearing North 00°00'26" East and with all bearings contained herein relative thereto:

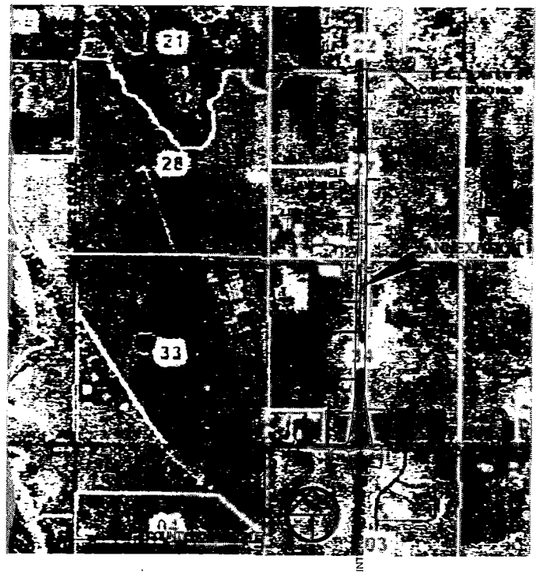
BEGINNING at the South Quarter corner of said Section 34; thence South 72°23'38" West, a distance of 469.20 feet to the West right-of-way line of Interstate 25; thence along said West right-of-way line, North 51°26'18" West, a distance of 108.50 feet to the South right-of-way line of Crossroads Boulevard; thence along said South right-of-way line, North 89°55'18" West, a distance of 337.12 feet to the East corner of Outlot B, Myers Group Partnership #949, 2nd Subdivision; thence along the South and West lot lines of said Outlot B the following 5 courses and distances: South 45°02'07" West, a distance of 218.27 feet; thence North 03°53'33" East, a distance of 70.36 feet; thence North 01°59'08" East, a distance of 4.03 feet; thence North 00°04'43" East, a distance of 60.22 feet; thence North 45°02'07" East, a distance of 28.26 feet to the South right-of-way line of Crossroads Boulevard; thence along said South right-of-way line, North 89°55'18" West, a distance of 433.44 feet; thence North 65°41'48" West, a distance of 109.70 feet; thence North 00°04'42" East, a distance of 60.00 feet to the North right-of-way line of Crossroads Boulevard; thence along said North right-of-way line the following 2 courses and distances: North 65°51'12" East, a distance of 109.70 feet; thence South 89°55'18" East, a distance of 326.73 feet to the West line of a right-of-way easement as described at Reception Number 2003-0098332, Larimer County Records; thence along said West and along the North and East lines of said right-of-way easement the following 3 courses and distances: North 00°37'47" West, a distance of 997.93 feet; thence South 89°55'19" East, a distance of 40.00 feet; thence South 00°37'47" East, a distance of 997.94 feet to the North right-of-way line of Crossroads Boulevard; thence along said North right-of-way line, South 89°55'19" East, a distance of 533.35 feet to the West right-of-way line of Interstate 25; thence along said West right-of-way line the following 8 courses and distances: North 46°51'41" East, a distance of 120.35 feet; thence North 10°04'11" East, a distance of 608.30 feet; thence North 06°53'11" East, a distance of 704.20 feet; thence North 00°36'41" East, a distance of 3,769.73 feet; thence North 06°55'12" East, a distance of 90.46 feet; thence North 00°00'03" West, a distance of 150.00 feet; thence North 01°23'34" East, a distance of 150.57 feet; thence North 89°26'16" East, a distance of 32.33 feet; thence North 00°00'03" West, a distance of 4,884.25 feet; thence, North 89°02'06" East, a distance of 250.65 feet to the East right-of-way line of Interstate 25; thence along said East right-of-way line the following 6 courses and distances: South 00°00'59" East, a distance of 2,636.85 feet; thence South 00°00'48" East, a distance of 2,639.03 feet; thence South 00°35'54" West, a distance of 3,676.16 feet; thence South 08°09'08" East, a distance of 809.43 feet; thence South 09°46'48" East, a distance of 610.00 feet; thence South 34°30'18" East, a distance of 92.13 feet to the North right-of-way line of Crossroads Boulevard; thence along said North right-of-way line, South 89°55'18" East, a distance of 150.00 feet; thence South 65°41'31" East, a distance of 109.73 feet; thence South 00°04'41" West, a distance of 60.02 feet; thence South 65°51'11" West, a distance of 109.67 feet to the South right-of-way line of Crossroads Boulevard; thence along said South right-of-way line, North 89°55'19" West, a distance of 150.00 feet; thence North 76°38'29" West, a distance of 326.73 feet to the POINT OF BEGINNING.

The above described tract of land contains 80.934 acres, more or less and is subject to all easements and rights-of-way now on record or existing.

TOTAL PERIMETER TO ANNEX = 27,035 FEET

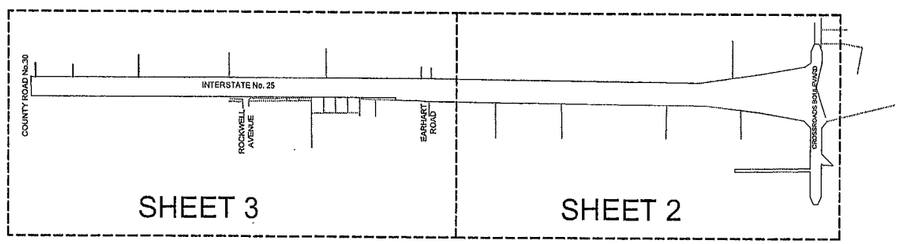
TOTAL BOUNDARY CONTIGUOUS TO CITY = 22,216 FEET

MINIMUM CONTIGUOUS PERIMETER FEET REQUIRED = 27,036/6.....4,506 FEET



VICINITY MAP
SCALE: 1" = ± 2,000'

KEY MAP



NOTICE:
According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown hereon.

NORTHERN ENGINEERING
200 South College Avenue, Suite 100
Fort Collins, Colorado 80524
PHONE: 970.221.4158 FAX: 970.221.4159
www.northernengineering.com

SECTION: S. 22, 27 & 34
TOWNSHIP: 5N & 6N
RANGE: 68 W of the 6th PM

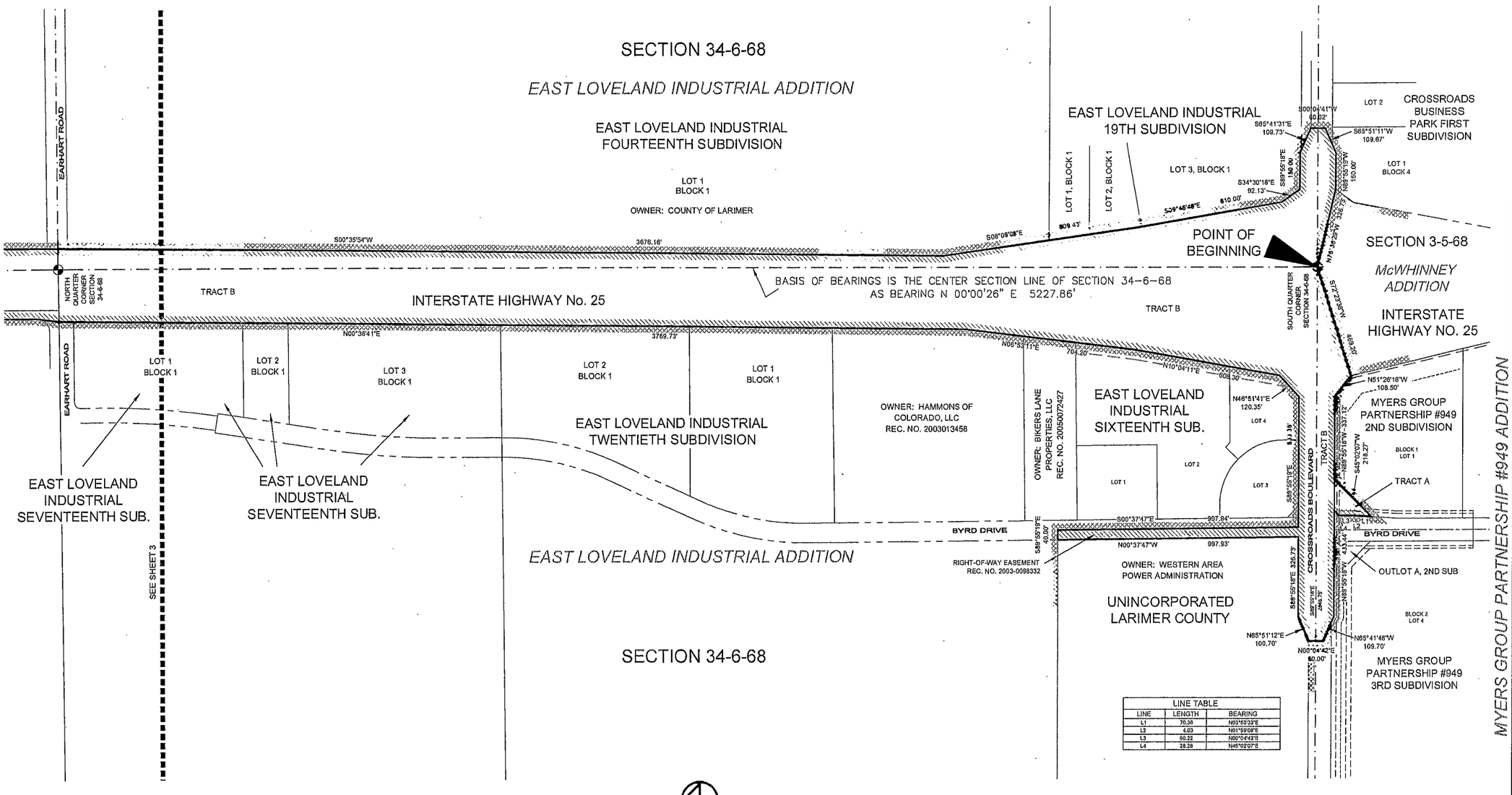
PROJECT: 750-068
DESIGNED BY:
DRAWN BY: L. Smith
DATE: 9/13/10
SCALE: N/A
REVIEWED BY: G. Gilliland

MOTORPLEX ENTRY ADDITION
TO THE CITY OF LOVELAND
LARIMER COUNTY, COLORADO

ATTACHMENT C

MOTORPLEX ENTRY ADDITION

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING A PORTION OF SECTIONS 22, 27 AND 34, TOWNSHIP 6 NORTH, RANGE 68 WEST AND A PORTION OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN.



LINE TABLE

LINE	LENGTH	BEARING
L1	70.38	N03°53'33"E
L2	4.03	N01°59'08"E
L3	60.22	N00°04'42"E
L4	28.28	N45°02'07"E

NOTICE:
According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown hereon.

SECTION: 3, 22, 27 & 34
TOWNSHIP: 5N & 6N
RANGE: 68 W of the 6th PM

NORTHERN ENGINEERING
PHONE: 970.221.4158 FAX: 970.221.4159
www.northernengineering.com

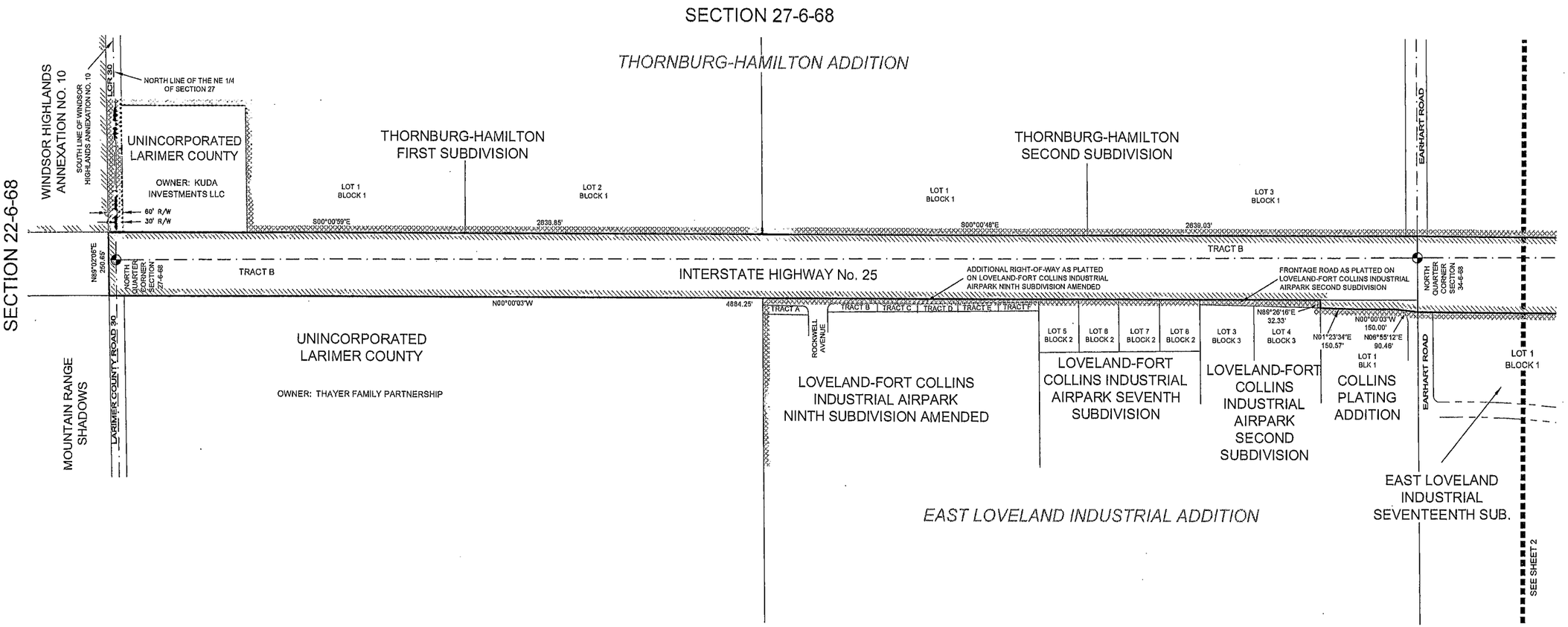
PROJECT: 750-008
DESIGNED BY:
DRAWN BY: L Smith
DATE: 9/13/10
SCALE: 1"=200'
REVIEWED BY: C. Gilliland

MOTORPLEX ENTRY ADDITION
TO THE CITY OF LOVELAND
LARIMER COUNTY, COLORADO

Sheet 2 Of 3 Sheets

MOTORPLEX ENTRY ADDITION

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING A PORTION OF SECTIONS 22, 27 AND 34, TOWNSHIP 6 NORTH, RANGE 68 WEST AND A PORTION OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN.



NORTH

200 0 200 400 600Feet

(IN FEET)
1 inch = 200 ft.

NOTICE:
According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown hereon.

SECTION: 3, 22, 27 & 34
TOWNSHIP: 5N & 6N
RANGE: 68 W of the 6th PM

NORTHERN ENGINEERING
350 South Cleveland Avenue, Suite 110
Fort Collins, Colorado 80526
PHONE: (970) 221-4158 FAX (970) 221-4159
www.northernengineering.com

PROJECT: 750-068
DESIGNED BY:
DRAWN BY: L. Smith
DATE: 9/13/10
SCALE: 1"=200'
REVIEWED BY: C. Gilliland

MOTORPLEX ENTRY ADDITION
TO THE CITY OF LOVELAND
LARIMER COUNTY, COLORADO

Sheet 3
Of 3 Sheets

CITY OF LOVELAND
PARKS AND RECREATION DEPARTMENT
500 E. Third Street, Suite 200 • Loveland, Colorado 80537
(970) 962-2727 • FAX (970) 962-2903 • TDD (970) 962-2620

AGENDA ITEM: **8**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Gary Havener, Parks and Recreation Department

PRESENTER: Gary Havener

TITLE:
Resolution Approving Residential Lease Agreements with Adam Clark and Greg Hays

DESCRIPTION:
This is an administrative action to consider a resolution approving Residential Lease Agreements with Adam Clark (Viestenz-Smith Mountain Park Caretaker) and Greg Hays (Loveland Burial Park/Lakeside Cemetery Caretaker), both Parks and Recreation Department employees. The real properties to be leased consist of one City-owned house and a storage shed located at 1211 West Highway 34 (site of the City's hydro-electric plant and mountain park) and one City-owned house and a storage shed located at 1702 North Cleveland Avenue (site of the City's Loveland Burial Park).

BUDGET IMPACT:

☐ Yes ☒ No

SUMMARY:
The houses and storage sheds (together, the "premises") to be leased under the Residential Lease Agreements ("Agreements") are owned by the City and located on the City's Viestenz-Smith Mountain Park and Loveland Burial Park sites. Mr. Clark has resided in the Viestenz-Smith Caretaker's house for 19 years (since October 1992) and Mr. Hays has resided in the Cemetery Caretaker's house for 23 years (since March 1988). The Department of Parks and Recreation deems it desirable to have employees familiar with and responsible for site maintenance, operations and security lease the premises. The Agreements address the special duties and requirements that each caretaker performs in lieu of rent. The City will not be required to provide any additional employment compensation or benefits to either Mr. Clark or Mr. Hays as a result of the Lease Agreements.

Colorado Revised Statutes § 24-18-201 requires that employees who have a personal interest in a contract with the City disclose the personal interest to City Council and notify City Council of the contract. A form of that disclosure notice is included in each Agreement at Exhibit B. If the Agreements are approved by City Council and executed by the parties, Mr. Clark and Mr. Hays

have agreed to sign the disclosure notices and provide them to the City Council as required by State law.

LIST OF ATTACHMENTS:
Resolution
Residential Lease Agreements (Attached to the Resolution as Exhibits A and B)

RECOMMENDED CITY COUNCIL ACTION:
Adopt a resolution approving Residential Lease Agreements with Adam Clark and Greg Hays, and authorizing the City Manager to sign said Agreements on behalf of the City.

REVIEWED BY CITY MANAGER:

RESOLUTION #R-31-2011

A RESOLUTION APPROVING RESIDENTIAL LEASE AGREEMENTS WITH ADAM CLARK AND GREG HAYS

WHEREAS, the City of Loveland owns a house located at 1211 D. Big Thompson Canyon, Loveland, Colorado 80537 (the "Park House") on the grounds of the City of Loveland Viestenz-Smith Mountain Park (the "Park"); and

WHEREAS, the City of Loveland also owns a house located at 1702 North Cleveland, Loveland, Colorado 80538 (the "Cemetery House") on the grounds of the City's Loveland Burial Park (the "Cemetery"); and

WHEREAS, the City desires to lease the Park House to Adam Clark ("Clark"), a City employee working for the Parks & Recreation Department whose job site is located at the Park and for whom residence in the Park House is a condition of employment; and

WHEREAS, the City desires to lease the Cemetery House to Greg Hays ("Hays"), a City employee working for the Parks & Recreation Department whose job site is located at the Cemetery and for whom residence in the Cemetery House is a condition of employment; and

WHEREAS, the City has negotiated a Residential Lease Agreement with Clark (the "Park House Lease") and a Residential Lease Agreement with Hays (the "Cemetery House Lease") whereby the City will lease to and Clark and Hays will lease from the City, the Park House and the Cemetery House, respectively, on a month-to-month basis for so long as Clark and Hays are each employed by the City in their respective positions, unless is terminated by either party in accordance therewith.

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

Section 1. That the Park House Lease to Clark attached hereto as **Exhibit A** and incorporated herein by reference is hereby approved.

Section 2. That the Cemetery House Lease to Hays attached hereto as **Exhibit B** and incorporated herein by this reference is hereby approved.

Section 3. That the City Manager is authorized, following consultation with the City Attorney, to modify the Park House Lease and the Cemetery House Lease, in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 4. That the City Manager and the City Clerk are hereby authorized and directed to execute the Park House Lease and the Cemetery House Lease on behalf of the City of Loveland.

Section 5. That in accordance with C.R.S. § 24-18-201, Clark shall execute and deliver to the City Council a disclosure notice as set forth in Exhibit B of the Park House Lease concurrently with Clark's execution of the Park House Lease.

Section 6. That in accordance with C.R.S. § 24-18-201, Hays shall execute and deliver to the City Council a disclosure notice as set forth in Exhibit B of the Cemetery House Lease concurrently with Hays' execution of the Cemetery House Lease.

Section 7. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 17th day of May, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

EXHIBIT A

RESIDENTIAL LEASE AGREEMENT
1211 West Highway 34, Loveland, CO 80537

This Residential Lease Agreement ("Lease") is made and entered into on this ___ day of _____, 2011, by and between the **City of Loveland, Colorado** ("Landlord") through the City Manager or his designee, and Adam Clark ("Tenant").

1. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term of this Lease and upon all terms and conditions set forth herein, the single-family home and one storage shed located at **1211 West Highway 34, Loveland, Colorado 80537** ("Premises") located on the grounds of City of Loveland Viestenz-Smith Mountain Park (the "Park"). Tenant has inspected the Premises and leases the Premises from Landlord "as is" and with no warranties, express or implied, expect as provided in paragraph 10 below.

2. Term. The term of this Lease ("Term") shall be month to month beginning on the date set forth above. This Lease shall continue in full force and effect until terminated in accordance with the provisions herein.

3. Rent. Tenant is an employee of Landlord and residency in the Premises is a condition of Tenant's employment. Tenant acknowledges that, to the extent required by federal law, Landlord may report Tenant's right to occupy the Premises under this Lease as income to Tenant. In lieu of rent, the Tenant shall perform additional special duties including opening and closing the entrance gate to the Park according to City of Loveland's Department of Parks and Recreation (the "Department") policy/hours of park operation; clearing the Park of visitors prior to Park closure; responding to any Park issues at any time including weekends while on site; responding to after-hours emergencies; performing snow removal within the Park; inspection and monitoring of Round Mountain Trail/Trailhead and Idlewilde Dam parking lots; and other duties as authorized by the Park Manager).

4. Utilities. Landlord shall furnish water and sewer, telephone, and trash removal service to the Premises. Tenant shall reimburse Landlord for the cost of personal telephone calls and shall obtain and pay for all metered and other utilities used on the Premises during the Term of this Lease. For the purposes of this Lease, "metered and other utilities" shall include, without limitation, the following services: electric, gas or propane, Internet, and cable or satellite television. In no event shall Landlord be liable for any interruption or failure in the supply or delivery of any utility to the Premises.

5. Inspection of Premises. Tenant hereby certifies that, prior to signing this Lease, Tenant inspected the Premises and informed Landlord of any defects and requested repairs to the Premises. Landlord shall make any necessary repairs in accordance with paragraph 10 below.

6. Use of Premises. Tenant shall use the Premises as a residence and shall occupy

the Premises during the Term of this Lease. Commercial use of the Premises is prohibited. No persons except Tenant shall occupy the Premises during the Term of this Lease without Landlord's prior written consent, which may be withheld in Landlord's sole discretion. No more than four vehicles may be kept or stored on the Premises at any one time without Landlord's prior written consent. Tenant shall not commit or suffer any waste on the Premises or permit any disorderly conduct or excessive noise on the Premises. Tenant shall keep the Premises in a clean and safe manner free of trash, refuse, and other unsanitary conditions. Tenant shall pay Landlord for any damages to the Premises, including services required to remove any trash, refuse, or other unsanitary condition, caused by Tenant or Tenant's invitees. Tenant shall comply with all applicable federal, state, and local laws and regulations relating to use of the Premises.

7. Pets. Tenant shall be permitted to keep pets on the Premises with Landlord's prior written consent, which may be withheld in Landlord's sole discretion. Tenant shall be responsible for any and all damages caused by or related to Tenant's pets.

8. Maintenance of Yard. Tenant shall water, mow, and trim the lawn and landscaping as required to maintain a pleasing appearance. Tenant shall be responsible for removing all snow and ice from the sidewalks and areas surrounding the Premises.

9. Repairs and Improvements. Tenant agrees to notify Landlord as soon as possible of any necessary repairs or improvements required for upkeep and maintenance of the Premises. Landlord shall have up to 30 days to make any necessary repairs; provided, however, that repairs necessary to heating, cooling, water, wastewater, and electrical improvements shall be performed within 24 hours, or as soon as practicable. Tenant shall make no repairs or improvements to the Premises without prior written consent from the Park Manager.

10. Quiet Enjoyment. Landlord covenants and agrees that so long as Tenant observes and performs all of its promises and covenants hereunder, Tenant shall peaceably and quietly have, hold, and enjoy the Premises during the Term of this Lease without any encumbrance, interference, or hindrance by Landlord, except as specifically provided herein and as otherwise provided by law. If Tenant's use of the Premises is limited or denied through an action of any public or quasi-public agency or governmental authority, this Lease, at the sole option of Tenant, shall terminate as of the effective date of such action.

11. Security. The parties acknowledge that the Premises are located on the grounds of the City of Loveland's Viestenz-Smith Mountain Park, which is open to the public in accordance with the Department's policies. Access to the Premises after hours by Tenant requires opening, closing and locking existing gate to secure the park and the Water and Power Department's Hydro-Electric Plant on site.

12. Mail. Tenant shall be entitled to receive mail at the park address (1211 West Highway 34, Loveland, CO 80537) at a mail box located outside the main gate on Highway 34.

13. Employment. Tenant understands and agrees that this Lease is subject to

Tenant's employment with the City of Loveland. Tenant understands and agrees that if Tenant's employment with the City of Loveland is terminated for any reason, whether voluntarily or involuntarily, this Lease shall automatically terminate 30 days after the date on which Tenant's employment with the City of Loveland is terminated. Tenant shall pay reasonable market value rent as determined by Landlord for each day of occupancy after termination of employment, which shall not exceed thirty (30) days of occupancy as set forth herein.

14. Assignment and Subletting. Tenant shall not have the right to assign this Lease or sublease all or any part of the Premises.

15. Insurance. During the Term of this Lease, Tenant shall be required to obtain and keep in force a renter's insurance policy insuring Tenant's personal property on the Premises and with a liability limit of at least $150,000. Tenant shall be required to provide current certificate to the City.

16. Indemnity. Landlord, its officers, employees, and authorized agents shall not be liable for any damage or injury to Tenant or any other person or to any property occurring on the Premises or any part thereof. Tenant agrees to hold Landlord, its officers, employees, and authorized agents harmless from any and all claims for damages no matter how caused. This paragraph shall survive the termination of this Lease.

17. Governmental Immunity. No term or condition of this Lease 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.

18. Defaults; Remedies.

a. Default by Tenant. The failure by Tenant to observe or perform any of the covenants, conditions, or provisions as required by this Lease, where the failure continues for a period of 30 days after Tenant receives notice thereof from Landlord shall constitute a material default under this Lease; provided, however, that if the nature of Tenant's default is such that more than 30 days are reasonably required for its cure, then lessee shall not be deemed to be in default if Tenant commences such cure within the 30 day period and thereafter diligently completes the cure. In the event of any such material default by Tenant, Landlord may, after giving notice as provided above, enter the Premises, remove Tenant's personal property, and take and hold possession of the Premises and expel Tenant and pursue those remedies available to Landlord under Colorado law.

b. Default by Landlord. Landlord shall not be in default unless Landlord fails to perform any covenants, terms, provisions, agreements, or obligations required of it under this Lease within a reasonable time, but in no event more than 30 days after notice by Tenant to Landlord; provided that if Landlord's obligation is such that more than thirty 30 days are

reasonably required for performance, then Landlord shall not be in default if Landlord commences performance within the 30-day period and thereafter diligently completes performance. If Landlord defaults in the performance of any of the obligations or conditions required to be performed by Landlord under this Lease, Tenant may, after giving notice as provided above, terminate this Lease upon giving 30 days' notice to Landlord of his intention to do so. In that event, this Lease shall terminate upon the date specified in the notice, unless Landlord has meanwhile cured the default to the satisfaction of Tenant. In the event that any of the representations and warranties set forth in this Lease cease to be true, and if Landlord fails to commence to cure within 60 days after notice from Tenant and thereafter diligently completes the cure of the same, then except as specifically provided elsewhere in this Lease, Tenant shall have the right to terminate this Lease upon notice to Landlord. Tenant may also pursue those remedies available to Tenant under Colorado law.

19. Termination. Either Landlord or Tenant may terminate this Lease by written notice given to the other at least 10 days prior to the expiration of any calendar month and upon the giving of such notice, this Lease shall terminate on the last day of such calendar month. Tenant shall have no right to hold-over after termination of the Lease.

20. Landlord's Access. Upon twenty-four hours' notice, written or otherwise, Landlord, its officers, employees, and authorized agents shall have the right to enter the Premises at reasonable times during normal business hours for the purpose of inspecting or making such alterations, repairs, improvements, or additions to the Premises as Landlord deems necessary or desirable. Shorter notice shall be allowed if mutually agreed upon by Owner and Tenant.

21. Force Majeure. Notwithstanding anything contained herein to the contrary, in the event and to the extent that fire, flood, earthquake, natural catastrophe, explosion, accident, riot, terrorist attack, war, illegality, or any other cause beyond the control of the parties hereto prevents or delays performance by either party, such party shall be relieved of the consequences thereof without liability, so long as and to the extent that performance is prevented by such cause; provided, however, that such party shall exercise due diligence in its efforts to resume performance as soon as practicable.

22. Notices. All notices required under this Lease shall be directed as follows and if written, shall be deemed received when hand-delivered or emailed, or three days after being sent by certified mail, return receipt requested:

To Landlord:
Bill Cahill
500 E. Third
Loveland, CO 80537
Email: cahilb@ci.loveland.co.us
Phone: (970) 962-2306

To Tenant:
Adam Clark
1211 West Highway 34
Loveland, CO 80537
Email: clarka@ci.loveland.co.us
Phone: (970) 461-2635

23. **C.R.S. § 24 -76.5-103.** Tenant shall complete the affidavit attached hereto as Exhibit A and attach a photocopy of a valid form of identification. If Tenant states that he is an alien lawfully present in the United States, Landlord will verify his lawful presence through the SAVE Program or successor program operated by the U.S. Department of Homeland Security. In the event Landlord determines that Tenant is not lawfully present in the United States, Landlord shall terminate this Lease for default in accordance with the provisions herein.

24. **C.R.S. § 24-18-201.** Tenant shall complete and sign the notice attached hereto as Exhibit B. Tenant understands and agrees that said notice shall be provided to the Loveland City Council as required by C.R.S. § 24-18-201.

25. **Miscellaneous.** This Lease 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. No waiver by Landlord or Tenant of any provision hereof shall be deemed a waiver of any other provision or of any subsequent breach by Tenant or Landlord of the same or any other provision. Landlord's consent to or approval of any act by Tenant shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. In the event a court of competent jurisdiction holds any provision of this Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Lease. This Lease shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

Signed by the parties on the date written above.

Landlord:
City of Loveland, Colorado

By: _____

Title: William D. Cahill, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Deputy City Attorney

Tenant:
Adam Clark

_____

Adam Clark

State of Colorado)
) ss.
County of Larimer)

The foregoing Residential Lease Agreement was acknowledged before me this ___ day of _____, 2011 by Adam Clark.

_____
Notary's official signature

S E A L

_____
Commission expiration date

EXHIBIT A - AFFIDAVIT

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.

EXHIBIT B – NOTICE

Date: _____, 2011

To Members of Loveland City Council:

In accordance with the requirements of C.R.S. § 24-18-201, please allow this letter to serve as notice that I have entered into a Residential Lease Agreement ("Lease") with the City of Loveland for occupancy and use of the single-family house and one storage shed located at 1211 West Highway 34, Loveland, Colorado 80537 ("Premises") on the grounds of City of Loveland Viestenz-Smith Mountain Park (the "Park") owned by the City. A copy of the Lease is on file with the City Clerk's Office and will be provided to you upon request.

The house is located on the grounds of the Park inside the security gate. I understand that the Parks & Recreation Division deems it desirable to have an employee occupy the Premises as a condition of employment and the Lease provides for my occupancy of the Premises in return for additional job duties as set forth therein.

Please do not hesitate to contact the City Attorney's Office with any questions regarding the Lease or this notice.

Sincerely,

Adam Clark
Crew Supervisor – Mountain Parks, Recreation Trails and Fleet

cc: Parks Manager
Parks & Recreation Director
Human Resources Director
City Attorney

EXHIBIT B

RESIDENTIAL LEASE AGREEMENT
1702 N. Cleveland Avenue, Loveland, CO 80538

This Residential Lease Agreement ("Lease") is made and entered into on this ___ day of _____, 2011, by and between the **City of Loveland, Colorado** ("Landlord") through the City Manager or his designee, and Greg Hays ("Tenant").

1. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term of this Lease and upon all terms and conditions set forth herein, the single-family home and one storage shed located at **1702 N. Cleveland Avenue, Loveland, Colorado 80538** ("Premises") located on the Loveland Burial Park grounds (the "Cemetery"). Tenant has inspected the Premises and leases the Premises from Landlord "as is" and with no warranties, express or implied, expect as provided in paragraph 10 below.

2. Term. The term of this Lease ("Term") shall be month to month beginning on the date set forth above. This Lease shall continue in full force and effect until terminated in accordance with the provisions herein.

3. Rent. Tenant is an employee of Landlord and residency in the Premises is a condition of Tenant's employment. Tenant acknowledges that, to the extent required by federal law, Landlord may report Tenant's right to occupy the Premises under this Lease as income to Tenant. In lieu of rent, the Tenant shall perform additional special duties including after-hours and weekend lot showings; lot sales; interments; responding to any cemetery issues at any time including weekends while on site; responding to after-hours emergencies; performing snow removal within the Cemetery; inspection and monitoring of Loveland Burial Park and Lakeside Cemetery; and other duties as authorized by the Park Manager.

4. Utilities. Landlord shall provide water, sewer, telephone, and trash removal service to the Premises. Tenant shall reimburse Landlord for the cost of personal telephone calls and shall pay for all metered and other utilities used on the Premises during the Term of this Lease. For the purposes of this Lease, " metered and other utilities" shall include, without limitation, the following services: electric, gas, water, sewer, telephone, Internet, and cable or satellite television. In no event shall Landlord be liable for any interruption or failure in the supply or delivery of any utility to the Premises.

5. Inspection of Premises. Tenant hereby certifies that, prior to signing this Lease, Tenant inspected the Premises and informed Landlord of any defects and requested repairs to the Premises. Landlord shall make any necessary repairs in accordance with paragraph 10 below.

6. Use of Premises. Tenant shall use the Premises as a residence and shall occupy the Premises during the Term of this Lease. Commercial use of the Premises is prohibited. No persons except Tenant and spouse shall occupy the Premises during the Term of this Lease without Landlord's prior written consent, which may be withheld in Landlord's sole discretion.

No more than two vehicles may be kept or stored on the Premises at any one time without Landlord's prior written consent. Tenant shall not commit or suffer any waste on the Premises or permit any disorderly conduct or excessive noise on the Premises. Tenant shall keep the Premises in a clean and safe manner free of trash, refuse, and other unsanitary conditions. Tenant shall pay Landlord for any damages to the Premises, including services required to remove any trash, refuse, or other unsanitary condition, caused by Tenant or Tenant's invitees. Tenant shall comply with all applicable federal, state, and local laws and regulations relating to use of the Premises.

7. Pets. Tenant shall be permitted to keep pets on the Premises, with Landlord's prior written consent, which may be withheld in Landlord's sole discretion. Tenant shall be responsible for any and all damages caused by or related to Tenant's pets.

8. Maintenance of Yard. Tenant shall water, mow, and trim the lawn and landscaping as required to maintain a pleasing appearance. Tenant shall be responsible for removing all snow and ice from the sidewalks and areas surrounding the Premises.

9. Repairs and Improvements. Tenant agrees to notify Landlord as soon as possible of any necessary repairs or improvements required for upkeep and maintenance of the Premises. Landlord shall have up to 30 days to make any necessary repairs; provided, however, that repairs necessary to heating, cooling, water, wastewater, and electrical improvements shall be performed within 24 hours, or as soon as practicable. Tenant shall make no repairs or improvements to the Premises without prior written consent from the Park Manager.

10. Quiet Enjoyment. Landlord covenants and agrees that so long as Tenant observes and performs all of its promises and covenants hereunder, Tenant shall peaceably and quietly have, hold, and enjoy the Premises during the Term of this Lease without any encumbrance, interference, or hindrance by Landlord, except as specifically provided herein and as otherwise provided by law. If Tenant's use of the Premises is limited or denied through an action of any public or quasi-public agency or governmental authority, this Lease, at the sole option of Tenant, shall terminate as of the effective date of such action.

11. Security. The parties acknowledge that the Premises are located on the grounds of the Loveland Burial Park, which is open to the public in accordance with the Department's policies.

12. Mail. Tenant shall be entitled to receive mail at the park address (1702 N. Cleveland Avenue, Loveland, CO 80538) at a mail box located outside the main residence.

13. Employment. Tenant understands and agrees that this Lease is subject to Tenant's employment with the City of Loveland. Tenant understands and agrees that if Tenant's employment with the City of Loveland is terminated for any reason, whether voluntarily or involuntarily, this Lease shall automatically terminate 30 days after the date on which Tenant's employment with the City of Loveland is terminated. Tenant shall pay

reasonable market value rent as determined by Landlord for each day of occupancy after termination of employment, which shall not exceed thirty (30) days of occupancy as set forth herein.

14. Assignment and Subletting. Tenant shall not have the right to assign this Lease or sublease all or any part of the Premises.

15. Insurance. During the Term of this Lease, Tenant shall be required to obtain and keep in force a renter's insurance policy insuring Tenant's personal property on the Premises and with a liability limit of at least $150,000. Tenant shall also provide current certificate to the City.

16. Indemnity. Landlord, its officers, employees, and authorized agents shall not be liable for any damage or injury to Tenant or any other person or to any property occurring on the Premises or any part thereof. Tenant agrees to hold Landlord, its officers, employees, and authorized agents harmless from any and all claims for damages no matter how caused. This paragraph shall survive the termination of this Lease.

17. Governmental I mmunity. No term or condition of this Lease 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.

18. Defaults; Remedies.

~~a.~~ Default by Tenant. The failure by Tenant to observe or perform any of the covenants, conditions, or provisions as required by this Lease, where the failure continues for a period of 30 days after Tenant receives notice thereof from Landlord shall constitute a material default under this Lease; provided, however, that if the nature of Tenant's default is such that more than 30 days are reasonably required for its cure, then lessee shall not be deemed to be in default if Tenant commences such cure within the 30 day period and thereafter diligently completes the cure. In the event of any such material default by Tenant, Landlord may, after giving notice as provided above, enter the Premises, remove Tenant's personal property, and take and hold possession of the Premises and expel Tenant and pursue those remedies available to Landlord under Colorado law.

b. Default by Landlord. Landlord shall not be in default unless Landlord fails to perform any covenants, terms, provisions, agreements, or obligations required of it under this Lease within a reasonable time, but in no event more than 30 days after notice by Tenant to Landlord; provided that if Landlord's obligation is such that more than thirty 30 days are reasonably required for performance, then Landlord shall not be in default if Landlord commences performance within the 30-day period and thereafter diligently completes performance. If Landlord defaults in the performance of any of the obligations or conditions required to be performed by Landlord under this Lease, Tenant may, after giving notice as

provided above, terminate this Lease upon giving 30 days' notice to Landlord of his intention to do so. In that event, this Lease shall terminate upon the date specified in the notice, unless Landlord has meanwhile cured the default to the satisfaction of Tenant. In the event that any of the representations and warranties set forth in this Lease cease to be true, and if Landlord fails to commence to cure within 60 days after notice from Tenant and thereafter diligently completes the cure of the same, then except as specifically provided elsewhere in this Lease, Tenant shall have the right to terminate this Lease upon notice to Landlord. Tenant may also pursue those remedies available to Tenant under Colorado law.

19. Termination. Either Landlord or Tenant may terminate this Lease by written notice given to the other at least 10 days prior to the expiration of any calendar month and upon the giving of such notice, this Lease shall terminate on the last day of such calendar month. Tenant shall have no right to hold-over after termination of the Lease.

20. Landlord's Access. Upon twenty-four hours' notice, written or otherwise, Landlord, its officers, employees, and authorized agents shall have the right to enter the Premises at reasonable times during normal business hours for the purpose of inspecting or making such alterations, repairs, improvements, or additions to the Premises as Landlord deems necessary or desirable. Shorter notice shall be allowed if mutually agreed upon by Owner and Tenant.

21. Force Majeure. Notwithstanding anything contained herein to the contrary, in the event and to the extent that fire, flood, earthquake, natural catastrophe, explosion, accident, riot, terrorist attack, war, illegality, or any other cause beyond the control of the parties hereto prevents or delays performance by either party, such party shall be relieved of the consequences thereof without liability, so long as and to the extent that performance is prevented by such cause; provided, however, that such party shall exercise due diligence in its efforts to resume performance as soon as practicable.

22. Notices. All notices required under this Lease shall be directed as follows and if written, shall be deemed received when hand-delivered or emailed, or three days after being sent by certified mail, return receipt requested:

To Landlord:
Bill Cahill
500 E. Third
Loveland, CO 80537
Email: cahilb@ci.loveland.co.us
Phone: (970) 962-2306

To Tenant:
Greg Hays
1702 N. Cleveland
Loveland, CO 80538
Email: haysg@ci.loveland.co.us
Phone: (970) 744-8172

23. C.R.S. § 24-76.5-103. Tenant shall complete the affidavit attached hereto as Exhibit A and attach a photocopy of a valid form of identification. If Tenant states that he is an alien lawfully present in the United States, Landlord will verify his lawful presence through the SAVE Program or successor program operated by the U.S. Department of Homeland Security.

In the event Landlord determines that Tenant is not lawfully present in the United States, Landlord shall terminate this Lease for default in accordance with the provisions herein.

24. C.R.S. § 24-18-201. Tenant shall complete and sign the notice attached hereto as Exhibit B. Tenant understands and agrees that said notice shall be provided to the Loveland City Council as required by C.R.S. § 24-18-201.

25. Miscellaneous. This Lease 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. No waiver by Landlord or Tenant of any provision hereof shall be deemed a waiver of any other provision or of any subsequent breach by Tenant or Landlord of the same or any other provision. Landlord's consent to or approval of any act by Tenant shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. In the event a court of competent jurisdiction holds any provision of this Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Lease. This Lease shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

Signed by the parties on the date written above.

Landlord:
City of Loveland, Colorado

By: _____

Title: William D. Cahill, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Deputy City Attorney

Tenant:
Greg Hays

_____

Greg Hays

State of Colorado)
) ss.
County of Larimer)

The foregoing Residential Lease Agreement was acknowledged before me this ___ day of _____, 2011 by Greg Hays.

_____
Notary's official signature

S E A L

_____
Commission expiration date

EXHIBIT A - AFFIDAVIT

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.

EXHIBIT B – NOTICE

Date: _____, 2011

To Members of Loveland City Council:

In accordance with the requirements of C.R.S. § 24-18-201, please allow this letter to serve as notice that I have entered into a Residential Lease Agreement ("Lease") with the City of Loveland for occupancy and use of the single-family house and one storage shed located at 1702 N. Cleveland Avenue, Loveland, Colorado 80538 ("Premises") on the grounds of Loveland Burial Park (the "Cemetery"") owned by the City. A copy of the Lease is on file with the City Clerk's Office and will be provided to you upon request.

The house is located on the grounds of the Loveland Burial Park. I understand that the Parks & Recreation Department deems it desirable to have an employee occupy the Premises as a condition of employment and the Lease provides for my occupancy of the Premises in return for additional job duties as set forth therein.

Please do not hesitate to contact the City Attorney's Office with any questions regarding the Lease or this notice.

Sincerely,

Greg Hays
Cemetery Crew Supervisor

cc: Parks Manager
Parks & Recreation Director
Human Resources Director
City Attorney

CITY OF LOVELAND
MUNICIPAL AIRPORT
4900 Earhart Road • Loveland, Colorado 80538
(970) 962-2852 • FAX (970) 962-2855 • TDD (970) 962-2620

AGENDA ITEM: **9**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Jason Licon, Airport Director

PRESENTER: Jason Licon, Airport Director

TITLE:
A motion approving Amendment No. 13 to contract between CH2M Hill, Inc. and the Cities of Loveland and Fort Collins for construction management services for the runway 15-33 rehabilitation and runway safety area improvements AIP 3-08-0023-29 at the Fort Collins-Loveland Municipal Airport, and authorizing the City Manager to execute Amendment No. 13.

DESCRIPTION:
This is an administrative action to approve an amendment to an existing contract with CH2M Hill for construction management for the FAA Project AIP29.

BUDGET IMPACT:

◉ Yes ○ No

CH2M Hill's Amendment No. 13 is for $487,068.00. The Airport's 2011 approved budget contains the necessary appropriations for the expenditure for this Amendment and is reimbursable from the FAA under the AIP 29 grant. The local matching funds necessary for the FAA reimbursement is $24,353.40 and will come from the Airport's fund balance.

SUMMARY:
The Airport's engineering firm is CH2M Hill and is under contract with the Cities of Loveland and Fort Collins to perform various work associated with Airport improvement projects. Amendments to the base contract are approved as each scope of work is negotiated and funded with FAA and state grants. Under FAA process, engineering contracts are bid every 5 years, and each new scope is cross-checked for a local price to assure competitive pricing. Amendment No.13 is for services to perform construction management of the next phases of airport construction under AIP 29. Because Amendment No. 13, when combined with all previous amendments to the base contract, exceeds the limit of the City Manager's authorization level, City Council is required to review and approve this Amendment.

LIST OF ATTACHMENTS:
Amendment No. 13 to contract between CH2M Hill, Inc. and the Cities of Loveland and Fort Collins.

RECOMMENDED CITY COUNCIL ACTION:
Adopt a motion approving Amendment No. 13 to contract dated February 1, 2007 between CH2M Hill, Inc. and the Cities of Loveland and Fort Collins, and authorizing the City Manager to execute Amendment No. 13.

REVIEWED BY CITY MANAGER:

Amendment No. Thirteen to Contract
Dated February 1, 2007
Between
CH2M HILL, INC.
and
The Cities of Fort Collins and Loveland

The Cities and the Engineer agree to amend their contract for improvements to Fort Collins-Loveland Municipal Airport, Loveland, to include fees for engineering services. The improvement items are included in the Scope of Work of the original contract. The items covered by this amendment are as described on the attached:

SCOPE OF SERVICES
FORT COLLINS – LOVELAND MUNICIPAL AIRPORT

2011 CONSTRUCTION OBSERVATION - REHABILITATE RUNWAY 15/33
AIP PROJECT 3-08-0023-29-2011

The Scope of Services and Cost Proposal for this Amendment No. Thirteen are attached hereto as Attachments A and B respectively and incorporated herein by reference. The Cities agree to pay the Engineer for the engineering services related to these additional improvements in the following manner:

PART A – BASIC SERVICES

Not Required:

PART B – SPECIAL SERVICES (FIELD ENGINEERING)

The maximum estimated SPECIAL SERVICES engineering is as follows:

FIELD ENGINEERING

The Engineer shall be reimbursed on a Fixed Unit Rate Basis. The Engineer's costs shall be determined on the basis of time (i.e., the number of hours worked), multiplied by the Engineer's standard hourly rates for each applicable employee classification, which includes overhead, general administrative costs, and profit. See Section 1.0 of the attached Scope of Services for a description of how rates are established. Overhead costs are based on the most recent audit on the Engineer's records. The Engineer shall also be reimbursed for any direct expenses incurred as a result of his or her duties, including but not limited to auto mileage, meals, per diem, communication charges and computer charges.

The estimated maximum for FIELD ENGINEERING is:

Maximum Not to Exceed $487,068.00

All other terms and conditions of the original contract shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures this _____ day of _____, 2011.

SPONSOR:
CITY OF LOVELAND, COLORADO

By _____
City Manager

Attest _____

CITY OF FORT COLLINS, COLORADO

By _____
Purchasing Agent

Attest _____

ENGINEER:
CH2M HILL

By _____
Guy Geerdts, PE – Manager of Aviation Services – West Region

Attachment A – Amendment #13
SCOPE OF SERVICES
FORT COLLINS – LOVELAND MUNICIPAL AIRPORT

2011 CONSTRUCTION OBSERVATION - REHABILITATE RUNWAY 15/33
AIP PROJECT 3-08-0023-29-2011
March 2011

This is an Appendix attached to, made a part of and incorporated by reference with the Agreement between CH2M HILL, Inc. and The Cities of Fort Collins and Loveland, dated 02-01-2007, for professional services. This Scope of Services is Attachment A of Amendment #13 to the Contract. For the remainder of this scope of services, the Cities of Fort Collins and Loveland are collectively referred to as "Owner" or "Airport" and CH2M HILL, Inc. is indicated as "Consultant".

The work is to occur at the Fort Collins – Loveland Municipal Airport (FNL) in Loveland, Colorado. The work will be performed and constructed using a Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant to the Airport. This Contract will utilize the work accomplished in Amendment #9, Amendment #10, and Amendment #12 for the design and bidding of the Improvements.

The Construction is estimated to cost $8.0 million. The work consists of the following items.

1.0 GENERAL

Consultant shall provide Services during Construction (SDC) as defined below. The SDC are intended to assist the Owner to administer the contract for construction, monitor the performance of the construction Contractor, verify that the Contractor's work is in general conformance with the contract documents, and assist the Owner in responding to events that occur during the construction. The SDC are based upon the understanding that the Owner will contract directly with the Contractor and will be actively involved in the construction process to make decisions, provide approvals, and perform other actions necessary for the completion of the construction. The SDC are also based upon the Owner executing a contract for construction with the Contractor that is consistent with the Consultant's Agreement and with this scope of work.

The Consultant's SDC are based upon the schedule or duration of construction anticipated at the time that these services are agreed. Deviations from the anticipated schedule or duration of construction will materially affect the scope of these SDC and the Consultant's compensation for the SDC, and will require an adjustment to the Consultant's compensation.

The included SDC is for construction of the Runway 15/33 Rehabilitation project and includes the following schedules:

Schedule I –Runway 15/33 Rehabilitation and Safety Area Grading
Schedule II – Install Runway Weather Information System (RWIS)
Schedule III – Install Runway 33 Blast Pad
Schedule IV – Install Runway 15/33 Edge Drains
Schedule V –Install Segmented Circle
Schedule VI – Install Perimeter Security Fencing (PFC)

The work required for this Scope of Services is the same regardless if Schedule II, III, IV, V, and VI, or any combination thereof, are awarded. The Construction Observation of each of Schedules II through VI is considered incidental to the work required for Schedule I.

The Consultant shall not be responsible for the means, methods, techniques, sequences or procedures or Health and Safety of the Contractor, nor shall the Consultant be responsible for the Contractor's failure to perform in accordance with the contract for construction.

The attached professional services cost estimate is based on the following Construction Schedule:

- Bid Opening April 7, 2011
- Contract Award on or about June 15, 2011
- Phase 1 – July 15, 2011 until August 15, 2011. Anticipates 10 on site working days – Mobilization, Runway Safety Area (RSA) Work outside 200 feet from Runway centerline on west side, Aggregate base course test section, asphalt test sections, submittal reviews, Schedule V and VI work.
- Phase 2 - August 15, 2011 at noon until September 1, 2011 at 8 am. Anticipates 24 hour work for a total of 404 consecutive hours – Work includes all work inside RSA, including asphalt milling, asphalt paving, electrical improvements, subsurface edge drain installation, and RSA grading on east and west side.
- Phase 3 – September 6, 2011 until September 16, 2011. 10 working days to complete work outside of RSA, including an estimated 5 nights from 8 pm until 6 am for work inside the RSA.
- Phase 4 - Grooving and Final Marking. Night work from 8 pm until 6 am for 15 working nights in October 2011

Design and bidding services for the project have been covered by a separate scope of services (Amendments #9, #10 and #12).

To establish a maximum, not to exceed fee, the 2011 hourly wage has been established using the 2010 FAR Compliant rate with an increase of 5% rounded up to the nearest whole dollar, as shown in Attachment C. New FAR compliant rates will be provided by functional category in May 2011 and will be used through the rest of the year.

2.0 SERVICES PROVIDED DURING CONSTRUCTION

The Consultant shall provide services to assist in coordinating the site activities, administering the contract for construction, monitoring the contractor's performance, responding to design and technical submittals, and closing out the contract for construction.

2.1 Project Management

2.1.1 Reporting: The Consultant shall keep the Owner advised of the progress of the construction. This includes submitting weekly progress reports and monthly invoices to the Owner and regular conversations with the Owner.

2.1.2 Suspension and Debarment Verification: The Consultant, upon recommendation of a qualified bidder, shall investigate and document compliance with the Suspension and Debarment rules on the https://www.epls.gov/epls/search.do website

2.2 Document Management System and Procedures

The Consultant shall establish a system and set of procedures for managing, tracking and storing all relevant documents between the Contractor, the Consultant and Owner produced during the Bid/Award, Construction and Closeout phases of the project. The Consultant shall utilize an appropriate computer based document management system selected by the Consultant. Should the Owner require a specific system, the Owner will advise the Consultant in advance and will compensate the Consultant for any additional costs incurred. The Consultant shall, in coordination with the Owner, maintain hard copy records, suitably organized, of all relevant documentation.

The Consultant shall implement procedures for the logging and tracking of all relevant correspondence and documents. The Consultant shall assist the Owner in monitoring all outstanding decisions, approvals or responses required from the Owner.

2.2.1 Prepare Conformed Construction Set. The Consultant shall modify the bid documents performed under a separate amendment and update them for any addendum changes to create a set of Conformed Construction documents to be issued as an "lssue for Construction". The Consultant will prepare and reproduce 3 full size drawing sets (22" X 34") for the Contractor, 10 half size drawing sets (11" X 17") for the Contractor, 3 half size sets for the Airport, 8 half size sets for the Consultant, and 1 half size set for the FAA. Each set will include a reproduced conformed issue of the technical specifications for a total of 25 specification books.

2.3 Site Coordination

2.3.1 Construction Management Plan (CMP): The Consultant shall prepare a Construction Management Plan (CMP) using FAA accepted format. The CMP shall be submitted to the Denver ADO for approval a minimum of 10 working days before the start of construction. The CMP shall detail the measures and procedures to be used to enforce the quality control provisions of the construction contract, including quality control and acceptance tests required by the contract specifications.

2.3.2 Project Sequencing Meeting: The Consultant shall coordinate and conduct one project sequencing meeting with the Owner and Contractor to prepare key personnel for the upcoming construction project, discuss long lead items and prepare for pre-construction meeting. The Consultant shall take minutes or otherwise record the results of this meeting. The Consultant attendees will include the Project Manager (PM), Construction Manager (CM), Lead Engineer / Staff Engineer 3 (SE3), and the Staff Engineer 2 (SE2).

2.3.3 Pre-Construction Conference: The Consultant shall coordinate and conduct one pre-construction conference with the Owner, Contractor, Subcontractors, Airport users, and FAA to review the project communication, coordination and other procedures and discuss the Contractor's general workplan and requirements for the project. The Consultant shall take minutes or otherwise record the results of this conference. The Consultant attendees will include the Project Manager, Construction Manager, Lead Engineer / Staff Engineer 3, the Staff Engineer 2, and the Staff Engineer 1 (SE1).

2.3.4 Communications: The Consultant shall implement and maintain regular communications with the Contractor during the construction. The Consultant shall receive and log all substantive communications from the Contractor and shall coordinate the communications between the Owner and Contractor. The Consultant shall not communicate directly with the Contractor's subcontractors.

2.3.5 Weekly Progress Meetings: The Consultant shall conduct weekly progress meetings with the Contractor and shall prepare the minutes of these meetings. The Consultant will have the CM and SE3 attend the weekly progress meetings. A total of 8 weekly progress meetings have been budgeted. In addition, either the PM or the SE2 will attend each weekly progress meeting.

2.3.6 Field Instructions and Orders: The Consultant shall issue field instructions, orders or similar documents during construction as provided in the contract for construction.

2.3.7 Mobilization to the Site: The Consultant shall mobilize the field personnel to the site to provide coordination with the Contractor and Airport prior to the start of Construction. The Mobilization activities include organizing files, reviewing the plans and specifications, and coordinating the efforts of the Contractor. Mobilization includes 40 hours for the CM and SE3 and 16 hours for the other three field personnel, the SE2, SE1 and Electrical Engineer.

2.3.8 De-Mobilization: The Consultant shall demobilize the field personnel resources after the completion of the project. Demobilization activities include final pay quantities, organization of field test results, negotiation of final quantities with Contractor, and removal of supplies and files from project trailer. Demobilization includes 40 hours for both the CM and the SE3.

2.4 Construction Contract Administration

2.4.1 Permits, Bonds and Insurance: The Consultant shall verify that the required permits, bonds and insurance have been obtained and submitted to the Owner by the Contractor.

2.4.2 Payments to Contractor: The Consultant shall receive and review the Contractor's requests for payment. The Consultant shall determine whether the amount requested reflects the progress of the Contractor's work and is in accordance with the contract for construction. The Consultant shall provide recommendations to the Owner as to the acceptability of the requests. The Consultant shall advise the Owner as to the status of the total amounts requested, paid, and remaining to be paid under the terms of the contract for construction.

Recommendations by the Consultant to the Owner for payment shall be based upon the Consultant's knowledge, information and belief from its observations of the work on site and selected sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the Consultant to ascertain that the Contractor has completed the work in exact accordance with the contract for construction; that the Consultant has made an examination to ascertain how or for what purpose the Contractor has used the moneys paid; that title to any of the work, materials or equipment has passed to the Owner free and clear of liens, claims, security interests, or encumbrances.

2.4.3 Correspondence and Communications: The Consultant shall coordinate written communications among the Contractor, the Consultant and Owner during the construction for work inspected. The Consultant shall prepare written communications to the Contractor and provide recommendations to the Owner for written communications between the Owner and Contractor.

2.5 Changes

2.5.1 Minor Variations in the Work: The Consultant may authorize minor variations in the work which do not involve an adjustment in the Contractor's contract price nor time for construction and are not inconsistent with the intent of the contract for construction.

2.5.2 Coordinate Issuance of Changes: The Consultant shall assist the Owner with the issuance of changes to the contract for construction. A total of 4 change orders or supplemental agreements are included.

The Consultant shall receive and review the Contractor's response to the request for change and shall obtain such further information as is necessary to evaluate the basis for the Contractor's proposal. The Consultant shall assist the Owner with negotiations of the proposal and, upon approval by the Owner, prepare final change order or supplemental agreements documents for execution by the Owner and Contractor.

2.5.3 Review of Contractor's Requested Changes: The Consultant shall review all Contractor - requested changes to the contract for construction. The Consultant shall make recommendations to the Owner regarding the acceptability of the Contractor's request and, upon approval of the Owner, assist the Owner in negotiations of the requested change. Upon agreement and approval, the Consultant shall prepare final change order documents.

Design and engineering services of the Consultant to review Contractor initiated changes and to prepare drawings and specifications for issuance to the Contractor shall be considered as Additional Services, entitling the Consultant to additional compensation. The Consultant will coordinate changes with the FAA to verify eligibility of construction and/or engineering costs.

2.5.4 Change Order Reports: The Consultant shall provide periodic reports to the Owner about the status of Change Orders. The report shall include issued Change Orders, pending change orders, and change order amounts.

2.6 Interpretations of Contract Documents

The Consultant shall provide written responses to the Contractor's written request for interpretation or clarification of the contract documents.

2.7 Claims and Disputes

The Consultant shall receive, log, and notify the Owner about letters and notices from the Contractor concerning claims or disputes between the Contractor and Owner pertaining to the acceptability of the work or the interpretation of the requirements of the contract for construction. The Consultant shall review such letters and notices and shall discuss them with the Contractor. The Consultant shall advise the Owner regarding the Contractor's compliance with the contract requirements for such claims and disputes. The Consultant shall assist the Owner in discussions with the Contractor to resolve claims and disputes.

The Consultant shall not issue decisions on Contractor claims or disputes. The Consultant shall not, except as part of Additional Services, undertake comprehensive and detailed investigation or analysis of Contractor's claims and

disputes, nor participate in judicial or alternative dispute resolution procedures for the claims or disputes.

2.8 Project Controls

2.8.1 Contractor's Schedule Submittal: The Consultant shall review the Contractor's construction schedule for consistency with the requirements of the contract for construction. The Consultant shall advise the Contractor of areas where the schedule is not in compliance with the contract for construction. The Consultant shall provide comments to the Owner to assist the Owner in accepting or taking other action on the contractor's schedule, in accordance with the contract for construction.

The Consultant's review and comments shall not be considered as a guarantee or confirmation that the Contractor will complete the work in accordance with the contract for construction.

2.8.2 Contractor's Schedule Updates: The Consultant shall review the Contractor's weekly, (only 5 updates are listed in assumptions) schedule updates or other schedule submissions. The Consultant shall advise the Contractor if the updates or other submissions are not in accordance with the contract for construction. The Consultant shall provide comments to the Owner regarding the updates or other submissions.

2.8.3 Effect of Change Orders: The Consultant shall review information submitted by the Contractor regarding the effect of proposed or issued Change Orders upon the construction schedule, duration and completion date. The Consultant shall advise the Owner and the FAA as to the potential impact of proposed or issued Change Orders. The Consultant shall assist the Owner in discussions with the Contractor concerning the potential impact of proposed or issued Change Orders.

2.8.4 Periodic Reports: The Consultant shall provide weekly reports to the Owner as to the status of the construction schedule, date of completion, contract price, retainage, pending changes to the contract price or completion date and other issues material to the cost and time for completion of the construction.

2.9 Field Inspection

2.9.1 Field Staffing: The Consultant shall staff a field office on the project site by providmg the CM for the entire on site 10 working day duration of Phase 1. See Section 6.1.5. In addition, a minimum of 3 inspection members will be on site during the entire 404 working hours of Phase 2. The five staff members will be expected to rotate, with each working a total of 250 hours during Phase 2. These staff members include the CM, the SE3, the SE2, the SE1, and an Electrical Engineer (EE). The PM will also be on-site during most of the days for the duration of Phase 2 and will work a total of 100 hours on site. The SE3 will be on site for the day work of Phase 3. The SE 1 will be on site for the anticipated 5 nights of Phase 3 and final 15 nights of work for Phase 4.

2.9.2 Independent Survey and Material Testing Services: The Consultant shall employ an independent survey firm to verify the quality of the Contractor's work and an independent material testing firm to conduct acceptance testing. The Consultant shall review the reports and other information prepared by the testing firms for conformance to the contract for construction. The Consultant shall assist in coordinating their schedules and the transmittal of their reports, findings or other information to the Contractor and the Owner. The Consultant shall not be responsible for the accuracy or completeness of the work and reports of the independent testing. These services will be billed at cost, with no markup.

2.9.3 Review of Work: The Consultant shall conduct continuous on-site observations of the Contractor's work for the purposes of determining if the work generally conforms to the contract for construction and that the integrity of the design concept as reflected in the contract for construction has been implemented and preserved by the Contractor. The Consultant's Construction Manager / Staff Engineer 2 and Field Supervisor shall prepare written weekly reports and daily diaries observations.

The Consultant's Construction Manager / Staff Engineer 2 and Field Supervisor shall photograph the work in progress by the Contractor at regular intervals. These photographs shall be made available to the Owner and FAA.

The Consultant's observation of the work is not an exhaustive observation or inspection of all work performed by the Contractor. The Consultant does not guarantee the performance of the Contractor. The Consultant's observations shall not relieve the Contractor from responsibility for performing the work in accordance with the contract for construction, and The Consultant shall not assume liability in any respect for the construction of the project. The Consultant shall, with the assistance of the Owner, obtain written plans from the Contractor for quality control of its work, and shall monitor the Contractor's compliance with its plan. The photographs will be delivered electronically to the owner at the completion of each day.

2.9.4 Deficient and Non-conforming Work: Should the Consultant discover or believe that work by the Contractor is not in accordance with the contract for construction, or is not conforming to applicable rules and regulations, the Consultant shall bring this to the attention of the Contractor and the Owner. The Consultant shall thereupon monitor the Contractor's corrective actions, shall advise the Owner as to the acceptability of the corrective actions, and shall notify the Contractor and Owner of noted deficiencies from that plan.

2.9.5 The Consultant Team Visits: The Consultant shall coordinate visits to the site by the "Project Team", to include the Senior Consultant and Drainage Engineer to review progress and quality of the work (see paragraph 6.1.6). The Senior Consultant will be present for three days during the Phase 2 runway closure for a total of 30 hours. The Drainage Engineer will be present for six days during the Phase 2 runway closure and other drainage items completed during Phase 3 or 4, for a total of 60 hours. The visits shall observe the general quality of the work at the time of the visit and review any specific items of work that are brought to the attention of the "Project Team" members by the Contractor or the Owner. Each visit will require mileage from Denver, Colorado to Loveland, Colorado. No overnight stays are expected of the "Project Team".

2.9.6 Factory and Off-Site Tests and Inspections: The Consultant shall coordinate tests and inspections of work, materials and equipment for the project at off-site facilities and suppliers, as specified in the contract for construction.

2.9.7 Performance and Witness Testing: The Consultant shall attend and witness field and factory performance tests as specified in the contract for construction and The Consultant contract scope. Four (4) hours have been budgeted for the lead airfield inspector on this effort.

2.9.8 Regulatory and Third Party Testing and Inspections: The Consultant shall monitor the Contractor's coordination of inspection and testing by regulatory and third party agencies that have jurisdiction over the project, if required for disputes between Quality Assurance and Quality Control testing.

2.9.9 Subsurface and Physical Conditions: Whenever the Contractor notifies the Consultant of subsurface or physical conditions which differ from the design subsurface investigation at the site and for which the contract for construction provides should be so notified, the Consultant shall advise the Owner and inspect the conditions at the site. The Consultant shall advise the Owner as to the appropriate action(s), and shall assist the Owner in responding to the Contractor.

Engineering and technical services that are required to investigate the subsurface or physical conditions shall be considered an Additional Service. The Consultant will coordinate with the FAA to verify eligibility of additional services.

2.10 Shop Drawings, Samples and Submittals

2.10.1 Submittal Schedule: The Consultant shall obtain from the Contractor, as required by the contract for construction, a proposed shop drawing and submittal schedule which shall identify shop drawings, samples and submittals required by the contract for construction, along with the anticipated dates for submission.

2.10.2 Review of Shop Drawings, Samples and Submittals: The Consultant shall review the Contractor's shop drawings, samples, and other submittals and provide review acceptance, disapproval, or comments within 5 working days. The Consultant shall log and track shop drawings, samples and submittals.

The Consultant's review of shop drawings, samples and submittals shall be for general conformance with the design concept and general compliance with the requirements of the contract for construction. Such review will not relieve the Contractor from its responsibility for performance in accordance with the contract for construction, nor is such review a guarantee that the work covered by the shop drawings, samples and submittals is free of errors, inconsistencies or omissions.

2.10.3 Scope of Review: The Consultant's scope shall be based upon the scope of work in the contract for construction. Should there be additional reviews required of the Consultant, the Consultant shall be entitled to additional compensation.

2.11 Requests for Information (RFI)

2.11.1 Requests for Information: The Consultant shall review the Contractor's requests for information or clarification of the contract for construction, including plans. The Consultant shall log and track the Contractor's RFIs, and shall coordinate such review with the Owner as appropriate. The Consultant shall coordinate and issue responses to the requests.

2.11.2 Proposed Substitutions: The Consultant shall assist the Owner in reviewing and responding to the Contractor's requests for substitution of materials and equipment. The Consultant shall review such requests and shall advise the Owner as to the acceptability of such substitutions.

2.11.3 The Consultant shall prepare field safety instructions for the consultant team.

2.12 Davis - Bacon Wage Rate Compliance

2.12.1 Wage Rate Verification and Reporting. The Wage and Hour Division of the U.S. Department of Labor determine prevailing wage rates to be paid on federally funded or assisted construction projects. The Davis-Bacon Wages shall be monitored and reviewed by the Consultant throughout the project. The Labor Standards Interview shall also be conducted at least once a week by the Consultant during the project, including interviews of both the Prime Contractor and all subs. The Consultant shall keep a binder of all wage rates and hand write approval of each wage rate. The Consultant will deliver the binder to the Owner at least once monthly for the Owner's approval on the wage rate determinations.

2.13 Contractor Health and Safety Assumption: The Consultant is not responsible for health or safety precautions of construction workers. The Consultant is not responsible for the Contractor's compliance with the health and safety requirements in the contract for construction, or with federal, state, and local occupational safety and health laws and regulations.

3.0 SERVICES DURING THE CLOSE-OUT PHASE

The Consultant shall assist the Owner in closing out the contract for construction and commencement of the Owner's use of the completed work. The Consultant's services shall include the following.

3.1 Substantial Completion

3.1.1 The Consultant shall assist the Owner in issuing documents for substantial completion and acceptance of the work. Documents include submittal of all acceptance and quality control results to the FAA prior to the final inspection. The Consultant shall advise the Owner on payment, and partial release of retention. Included with the Substantial Completion shall be an inspection to be attended by the PM, EE, CM and SE3.

3.2 Final Completion

3.2.1 After approval by the FAA of the Quality Control and Quality Acceptance testing summaries, The Consultant shall assist the Owner in issuing documents for final completion and acceptance of the work. The Consultant shall advise the Owner on final payment, release of retention, and release of insurance and bonds. Included with the Final Completion shall be an inspection to be attended by the FAA, PM, the CM and the SE3.

3.3 Close-out File and Records

3.3.1 The Consultant shall provide to the Owner an organized set of project documents and records. The Consultant shall take the necessary steps to close out the project and all purchase orders with sub consultants.

3.3.2 The Consultant shall prepare and submit three copies of the FAA Final Construction Report to the Owner and one copy to the FAA for final grant closeout.

3.4 Preparation of Completed Sign Plans, Circuit Plans, Striping Plans and ALP Data and Plan Sheets

3.4.1 The Consultant shall provide to the Owner color plans reflecting the updated airfield signage, circuiting and striping plans. The plans shall be color coded to accurately and easily define the location and characteristics of each sign face, circuit routing, and airfield striping. The Consultant will update the plans for all AIP improvements associated with the Runway 15/33 project airfield lighting and signage improvements. The work will include compiling all existing data from the project and color coding the information into a readable and printable document. Review by the Staff Engineer 2 and Electrical Engineer will be required to verify accuracy of the plans before submittal to the airport. A CAD technician will be required to compile all information into a presentation style document.

3.4.2 A total of two full size (22" X 34") drawings (paper) of each plan, two half size (11" X 17") drawings, and color adobe acrobat .pdf electronic files will be supplied to the Owner.

4.0 POST-CONSTRUCTION PHASE SERVICES

4.1 As-Built Drawings

The Consultant shall revise the original design drawings to reflect available record information provided by the Contractor and equipment suppliers for the Final Record Drawings. Consultant is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings. One full-size set of drawings, two half size drawings and one CD containing the electronic set of drawings (both adobe acrobat and AutoCAD files) shall be provided to the Owner. One half-size set of drawings and one CD containing the electronic set of drawings shall be provided to the FAA.

4.2 Warranty Period Services

The Consultant shall provide the following warranty performance review services during the one-year warranty period to assist the Owner in coordinating corrections of deficient equipment or construction:

4.2.1 Participate in an end-of-warranty period inspection one month prior to completion of the warranty period and provide a letter identifying any deficiencies found and recommended actions. This inspection shall be attended by the CM, PM and the SE3.

4.2.2 Provide one onsite observation to verify correction of the deficiencies, if any, by the CM.

5.0 ADDITIONAL SERVICES

5.1 Services Provided

The following additional services shall be provided by the Consultant upon authorization of the Owner and FAA and agreement on compensation to the Consultant.

5.1.1 Services necessary due to the default of the Contractor.

5.1.2 Services related to warranty claims, enforcement and inspection.

5.1.3 Services for the investigation and analysis of contractor claims; preparation of reports on contractor claims; provision of professional claims analysis services; participation in litigation or alternative dispute resolution of claims.

5.1.4 Preparation for and serving as a witness in connection with any public or private hearing or other forum related to the project.

5.1.5 Services supporting the Owner in public relations activities.

5.1.6 Value engineering or similar value analysis studies.

5.1.7 Services for review and/or preparation of Owner or Contractor proposed changes to the project.

5.1.8 Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the Owner.

6.0 MASTER LIST OF ASSUMPTIONS

The following assumptions were used when determining the compensation to the Consultant. These assumptions are in addition to the scope and additional services set forth in the foregoing scope of work.

6.1 Services During the Construction Phase

6.1.1 The project will be constructed under one general contract for construction.

6.1.2 Field Office. The Contractor will provide a field office on site for the Consultant staff. Monthly utility, internet and telephone charges will be paid by the Contractor.

6.1.3 Meetings.

6.1.3.1 The Consultant shall arrange and conduct one sequencing meeting with the Owner and Contractor in the Owner's office. It is assumed that the PM, CM, SE3 and the SE2 will attend this meeting and roundtrip mileage will be required for two vehicles.

6.1.3.2 The Consultant shall arrange and conduct one pre-construction meeting with the Owner, Contractor, FAA, and other interested parties in the Owner's office or at the project site. It is assumed that the PM, CM, SE3, SE2, and SE1 will attend this meeting and roundtrip mileage will be required for two vehicles.

6.1.3.3 Weekly construction progress meetings shall be conducted by the Consultant at the project site. The Consultant will have the CM and SE3 attend the weekly progress meetings, and either the PM or the SE2 will attend each weekly progress meeting.

6.1.3.4 The Consultant shall conduct one final inspection lasting 4 hours not including travel time, to be attended by the PM, the CM, and the SE3.

6.1.4 Duration. The construction period consists of 3 phases of work as follows:

Phase	Description	Dates and Times	Contract Time
1	Mobilization, RSA Work outside 200 feet from Runway centerline on west	July 15, 2011 to August 15, 2011	30 total days - anticipates 10 on site Working

	side, P-209 test section, asphalt test sections, submittal reviews, Schedule III, IV and V work		Days
2	Rehabilitate Runway and all work inside RSA	August 15, 2011 at noon until September 1, 2011 at 8 am	404 hours
3	Work inside the RSA at night, outside RSA in the days.	September 6, 2011 until September 16, 2011	10 working days and anticipate 5 working nights from 8:00 pm until 6:00 am
4	Final Marking and Runway Grooving.	October 1, 2011 until October 16, 2011	15 working nights from 8:00 pm until 6:00 am

6.1.5 Field Staffing. All of the Consultant field staff will relocate from Denver, Colorado. Travel, lodging and per-diem will be required for each. The Consultant shall provide field staff as follows:

- One Construction Manager (CM) for the duration of Phase 1 and 2. During Phase 2, the CM will rotate with other field staff and lead the effort (100 hours during Phase 1, 250 hours total during runway closure of Phase 2), to include paper work prior to and after closure periods. Travel expenses and overnight accommodations will be necessary. It is expected the CM will stay at a hotel in the Loveland, Co area from August 1 until September 2, 2010 (31 days). The CM will be a registered Professional Engineer with a minimum of 14 years of Aviation Engineering experienced field inspection experience. The CM will be a registered Professional Engineer with a minimum of 14 years of Aviation Engineering experience who also served as the Lead Civil Design Manager for the design of the project. Overnight accommodations and 25 days of per diem will be necessary.

- One Project Manager (PM) for the duration of Phase 2 (100 hours for Runway closure). Travel expenses and mileage will be necessary. It is expected the PM will commute from Denver to Loveland for these visits. The PM will be a registered Professional Engineer with a minimum of 15 years of Aviation Engineering experience who also served as the Project Manager for the design of the project. 15 days of per diem will be necessary

- One Staff Aviation Engineer 3 (SE3) for the duration of Phase 2 (250 hours for Runway closure), and for Phase 3 (cleanup work) for 10 days at 10 hours per day. Travel expenses and overnight accommodations will be necessary. It is expected the SE3 will stay at a hotel in the Loveland, Co area from August 15, 2011 until September 16, 2011 (31 days). The SE3 will be a registered Professional Engineer with a minimum of 10 years of Aviation Engineering experience who also served as the Lead Civil Design Manager for the design of the project. Overnight accommodations and 25 days of per diem will be necessary.

- One Staff Aviation Engineer 2 (SE2) for the duration of Phase 2 (250 hours for Runway closure). Travel expenses and overnight accommodations will be necessary. It is expected the SE2 will stay at a hotel in the Loveland, Co area from August 15, 2011 until September 2, 2011 (17 days). The SE2 will be a registered Professional Engineer with a

minimum of 9 years of Aviation Engineering experience who also served as the Civil Design Task Manager for the design of the project. Overnight accommodations and 17 days of per diem will be necessary.

- One Electrical Engineer (EE) for the duration of Phase 2, to rotate with other field staff (250 hours total during runway closure), to include paper work prior to and after closure periods. Travel expenses and overnight accommodations will be necessary. It is expected the EE will stay at a hotel in the Loveland, Co area from August 15, 2011 until September 2, 2011 (17 days). The EE will be a registered Professional Engineer with a minimum of 8 years of Aviation Electrical Engineering experience who also served as the Lead Electrical Design Manager for the design of the project. Overnight accommodations and 17 days of per diem will be necessary.

- One Staff Aviation Engineer 1 (SE1) for the duration of Phase 2 (250 hours for Runway closure). In addition, the SE 1 will work the night closures associated with Phase 3 (cleanup work) and 4 (grooving and final striping) for a total of 20 nights at 10 hours per night. Travel expenses and overnight accommodations will be necessary. It is expected the SE1 will travel from Denver to Loveland each night of the 20night closures during Phase 3 and 4, and mileage will be required. It is expected the SE1 will stay at a hotel in the Loveland, Co area from August 15, 2011 until September 2, 2011 (17 days) for the Phase 2 work. 37 days of per diem will be necessary for the SE1.

6.1.6 Office Staffing and Field Visits. Additional non-field hours will be required for the staff as detailed above to attend the sequencing meeting and the pre-construction meeting. Mileage reimbursement will be necessary.

- The Project Manager (PM) will be on site for a total of 50 additional hours over 8 days during Phase 1, 3 and 4, to aid in the inspections and the decision matrix for the work with the Contractor. Eight mileage trips and 8 additional days of per diem will be necessary. The Sr. PM will be a registered Professional Engineer with a minimum of 14 years of aviation experience.

- The Senior Consultant (SC) will visit the project during three days of the Phase 2 runway closure. The SC will work 30 hours during Phase 2. Three mileage trips will be necessary. The SC will be a registered Professional Engineer with a minimum of 20 years of aviation engineering experience.

- The Drainage Engineer (DE) will be on site for a total of six days during the Phase 2 runway closure, to aid in the inspections and the decision matrix for the work with the Contractor. The DE will be scheduled to work 60 hours during the Phase 2 closure, to include inspections and. Six mileage trips and 6 days of per diem will be necessary. The DE will be a registered Professional Engineer with a minimum of 12 years of aviation experience.

6.1.7 Submittals and RFIs: Up to 20 Requests for Information/Clarification (RFI) will be reviewed and responded to. It is anticipated that no more than 40 original submittals and 15 re-submittals will be reviewed. This includes shop drawings, material submittals and samples.

6.1.8 Up to 1 construction schedule and 5 updates will be reviewed.

6.1.9 Up to 4 Change Orders will be prepared.

6.1.10 The Consultant shall review 4 monthly pay requests from the Contractor.

6.1.11 The Consultant shall provide surveying to verify the quality of the Contractor's work. See Attachment A for the surveying scope of work and fee.

6.1.12 The Consultant shall provide materials testing for acceptance testing requirements for Items P-152, P-209, P-401 and P-610. See Attachment B for the materials testing scope of work and fee.

6.1.13 Truck Rental. The Consultant has budgeted five rental vehicles for the field personnel (CM, SE3, SE2, SE1 and EE) as part of the work. The CM and the SE 3will receive a rental vehicle for 5 weeks. The SE2, SE1 and EE will receive a rental vehicle for 3 weeks. Each rental vehicle will be a 4-wheel drive pickup truck or 4-wheel drive sport utility vehicle, whichever rate is less.

6.1.14 Per Diem. The Consultant has budgeted per diem expenses for all field staff at a rate of $50 per day. See Section 6.1.5 and 6.1.6 for a breakdown of the per diem. A total of 150 per diem days are expected.

6.1.15 Miscellaneous Field Supplies, cell phone usage and travel expenses. Extra expenses will be required to supply the project team with supplies to complete the work, including use of personal cell phones during the project (project related only), printing cartridges, pens, notebooks, pencils, and other items to allow the project team to complete the work on site. Travel expenses for items prior to the work covered by per diem will be required as well for the sequence meeting, the pre-construction meeting and the final inspection.

6.1.16 Mileage. Mileage will be reimbursed for employees using their personal vehicles at the federal rate of 51 cents per mile. It is anticipated that the average roundtrip mileage is 150 miles per trip. The following roundtrip mileage is anticipated:

- SC – 3 (3 RW closures)
- PM – 21 (Sequence, Pre-con, two in Phase 1, ten in Phase 2, six in Phase 3 and 4, Final Inspection)
- CM – 5 (Sequence, Pre-con, two in Phase 3 and 4, Final Inspection)
- SE3 – 5 (Sequence, Pre-con, two in Phase 1, Final Inspection)
- SE2 – 3 (Sequence, Pre-con, Final Inspection)
- SE1 – 20 (20 in Phase 3 and 4)
- DE – 6 (Interim Inspections)

6.1.17 Lodging. Lodging will be required for each as follows:

- CM – 32 nights
- SE3 – 31 nights
- EE – 17 nights
- SE2 – 17 nights
- SE1 – 17 nights

6.1.18 Travel Expenses. Travel expenses for water, drinks, food, and other miscellaneous items will be included at $50 per travel day for the following non-field employees and there trips to the site:

- SC – 3 days
- PM – 10 days
- DE – 6 days

6.2 Services During the Post-Construction Phase

6.2.1 AGIS Survey Submittal: The Consultant shall modify the as-built record survey and provide the survey to the FAA through the AGIS process, to include a complete record of the survey in NAD 83 and NGVD 88 State Plane Coordinates.

6.3 Owner Provided Services

6.3.1 Owner will provide to the Consultant all data in Owner's possession relating to the Consultant's services on the Project. The Consultant shall reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the Owner.

6.3.2 Owner will make its facilities accessible to the Consultant as required for the Consultant's performance of its services.

6.3.3 Owner will give prompt notice to the Consultant whenever Owner observes or becomes aware of any development that affects the scope or timing of the Consultant's services, or of any defect in the work of The Consultant or the Contractor.

6.3.4 The Owner will examine information submitted by the Consultant and render in writing or otherwise provide decisions in a timely manner.

6.3.5 The Owner will furnish required information and approvals in a timely manner.

6.3.6 The Owner will cause all agreements with the Contractor to be consistent with the Consultant's Agreement.

Summary

Services During Construction	
Outside Services	
Total	

	Contracts	Accountant	
	$122.00	$70.00	Total Cost
Labor Rates			
Labor Hours	34	90	0
Total Labor			**$0.00**

Task No.	Services During Constructi	Contracts $122.00	Accountant $70.00	Misc. Costs	Total Cost per Item
2.1.1	Project Management	16	12		$5,600.00
2.2	Document Management System	6	6		$2,592.00
2.2.1	Prepare Conformed Construction Set				$2,842.00
2.3.1	Construction Management Plan				$1,758.00
2.3.2	Project Sequencing Meeting				$3,324.00
2.3.3	Pre-Construction Conference				$3,906.00
2.3.4	Communications				$3,452.00
2.3.5	Weekly Progress Meetings				$9,924.00
2.3.6	Field Instructions and Orders				$3,342.00
2.3.7	Mobilization to the Site				$16,216.00
2.3.8	De-Mobilization				$10,920.00
2.4	Construction Contract Administration				$3,676.00
2.5	Changes				$7,120.00
2.6	Interpretation of Contract Documents				$2,722.00
2.7	Claims and Disputes				$1,800.00
2.8	Project Controls		4		$1,456.00
2.9	Field Inspection				$214,100.00
2.9.5	Consultant Team Visits				$23,560.00
2.10	Shop Drawings, Samples and Submittals				$8,660.00
2.11	Requests for Information				$3,556.00
2.12	Davis - Bacon Wage Rate Compliance		60		$7,320.00
3.1	Substantial Completion				$3,324.00
3.2	Final Completion				$2,622.00
3.3.1	Close-out File and Records	12	8		$3,772.00
3.3.2	FAA Final Construction Report				$11,972.00
3.4	Preparation of Completed Sign Plans, Circ				$4,800.00
4.1	As-Built Record Drawings				$3,160.00
4.2	Warranty Period Service				$3,480.00
4.2	AGIS Survey Submittal				$5,112.00
	Estimated Total Labor	34	90		$376,088.00
	Outside Reproduction (Full-Size Drawings			$675.00	$675.00
	Postage and Freight (number of times pac			$150.00	$150.00
	Estimated Total Expenses				$825.00
	Total Services During Construction	**$4,148.00**	**$6,300.00**	**$825.00**	**$376,913.00**

Task No.	Expenses and Outside Ser	Total Cost per Item
6.1.17	Lodging (@ $125 per night)	$14,250.00
6.1.18	Travel Expenses (@ $50 per day) for Proj	$950.00
6.1.16	Mileage	$4,819.50
2.9.2	QA Survey Services	$23,880.00
2.9.2	QA Testing - Geotechnical Services	$46,875.00
6.1.13	Truck Rental (@ $60 per day)	$7,980.00
6.1.13	Truck Rental Fuel (@ $200 per week)	$3,400.00
6.1.14	Per Diem (@ $50 per day)	$7,500.00
6.1.15	Misc Field Expenses (printer, printing supp	$500.00
	Total Expenses and Outside Services	**$110,154.50**

ATTACHMENT C

CH2M HILL 2010-2011 FAR COMPLIANT HOURLY RATES

UPDATED AS OF MAY 17, 2010

Labor Resource	Per Diem	Functional Category	Local Denver 2010 Rates	Projected 2011 Rates (5%)
Rue, Dean	2	Principal		
Rose, Dave	2	Principal	$ 248.00	$ 261.00
Geerdts, Guy	3	Sr. Consultant	$ 217.00	$ 228.00
Thompson, John	4	Sr. Project Manager	$ 186.00	$ 196.00
Stewart, Doug	4	Sr. Drainage Engineer	$ 172.00	$ 181.00
VanHercke, Bill	5	Project Manager		
Martin, Ryan	5	Project Manager	$ 156.00	$ 164.00
Lamutt, Mark	5	Project Manager		
Garnet, Carla	5	Project Manager		
Southwick, Mike	5	Sr. Electrical Engineer	$ 137.00	$ 144.00
Jacobs, Scott	7	Electrical Engineer 2	$ 111.00	$ 117.00
Picard, Chad	6	Staff Engineer 3	$ 123.00	
Harry, Joel	6	Staff Engineer 3		$ 130.00
Campbell, Jeffrey	7	Staff Engineer 2		
Keas, Robert	7	Staff Engineer 2	$ 111.00	$ 117.00
Rivera, Chris	7	Staff Engineer 2		
Taylor, Anna	7	Staff Engineer 2		
Hansen, Matt	8	Staff Engineer 1	$ 92.00	
Brown, Marty	8	Staff Engineer 1		$ 97.00
Hoppe, Molly	9	Associate Engineer	$ 77.00	
Dodge, Chris	9	Associate Engineer		$ 81.00
Robbins, Lon	5	Drainage Engineer	$ 135.00	$ 142.00
Bernard, Dave	11	Senior Tech	$ 106.00	
Bartlett, Brian	12	Senior Tech		$ 112.00
Waziri, Sam	13	Cad Tech	$ 80.00	
Vlcek, Darrin	13	Cad Tech		$ 84.00
Mc Gurn, Rosemary	7	Contracts	$ 116.00	
Sage, Gretchen	5	Contracts		$ 122.00
Derrick, Cheryl	8	Project Accountant		
Kluger, Boni	8	Project Accountant	$ 66.00	$ 70.00
Trudy Hill	19	Project Accountant		
La Riviere, Loretta	19	Project Assistant		
Decker, Ranae	12	Project Assistant	$ 86.00	$ 91.00
Carlson, Linda	13	Project Assistant		
Vogt, Andrew	5	Construction Manager	$ 136.00	$ 143.00
Schwartz, Mike	4	Sr. Inspector	$ 168.00	$ 177.00
Reno, Kurt	7	Field Inspector	$ 115.00	
Sands, Bill	11	Field Inspector		$ 121.00

Scope of Services

Quality Assurance Surveying
FNL Airport – 2011 Airport Improvements

Prepared for

CH2M HILL

March 25, 2011

Prepared by
Gordon Anderson

CRI+IGEN

FNL QA Surveying

Purpose

The following scope of services will be a task order under the Master Services Agreement (MSA-935792) between CH2M HILL Inc ("CH2M HILL") and Critigen LLC ("Critigen"). The Terms and Conditions from the MSA will apply to this scope.

Scope

At the back of the doc you talk about assigning a Critigen project manager which is what we should do. I deleted this sentence but then the next senetnec really doesn't have anything to do with scope. I think this should be moved somewhere else and start with your bullets. Documents and data prepared for, and derived from, this scope of services are the property of CH2M HILL. Critigen understands and agrees that CH2M HILL may reproduce the documents and use all or part of the information provided on the documents without incurring obligation for additional compensation. The original drawings, copies of field notes, and any required survey reports shall be and shall remain the property of CH2M HILL. All required documents shall be submitted to CH2M HILL upon completion of the work, if requested.

The following items are included within the work scope:

- Attendance at the pre-construction meeting. Assume that the meeting will take place at Fort Collins-Loveland Municipal Airport and will last 2 hours (travel time is not included).
- Submittal of the health and safety plan, subject to review by CH2M HILL.
- Provide a survey crew to verify and update the Survey and Geometric Control Plan (attached) and to coordinate with the Contractor's surveyor. Include time for a survey crew to recheck the local control points established in design by running closure loops through the points and coordinating with the Contractors surveyor to ensure that the same accuracy is obtained by both surveying firms. Record shall be submitted to CH2M HILL prior to start of construction in the form of an excel spreadsheet showing the closure loops and finished elevations of the control points, with comparison to design control. Include time for coordination between all parties (CH2M HILL, the Contractor, and yourself) to determine the required action for updating the design survey data if discrepancies are found during control verification.

- Provide a survey crew to determine the finished elevations shown on the attached paving plans for subgrade, base course, and finished grade shots on

Area	Approx. # of Acceptance Check Shots
Runway 15/33	134 (finished grade)
Taxiway A4	13 (finished grade)
Taxiway A4	13 (base course)
Taxiway A4	13 (subgrade)
Taxiway A3	12 (finished grade)
Taxiway A3	12 (subgrade)
Taxiway A2	9 (finished grade)
Taxiway A2	9 (subgrade)

  asphalt (approximately 15% of the spot elevations shown on the Paving Plans). For estimating purposes, assume that the subgrade, base course, and asphalt shots will occur on separate days and require separate trips.
- Provide a survey crew for an estimated 8 hours of additional on-site time (travel time is additional) to obtain additional survey shots as requested by CH2M HILL. For estimating purposes this work will occur over a two (2) day time period. This cost shall be included with Schedule I.
- Perform survey required to update design and as-built survey data from NGVD 29 to NAVD 88. Industry standard surveying practices to achieve the accuracy outlined below shall be used. After survey is completed, the surveyor shall provide a written explanation of how to convert the design and as-built survey data from NGVD 29 to NAVD 88.

Deliverables

The surveying firm shall provide the following deliverables: copies of all field book notes and office calculations. Acceptance survey shall be submitted to CH2M HILL in an Excel spreadsheet. The spreadsheet shall list the proposed elevations shown on the drawing, the as built survey elevations, and the difference between the elevations. All work under this contract is required to be completed under the direction of a registered Colorado Professional Land Surveyor. All work shall be conducted using equipment, personnel, and procedures that will ensure compliance with the accuracy standards as defined below. It is the responsibility of the supervising Land Surveyor (Surveyor) to ensure that all work under this agreement complies with all state and local regulations. All documents submitted shall bear the surveyor's seal, signature, and a certificate that all work was done under the surveyor's supervision and that all information contained in the document is true and is accurately shown.

Specifications and Standards

All work under this contract is required to be completed under the direction of a registered Colorado Professional Land Surveyor. All work shall be conducted using equipment, personnel, and procedures that will ensure compliance with the accuracy standards as defined below. It is the responsibility of the supervising Land Surveyor (Surveyor) to ensure

that all work under this agreement complies with all state and local regulations. All documents submitted shall bear the surveyor's seal, signature, and a certificate that all work was done under the surveyor's supervision and that all information contained in the document is true and is accurately shown.

The Surveyor shall take reasonable precautions to prevent damage to public and private property, and shall restore the site to the condition existing prior to the Surveyor's entry.

Daily information shall be recorded in a hard bound field book. Field notes shall include, at a minimum, the date, crew members, weather conditions, and instrument setup information. All survey data information not gathered with an electronic device shall be recorded in the field book.

Horizontal/Vertical Datum Requirements

Survey control used for this Quality Assurance Surveying shall be NAD 83/NGVD 29. This is the datum that will be used for QA surveying of construction. After QA surveying the surveying firm shall perform survey required to convert the control points and design survey to NGVD 88.

Accuracy Standards

The following are the minimum accuracy standards for the work unless stated otherwise:

1. Positional accuracies shall meet or exceed Federal Geographic Data Committee Geospatial Positioning Accuracy Standards Part 4: Standards for Architecture, Engineering, Construction (A/E/C), and Facility Management (Part 4).
2. Construction control surveys performed with GNSS will meet a 1 cm horizontal positional standard for local accuracy and a 2 cm standard for network accuracy at the 95% confidence level. Construction control surveys performed with conventional instruments shall conform to Second Order, Class I for horizontal and vertical as described in Appendix A of Part 4. Elevations of all set control monuments will be generated from a closed and adjusted differential level loop beginning and ending at a primary or secondary control point with each monument being turned through. Side shots are not permitted.
3. Vertical loop closure of at least 0.035-foot per mile is required. A digital level shall be utilized in obtaining vertical loop closure.
4. Feature accuracies will meet or exceed the recommended values in Appendix A of Part 4 for Airfield Pavement Design Detail Drawings with a scale of 40 ft/in, a positional tolerance of 0.1 feet for horizontal and vertical and a contour interval of 1 foot.
5. All spot elevations shall be measured to 0.01 feet or better and shall be accurate to within ±0.02 feet on hard surfaces (i.e. asphalt, concrete) and within ±0.1 feet on soft surfaces (i.e. base course, dirt).
6. Surveyor shall use industry standard equipment and procedures to obtain these accuracy standards.
7. All data and deliverables prepared for and derived from this survey are the property of CH2M HILL. The Surveyor also understands and agrees that

CH2M HILL may reproduce the drawings and use all or part of the information provided on the drawings. This includes any reports prepared in connection with the investigative work for this site without incurring obligation for additional compensation to the Surveyor. The original drawings, copies of field notes, and any required survey reports shall be and shall remain the property of CH2M HILL. All required documents shall be submitted to CH2M HILL upon completion of the work.

Survey Control

Survey information will be tied to existing control monuments on the site. Setting of new monuments is not included in this scope of work.

Project Schedule

Construction is estimated at 17 calendar days from August 15 through August 31. The survey may need to be completed in the last 2 days of each phase. Surveying timeframe will be dictated by the awarded Contractor's schedule. Critigen will commence work within 1 week of receiving a written notice to proceed with the project.

Compensation

Compensation and rates are shown in Table 1. These rates are based on the non-Federal rates specified in MSA 935792. If it is necessary to engage additional Critigen staff, the current MSA non-Federal rates for those employees shall be used.

Critigen will provide staff in support of the services described above on a Time and Materials basis at the MSA non-Federal hourly rates (shown for anticipated staff) with direct expenses at cost plus a 10 percent service charge. The estimated total price for this scope of services is $23,879.42. Critigen reserves the right to use any labor categories to complete the work but will not exceed the not-to-exceed amount.

Critigen shall provide CH2M HILL a monthly invoice along with a summary of activities performed under this Task Order. Critigen will make reasonable efforts to complete the work within the budget and will keep CH2M HILL informed of progress toward that end so that the budget or work effort can be adjusted if found necessary.

This proposal is effective for 90 days.

Table 1: Compensation and Rates

	Description	Qty	Unit	Rate	Total
Task 1	**Surveying Services**				
	LABOR				
	Surveyor / Cartography 2	233	Hours	$ 82.96	$ 19,329.68
	Admin / Project Support 1	2	Hours	$ 61.19	$ 122.38
	Project Manager 1	8	Hours	$ 142.17	$ 1,137.36
	Total Labor	243			$ 20,589.42
	EXPENSES				
	Reimbursable mileage (mileage)	1200	Miles	$ 0.55	$ 660.00
	Survey vehicle rental (mileage)	2200	Miles	$ 0.84	$ 1848.00
	GPS – RTK	1	Each	$ 252.00	$ 252.00
	Total Station	1	Days	$ 134.00	$ 134.00
	Digital Level	11	Days	$ 36.00	$ 396.00
	Total Expenses				$ 3,290.00
TOTAL					$ 23,879.42

Project Assumptions

- As a task order with specific deliverables, Critigen will assign a project manager who will provide direction for Critigen staff and will be responsible for project management including cost, schedule, scope, quality assurance, communication and coordination with the CH2M HILL project manager. CH2M HILL will not provide direction to Critigen staff.
- CH2M HILL will provide written review comments for draft deliverables within two calendar weeks.
- An AutoCAD 2008 drawing containing design point locations and elevations will be provided at least 48 hours prior to commencement of field work.
- Runways and taxiways will be closed during the QA survey.
- All work will be performed during the day.
- The estimated additional on site time is for elevation checks and does not include the use of total station or GPS equipment.

We look forward to providing you with Critigen's excellent service and support and want to thank you for the privilege of working with you on this project.

Sincerely,

By:

Tolee Gardner

On behalf of

Lenn Stout, Vice President
Critigen

Date: 3/25/2011

March 25, 2011

Subject: Proposal for Acceptance Materials Testing Services, Fort Collins-Loveland Municipal Airport; 2011 Airport Improvements, Schedule I: Runway 15/33 Rehabilitation and Safety Area Grading; AIP No 3-08-0023-29; Loveland, Colorado

Proposal No. 1103-0446

Mr. Joel Harry, P.E.
CH2M HILL, INC.
9193 South Jamaica Street
Englewood, CO 80112

Dear Mr. Harry,

Ground Engineering Consultants, Inc. is pleased to provide you with a proposal of services and fees for quality acceptance construction materials testing and laboratory testing services. We have been requested to provide field testing to support the improvements at the Fort Collins-Loveland Airport in Colorado. The project is anticipated to be constructed over a 17-day period from August 15, 2011 through August 31, 2011.

The project will require a complete closure of the main runway for the full 17 days with 24-hour construction likely during most of this time. As requested, we are assuming 24 hours a day testing for 12 of these construction days. Please note that the services detailed below will only be provided as scheduled by the Owner, Owner's Representative, Contractor, or applicable Subcontractors.

Quality Acceptance Project Summary

The project involves rehabilitation of the runway and some of the connecting taxiways. The majority of the work is a milling and overlay of the runway with 4 to 6 inches of asphalt. Other work includes grading along the runway shoulders, and reconstruction of Taxiways A3 and A4 with fly ash subgrade and asphalt section.

Quality Acceptance Scope of Project

GROUND will provide quality acceptance testing services to include field and laboratory testing for the earthwork, fly ash treated subgrade, crushed aggregate base course, and asphalt paving. Laboratory testing will be performed according to the Quality Acceptance Testing Requirements provided by CH2M Hill.

Please see the Attachment 1 for quality assurance testing frequency, number of tests and unit costs for laboratory services.

The field work and report preparation will be conducted under the supervision of a licensed professional engineer registered in the State of Colorado. The Quality Acceptance Testing Program documents, field materials manuals and laboratory manuals will be used for the documentation, sampling and testing.

Quality Acceptance Testing Estimated Fees and Standard Rates

We are providing the following summary of the anticipated work scope, based on the information provided by CH2M Hill, our experience with similar projects with the Federal Aviation Administration (FAA) and the schedule information provided by your firm. The professional service rates listed below are based upon an hourly format; as requested. We are providing you an estimate of the costs associated with the scope of work. The observation and testing results do not relieve the contractor of his or her responsibilities. Job site safety and the means and methods of construction are solely the responsibility of the contractor.

We have based our estimate on the Contractor working for 17 calendar days, with 12 of those days being 24 hours a day, and the remaining days being 10 hours a day.

Schedule I (17 calendar days) – Runway 15/33 Rehabilitation and Safety Area Grading

Earthwork, Fly Ash Treated Subgrade*, Crushed Aggregate Base Course
Daytime Engineering Technician, 10 trips (3 hours per trip)
30 regular hours @ $38.00/hour $1,140.00

CLSM and Structural Concrete
Daytime Engineering Technician, 12 trips (3 hours per trip)
36 regular hours @ $38.00/hour $1,368.00

Hot Mix Asphalt
Engineering Technician, 12 days, 24 hour days (based on 12 hour technician shifts; 24 shifts)
Daytime shift
96 regular hours @ $38.00/hour $3,648.00
48 overtime hours @ $50.00/hour $2,400.00
Nighttime shift
96 regular hours @ $38.00/hour $3,648.00
48 overtime hours @ $50.00/hour $2,400.00
(An overtime rate of $50.00/hour will apply to all time over 8 hours per shift)

Project Engineer, 12 Hrs. @ $ 75.00 ..... $900.00

Quality Assurance Plan $750.00

Laboratory Testing $29,921.00
Please see Attachment 1 for a detail of the unit costs for laboratory testing.

Vehicle Equipment Expense
22 Trips @ $10.00 per trip $220.00
24 Shifts @ $20.00 per shift $480.00
Estimated Schedule I Total $ 46,875.00

Engineering and Supervision

GROUND Engineering's services will be completed under the direct supervision of a professional engineer. Daily field reports and laboratory testing reports will be reviewed and summaries will be provided as requested by the client.

Fee Estimate

The cost proposal spreadsheets attached represent an estimate of the cost for the required laboratory testing, based on our understanding of the project specifications and assuming proper scheduling of our services. The estimate detailed is not inclusive of costs associated with retesting.

The terms under which our work will be performed are outlined in the General Conditions that contain a limitation of GROUND's liability. This proposed estimate shall be valid for a period of 90 calendar days from the date of submittal. GROUND reserves the right to review and revise the proposed quantities and unit rates thereafter.

The referenced proposal spreadsheet, "Fee Schedule" and "General Conditions" are included and are part of this proposal. We propose that our fees for any additional services be based on our hourly and unit costs in accordance with the "Fee Schedule". This proposal and the rates herein, are submitted conditional to our understanding that this scope of work is not subject to the terms of the Service Contract Act or American Recovery and Reinvestment Act of 2009 (ARRA). In the event that this work is subject to the Service Contract Act or is funded by ARRA, the client must notify GROUND so that this proposal can be revised for compliance. Also note that GROUND reserves the right to withhold data and reports until we have received a signed proposal.

The observation and testing services outlined herein, or lack thereof, do not relieve the contractor, subcontractors or any other applicable trades of their responsibilities to perform their portion of this project in conformance to the project plans, specifications, and other applicable documents. Job site safety and the means and methods of construction are solely the responsibility of the contractor.

We request you call GROUND's office and schedule all observation and testing at least 24 hours in advance of each required observation or test. Verbal test results will be provided to the Contractor and your field representatives as tests are completed, and formal, typed reports will be forwarded once they have been processed and reviewed. Unless specifically scheduled through our main office for a specific test/observation, date, and time, testing or observations will not occur.

Construction Materials Testing

The required amount of work for materials testing depends on the contractor's schedule, the scheduling of our representatives, and on-site inspectors. Having no control over these factors, our proposed scope of work is in general accordance to the attached Fee Schedule. Additionally, the proposed scope of work is for periodic testing and observation. It is therefore important that the Client, Contractor, or Subcontractors schedule our field technicians such that: (1) Sufficient tests are conducted to comply with project specifications; and, (2) That such testing occurs at locations that are randomly distributed throughout the materials being tested. The quantity of tests provided for the various elements in the attached sheets are estimates; actual amounts of individual tests and locations are highly dependant on the Contractor's schedule and the scheduling of our field personnel (could be technicians, CWI, utility inspectors or building inspectors) by the Client, Contractor and/or Subcontractors.

Any exploration, testing, specific observations and analysis associated with the services will be performed by Consultant solely to fulfill the purpose of this Service Agreement and Consultant is not responsible for interpretation by others of the information developed. The services we have been retained to provide consist of periodic material testing and/or observations to assist the owner, contractor, construction manager and design team members with evaluating compliance with project specifications.

The proposed scope of services does not include engineering review of the project documents in regard to the geotechnical aspects of the project such as foundations, slabs, pavements, drains, walls, etc. Geotechnical engineering services can be provided under a separate scope and fee. The review services outlined in this proposal relate only to the materials testing services or observations described under herein.

The proposed scope of work does not consist of construction management services relating to acceptance of materials, material types, or placement methodology; it is not the responsibility of the testing agency to accept or reject material placement or material types. If required, these construction management services can be provided under a separate scope of work. GROUND cannot be held responsible for work performed or materials supplied by others. Client recognizes that conditions on the project site may vary from those encountered during testing and that information generated by Consultant is based solely on the information available to him at the time and location of such testing.

Delays, schedule extensions and construction inefficiencies caused by fuel shortage, a cement shortage or a delay or limitation in the delivery of materials to the Contractor/ Project, due to some unusual market condition caused by industry-wide strike, disaster, area-wide shortage, or other reasons beyond our control may result in additional fees for professional services and associated services needed to fulfill our scope of work. Please note that travel expenses limited to trip charges and mileage rates may be adjusted without notification, based on the current volatility of fuel prices.

We reserve the right to retain all reports and work not yet delivered until a signed proposal is received, and any past due invoices are paid in full.

If this proposal meets with your approval, please sign one copy and return it to this office. By signing this agreement, the client acknowledges that it is the responsibility of the contractor and subcontractors to complete their work in a manner that complies with the project plans, specifications, or any other applicable document, regardless of testing or observations performed or not performed by GROUND Engineering Consultants, Inc. GROUND Engineering Consultants, Inc. cannot and will not be responsible in any way for the work performed by others.

Thank you for considering us for the materials testing and special inspection services on this project.

Sincerely,
GROUND Engineering Consultants, Inc.

Rachelle Smith

Rachelle Smith

Reviewed by Joseph Zorack, P.E.

Agreed to this _____ day of _____, 2010

CH2M Hill, Inc., by _____

Print: _____

GROUND ENGINEERING CONSULTANTS, INC.

FEE SCHEDULE - CONSTRUCTION OBSERVATION (2010)

CONSTRUCTION OBSERVATION

(Time is round trip from office to project site and return)

Observation – Construction Materials Testing and Special Inspections

a. Engineering Technician ..... $40.00 - $55.00/hour
b. Senior Engineering Technician ..... $45.00 - $65.00/hour
c. Overtime ..... Technician Hourly Rate + $15.00 per hour
d. Vehicle Mileage $0.60/mile
e. Daily Rates (Includes personnel, vehicle and equipment) ..... Variable Based on Project
f. Weld Testing (MT,PT,UT), ASNT Qualified, Visual Weld Insp., (AWS, CWI Qualified), Bolt Tension & Special Insp. $60.00 - $75.00/hr
g. Trip Charge (covers vehicle and equipment) ..... Variable based on trip length

LABORATORY TESTING

Standard Proctor Compaction (ASTM D 698) $80.00
Modified Proctor Compaction (ASTM D 1557) $90.00
Check Point Proctor $40.00
Natural Density and Moisture Content $10.00
Specific Gravity (ASTM D 854) $45.00
Aggregate Specific Gravity $45.00
Gradation Analysis (ASTM D 422) .....
a. All Standard Sieve to #200 Sieve $50.00
b. Percent Less Than #200 Sieve $30.00
c. Hydrometer Analysis, add $50.00
"R"-Value (ASTM D 2844) $250.00
Atterberg Limit (ASTM D 4318) $40.00
Sand Equivalent (ASTM D 2419) $85.00
Relative Density (ASTM D 2049) $175.00
Clay Lumps and Friable Particles (C 142) $30.00
Concrete Compression Test, Cylinders $12.00/ea
Flat or Elongated Particles (D 4791) $30.00
Soil Stabilization Mixture Analysis ..... Quote
Concrete Flexural Test, Beams $50.00
Mortar Cubes $18.00/ea
Masonry Prisms ..... $60.00/ea + Lab preparation time
Grout Specimens $25.00/ea
Pinhole Dispersion $300.00
Floor Flatness and Levelness FF/FL Testing ..... Quote
Maturity Meter ..... Quote
Laboratory Technician 40.00-60.00/hour
Moisture Coupons ..... Tech Time + $25.00 per coupon
Coring: ..... $1.50/Inch Diameter x Depth Inches + Technician Time

Asphalt Extraction and Gradation Tests $140.00
Special Tests/Sample Preparation ..... $40.00-$60.00/hour
Marshall Properties:
Field production sample $150.00
Laboratory sample (3 specimens/point) $175/point
SHRP Mix Analysis SHRP Gyratory Compaction, 3 points
Field Production Sample $225.00
Laboratory Sample $275.00
Theoretical Maximum Specific Gravity (D 2041) $65.00
Effect of Water on Cohesion of Compacted
Bituminous Mixtures (D 1075) Field Production $175.00
Laboratory Specimens $240.00
Lottman Tests $275.00
Neutron Oven Calibration (4 point) $180.00
Neutron Oven Test (AC) $50.00
Concrete Mix Analysis Specimens
Cylinders/Beams ..... Quote
Soundness (ASTM C 88) $125.00
Fractured Faces Test $35.00
Los Angeles Abrasion Test $125.00
pH Test $30.00
Water Soluble Sulfates Test $40.00
Uncompacted Voids Test $55.00
Bulk Specific Gravity - Asphalt $35.00
Permeability
a. Falling or Constant Head, 2-4" Diameter $175.00
b. Triaxial Permeability $300.00
c. Remolded (W & PR E-13) $200.00

ENGINEERING

(Covers planning and general supervision, field trips, analysis, consultation, preparation of reports, and travel time.)

Principal Engineer ..... $100.00-$150.00/hour
Project Manager ..... $85.00-$105.00/hour
Project Engineer or Geologist ..... $65.00-$85.00/hour
Staff/Field Engineer ..... $55.00-$65.00/hour
ICC Building Inspection ..... $55.00-$65.00/hour
CAD Technician $50.00/hour
Special Consultation, Expert Testimony and Court Appearance ..... Negotiable Daily Rate

MISCELLANEOUS

Out-of-town living expenses, commercial travel costs, equipment rental, etc. ..... Cost +20%
Interest charged after 30 days from invoice date 1.5%/month
Non-Destructive Steel Testing Equipment $25.00/day
Outside Laboratory Services ..... Cost +20%
Pile Dynamic Analysis, Ground Penetrating Radar, Cross Hole Sonic Logging, Sonic Echo, Thermal Conductivity and Resitivity ..... Quote
Mobile Laboratory ..... Quote (Project Specific)

GENERAL CONDITIONS

INVOICES: Consultant will submit progress invoices to client monthly and a final bill upon completion of the services. Invoices will show charges for different personnel and expense classifications. Each invoice is due on presentation and is past-due thirty (30) days from invoice date. Client agrees to pay a finance charge of one and one-half percent (1.5%) per month, or the maximum rate allowed by law, on past-due accounts. Should Consultant bring suit to recover past due payment for services rendered to Client, Consultant shall be entitled to recover all costs of collection, including reasonable attorneys' fees.

INTENT OF SERVICES: It should be noted that our services (materials testing and specific observations) are intended to assist the contractor, owner, and governing authorities in evaluating compliance with project specifications. It must be understood that our tests and specific observations do not mean that Consultant is approving the placement or use of construction materials. Client acknowledges that Consultant is not responsible for the contractor's materials, means, methods, techniques, sequences, procedures of construction, nor for contractor's failure to follow recommendations or good construction practices, and that the services provided by the Consultant shall not relieve the contractor of its obligation to perform the Work and use materials that are in accordance with the plans and specifications.

RIGHT-OF-ENTRY: Unless otherwise agreed, Client will furnish right-of-entry for Consultant to take the scheduled tests or observations. Consultant will take reasonable precautions to reduce damage to property. However, cost of restoration or damage that may result from field operations are not included in the fee unless otherwise stated, and Consultant cannot be held responsible. Any construction debris or waste generated as a result of the required testing is the responsibility of the Client and their respective Contractor or Subcontractors.

REPORTS: Reports, plans and other work prepared by Consultant remain the property of Consultant until all fees for Consultant's services have been paid. Client agrees that all reports and other work furnished to the Client and his agents not paid for will be returned upon demand, and will not be used for licensing, permits, design and/or construction.

FINAL LETTERS: Many governing agencies require that the Consultant provide some form of final letter at the completion of a project. Such letters are usually required to state that the project was constructed in compliance or general compliance to certain specifications, plans, or codes. As professional consulting engineers, it is not possible or reasonable to state with certainty that all work completed by others completely complied with any specification, plan, or code, and any interpretation as such is incorrect. The Consultant can only make such statements based on the best of their knowledge, their experience, as well as on the specific periodic testing and/or observations that were made and for the time they were made. Any use of the word "inspection" shall be assumed to mean "observation" in any document provided by our office that is in any way connected with this project. Such letters do not constitute any form of warranty, guarantee, or certification, expressed or implied, regardless of the wording used.

It must also be understood that such testing and observation only occur when properly scheduled by the owner, owner's representatives, contractor, or subcontractors, and therefore, it is their responsibility to schedule accordingly and in a manner consistent with the project specifications and the scope of work provided herein.

USE OF ELECTRONIC OR OTHER SUPPLIED DATA: Electronic documents, site plans, or other information provided to Consultant for the subject project may be used in compiling geotechnical, environmental, or construction-related reports for the subject project. It is the responsibility of the Owner or Supplier of such documents to ensure that our use does not violate any copyright or confidentiality that may be pertinent to the supplied information.

LIMITATION OF LIABILITY: Consultant agrees in connection with services performed under this Agreement that such services are performed with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and in the same or a similar locality. No warranty, expressed or implied, is made or intended by rendition of consulting services or by furnishing oral or written reports of the findings made. Liability of Consultant or Subconsultant(s) for damages due to or arising from professional negligence, breach of contract, or any cause of action, shall be limited to the Consultant's fee.

Any exploration, testing, specific observations and analysis associated with the services will be performed by Consultant solely to fulfill the purpose of this Service Agreement and Consultant is not responsible for interpretation by others of the information developed. The services we have been retained to provide consist of periodic material testing and/or observations to assist the owner, contractor, construction manager and design team members with evaluating compliance with project specifications.

SCOPE OF WORK: The proposed scope of work does not consist of construction management services relating to acceptance of materials, material types, or placement methodology; it is not the responsibility of the testing agency to accept or reject material placement or material types. If required, these construction management services can be provided under a separate scope of work. GROUND cannot be held responsible for work performed or materials supplied by others. Client recognizes that conditions on the project site may vary from those encountered during testing and that information generated by Consultant is based solely on the information available to him at the time and location of such testing.

CORPORATE PROTECTION: It must be agreed to by all parties affiliated with this agreement that the services provided by the Consultant that are in any way connected to this project shall not connect Consultant's employees, owners, directors, or officers to any personal exposure for risks associated with any portion of this project. Therefore, and not withstanding anything to the contrary that may be contained herein or in any other document related to this project, the Client, future owners, future users, and/or any other trade or professional, agrees that as the sole and exclusive remedy for any claim, demand, or suit shall be directed and/or asserted against the Consultant, a Colorado Corporation, and not against any of GROUND's employees, owners, officers, or directors.

Quality Acceptance Testing Requirements (Estimate)
Schedule I: Runway 15/33 Rehabilitation and Safety Area Grading

Specification	Test Type	Qty	Unit	Frequency	No. Tests	Cost per Test	Total Cost
P-152 Excavation and Embankment							
	Max Density and Opt Moisture Proctors	4	ea	-	4	$180.00	$720.00
Unclassified Excavation	compaction and moisture	240,000	cy	check of QC	25	$8.00	$200.00
P-153 CLSM							
	7-day Compressive Strength			check of QC	4	$48.00	$192.00
	28-day Compressive Strength			check of QC	4	$48.00	$192.00
P-158 Fly Ash Treated Subgrade							
	compaction and moisture	8,700	sy	check of QC	6	Hourly	*No Charge*
P-209 Crushed Aggregate Base Course							
Test Section - assume 2 test sections	gradation				2	$50.00	$100.00
	density				4	Hourly	*No Charge*
Production	density	4,285	sy	check of QC	4	Hourly	*No Charge*
P-401 Plant Mix Bituminous Pavements		38,250	ton				
Test Section - assume 2 test sections	bulk specific gravity (lab and field)			3/lot	6	$22.50	$135.00
	stability			3/lot	6	$190.00	$1,140.00
	flow			3/lot	6	**	
	air voids			3/lot	6	**	
	VMA			3/lot	6	**	
	mat density			3/lot	6	$22.50	$135.00
	joint density			3/lot	6	$22.50	$135.00
Production-assume a lot is 1,500 TONS	bulk specific gravity (lab and field)			4/lot	104	$22.50	$2,340.00
Assume 26 Lots	stability			4/lot	104	$190.00	$19,760.00
	flow			4/lot	104	**	
	air voids			4/lot	104	**	
	VMA			4/lot	104	**	
	mat density			4/lot	104	$22.50	$2,340.00
	joint density			4/lot	104	$22.50	$2,340.00
	thickness			4/lot	104	Hourly	*No Charge*
P-610 Structural Portland Cement Concrete							
	Compressive Strength			check of QC	4	$48.00	$192.00
						Total	**$29,921.00**

*Contractor will provide all cores for testing
**Stability, Flow, Air Voids and VMA are all included in $190.00 fee

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: **10**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Keith Reester, Director, Public Works Department

PRESENTER: David Klockeman, City Engineer

TITLE:
Public Hearing and Consideration of an Ordinance on First Reading enacting a Supplemental Budget and Appropriation to the 2011 City of Loveland Budget for Traffic Signal Upgrades in the US 34, Wilson Avenue, and Taft Avenue Corridors

DESCRIPTION:
This is an administrative action for consideration of an ordinance on first reading. The ordinance appropriates additional funding from a federal Congestion Mitigation and Air Quality (CMAQ) grant for traffic signal equipment upgrades along the US 34, Wilson Avenue and Taft Avenue Corridors in Loveland. The contract between the City of Loveland and CDOT was approved by City Council at the December 7, 2010 meeting. The original grant of $120,000 was for the US 287 Corridor and the supplemental was approved by Council on second reading at the February 1, 2011 meeting. The additional funding in this supplemental budget and appropriation request is $125,000, bringing the total federal funds for this project to $245,000.

BUDGET IMPACT:

☐ Yes ☒ No

The funding is from Federal grants. This grant only requires in-kind contributions for the installation of the traffic signal upgrades and other associated work.

SUMMARY:

Under the previously approved agreement, CDOT agreed to reimburse the City of Loveland up to $120,000 for the purchase of traffic signal controllers for all traffic signal locations and mesh radios (traffic signal communications equipment) which will provide communication for those locations not already connected via fiber-optic to the City's Traffic Operations Center for the US 287 Corridor in Loveland. The additional funding of $125,000 included in this supplemental budget and appropriation request allows for similar work to be completed on the US 34, Wilson

Avenue and Taft Avenue corridors. The installation, programming and retiming of the signals will be performed by City Traffic Division personnel as an in-kind contribution. This work will be completed in 2011.

After adoption of the ordinance on second reading, the City Manager will execute an amendment to the previously approved CDOT agreement

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LIST OF ATTACHMENTS:

An Ordinance enacting a Supplemental Budget and Appropriation to the 2011 City of Loveland Budget for Traffic Signal Upgrades in the US 34, Wilson Avenue, and Taft Avenue Corridors

---

RECOMMENDED CITY COUNCIL ACTION:

Conduct a Public Hearing and approve the ordinance on first reading.

REVIEWED BY CITY MANAGER:

FIRST READING May 17, 2011

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR TRAFFIC SIGNAL UPGRADES IN THE US 34, WILSON AVENUE, AND TAFT AVENUE CORRIDORS

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2011; 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 2011, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That revenues in the amount of $125,000 from a Federal Congestion Mitigation and Air Quality (CMAQ) Grant in the Capital Projects Fund 02 are available for appropriation. These revenues are appropriated for equipment to upgrade traffic signal system controllers in the U.S. 34, Wilson Avenue, and Taft Avenue Corridors. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Capital Projects Fund 02 - Traffic Signal Equipment Upgrades

Revenues		
002-0270-334-48-00-TS1102	Federal Grants -Traffic Signal Controllers	125,000
Total Revenue		**125,000**
Appropriations		
002-0270-409-09-40-TS1102	Construction -Traffic Signal Controllers	125,000
Total Appropriations		**125,000**

Section 2. That as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

ADOPTED this ___ day of June, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: **11**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Keith Reester, Director, Public Works Department

PRESENTER: David Klockeman, City Engineer

TITLE:

1. Resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado, and the Colorado Department of Transportation for variable message signage in the I-25 / US 34 and I-25 / Crossroads Areas
2. Resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Colorado Department of Transportation for Traffic Responsive Signal Timing Improvements in the I-25 / US 34 and Crossroads/Centerra Areas
3. Public Hearing and consideration of an ordinance on First Reading enacting a Supplemental Budget and Appropriation to the 2011 City of Loveland Budget for Installation of Variable Message Signage and Traffic Responsive Signal Timing Plans and Improvements

DESCRIPTION:

These are administrative actions to consider:

1. Two resolutions approving Intergovernmental Agreements between the City of Loveland and the Colorado Department of Transportation (CDOT) for projects funded by the Federal Congestion Mitigation and Air Quality (CMAQ) program (installation of variable message signage (VMS) in the I-25 / US 34 and I-25 / Crossroads areas and traffic responsive signal timing and related improvements in the I-25 / US 34 and I-25 / Crossroads/Centerra areas).
2. First reading of an ordinance to appropriate federal grant funds for the projects included in the Intergovernmental Agreements.

BUDGET IMPACT:

☐ Yes ☒ No

The projects are funded from grant funds. The local match is within the approved budget for the Transportation Capital Program.

SUMMARY:

1. CDOT will provide federal funds to the City of Loveland to reimburse it for the costs, up to $370,000, of installing back to back variable message signs (VMS) at two median locations to inform regional, multi-modal travelers of roadway conditions or other items that may affect their travel. The two proposed locations are on US 34 east of Centerra Parkway and the second location is on Fairgrounds Avenue just north of Crossroads Boulevard (just south of The Ranch complex). This project is currently in the preliminary planning phase. Construction is planned for late 2011 or early 2012.

Funding Summary:		
Federal Funds		$370,000
Local Agency Match (required)	$ 76,914	
Local Over-Matching Funds	$ 3,086	
Subtotal Local Funds	$ 80,000	$ 80,000
Total Project Funds:		$450,000

2. CDOT will provide federal funds to the City of Loveland to reimburse it for the costs, up to $130,000 for traffic responsive/interactive signal timing plans and related improvements along 4 miles of roadway and the Interchanges of I-25 / US 34 and I-25 / Crossroads. The roadways included are Crossroads Boulevard, Fairgrounds Avenue / Centerra Parkway, and US 34 with a total of six (6) signalized intersections. The purpose of the project is to reduce travel time through the use of improved technology to automatically adjust the traffic signal system based on real-time conditions. This work will be completed in 2011.

Funding Summary:		
Federal Funds		$130,000
Local Agency Match (required)	$ 27,024	
Local Over-Matching Funds	$ 7,976	
Subtotal Local Funds	$ 35,000	$ 35,000
Total Project Funds:		$165,000

3. An ordinance is required to appropriate the Federal Funds as the award of these two projects occurred after the 2011 budget was adopted.

4. The Intergovernmental Agreements will be signed by the City Manager after approval of the ordinance on second reading.

LIST OF ATTACHMENTS:

1. A Resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Colorado Department of Transportation for Variable Message Signage in I-25 / US 34 and the I-25 / Crossroads
2. A Resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Colorado Department of Transportation for Traffic Responsive Signal Timing Improvements in the I-25 / US 34 and Crossroads/Centerra Areas
3. An Ordinance enacting a Supplemental Budget and Appropriation to the 2011 City of Loveland Budget for Installation of Variable Message Signage and Traffic Responsive Signal Timing Plans and Improvements

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RECOMMENDED CITY COUNCIL ACTION:

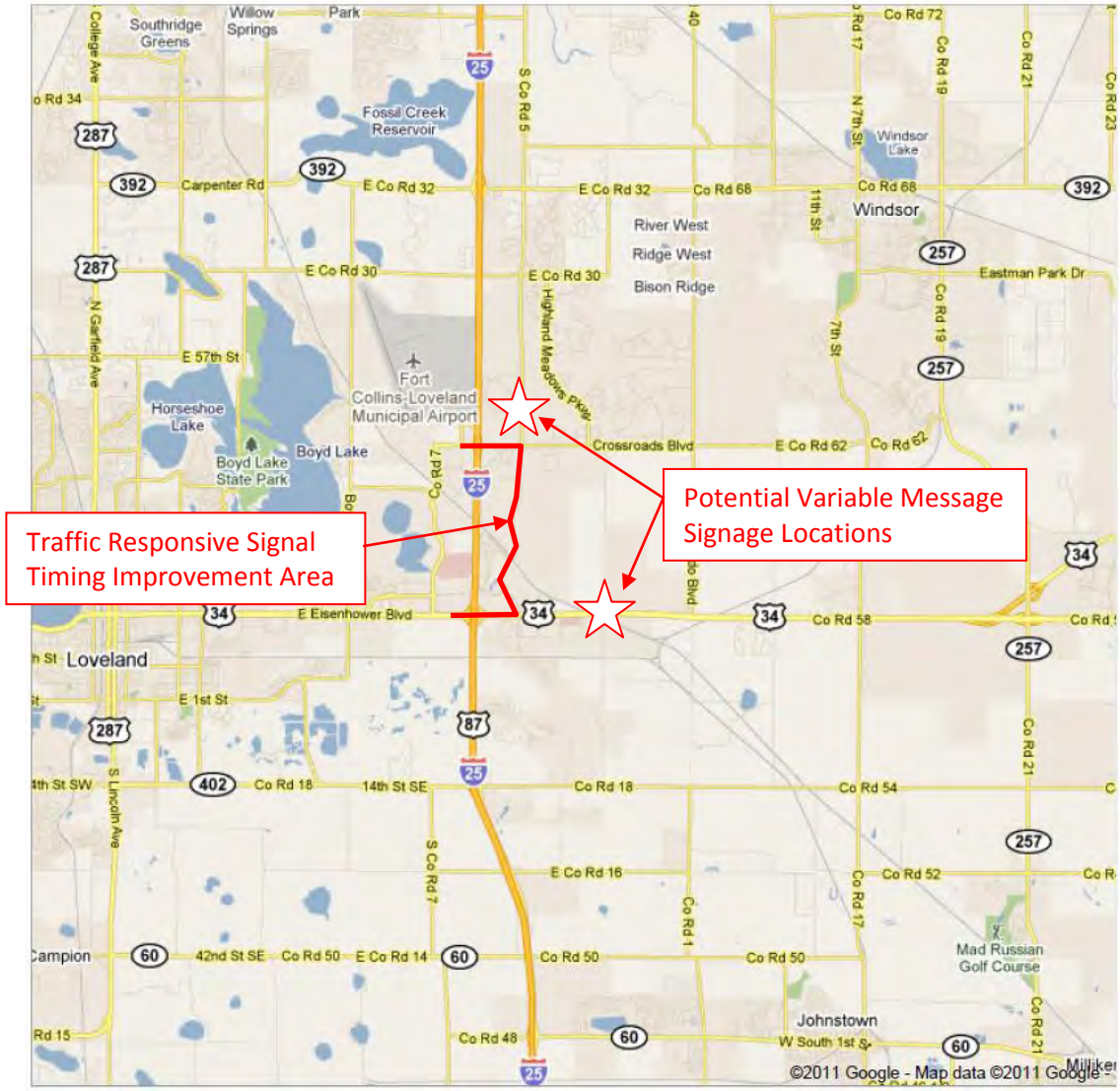
Move for approval of both Resolutions

Conduct a Public Hearing and approve the ordinance on first reading.

REVIEWED BY CITY MANAGER:

Map Exhibit – Item 11

1. I-25 Area Variable Message Signing
2. I-25 Area Traffic Responsive Signal Timing Improvements



RESOLUTION #R-32-2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR VARIABLE MESSAGE SIGNAGE IN I-25/US 34 AND THE I-25/CROSSROADS AREAS

WHEREAS, the City of Loveland desires to the install variable message signage improvements in the I-25 / US 34 and I-25 / Crossroads areas in Loveland (the "Project"), which is to be funded by federal-aid funds administered and made available through the State of Colorado, acting through the Colorado Department of Transportation ("CDOT"); and

WHEREAS, federal-aid funds are available for the Project in the amount of $370,000; and

WHEREAS, the City and CDOT desire to enter into an intergovernmental agreement, a copy of which is attached hereto Exhibit A and incorporated herein by this reference (the "Agreement"), to define the division of responsibilities with regard to the Project; and

WHEREAS, as governmental entities in Colorado, the City of Loveland 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 Intergovernmental Agreement in the form substantially similar to that attached hereto as Exhibit A and incorporated herein by reference, is hereby approved and 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 2. That the City Manager and the City Clerk are authorized and directed to execute the Contract on behalf of the City.

Section 3. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 17th day of May, 2011.

_____

Cecil Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
_____
Deputy City Attorney

EXHIBIT A

(FMLAWRK)
PROJECT AQC M830-059 (18119)
REGION #4 (PCO)

Rev 7/8/09
Routing # 11 HA4 30814
O/L # 331000415

STATE OF COLORADO
Department of Transportation
Agreement
with
City of Loveland

TABLE OF CONTENTS

1. PARTIES

THIS AGREEMENT is entered into by and between **City of Loveland** (hereinafter call 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 43-2-14.

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 add back to back electronic variable message signs (VMS) at two (2) median locations at I-25 & US34 and I-25 and Crossroads Blvd. in the City of Loveland.

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) and **Exhibit J** (Federal Requirements).

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

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

b) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

c) The Local Agency shall be responsible for the following:

(1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.

(2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23

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

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

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

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

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

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

(b) An alternative to the preceeding 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.

iv. 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**,

v. ROW and Acquistion/Relocation

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

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

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

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

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

vi. 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.

vii. Railroads

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

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

viii. 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.

ix. Maintenance Obligations

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

7. OPTION LETTER MODIFICATION

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

A. **Option 1- Level of service change within current term due to unexpected overmatch in an overbid situation only.**

In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding. The State may unilaterally increase the total dollars of this contract as stipulated by the

executed Option Letter (**Exhibit D**), which will bring the maximum amount payable under this contract to the amount indicated in **Exhibit C-1** attached to the executed Option Letter (future changes to **Exhibit C** shall be labeled as **C-2**, **C-3**, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

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

C. **Option 3 - To update funding (increases and/or decreases) with a new Exhibit C.** This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (**Exhibit C**) in the Original Contract with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc). The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in **Exhibit C-1**, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

8. PAYMENTS

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

A. **Maximum Amount**

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

B. **Payment**

i. Advance, Interim and Final Payments

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

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 reimubursement 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

Resonable 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 Witholding

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. Withold 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 forgegoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

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

A. **State:**

Tim Tuttle
CDOT Region 4
1420 2nd Street
Greeley, CO 80631
(970)350-2103

B. **Local Agency:**

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

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 Agencys's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

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

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

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may

result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

22. FEDERAL REQUIREMENTS

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. A listing of certain federal and state laws that may be applicable are described in **Exhibit J** (Section 37) and **Exhibit K** (Section 38 - Supplemental Federal Provisions).

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. **Jurisdction and Venue**

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

H. **Limitations of Liability**

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

I. **Modification**

i. By the Parties

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

ii. By Operation of Law

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

J. **Order of Precedence**

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

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

K. **Severability**

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

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

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

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

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

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26. COLORADO SPECIAL PROVISIONS

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

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

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

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

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

3. GOVERNMENTAL IMMUNITY.

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

4. INDEPENDENT CONTRACTOR

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

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

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

7. BINDING ARBITRATION PROHIBITED.

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

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

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

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

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

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

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

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

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

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

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

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

SPs Effective 1/1/09

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27. SIGNATURE PAGE
Agreement Routing Number 11 HA4 30814

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

THE LOCAL AGENCY
City of Loveland

By: _____

Title: _____

_____
*Signature

Date: _____

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Colorado Department of Transportation
Donald E. Hunt Executive Director

_____
By: Pam Hutton, CDOT Chief Engineer

Date: _____

2nd The Local Agency Signature if Needed

By: _____

Title: _____

_____
*Signature

Date: _____

LEGAL REVIEW
John W. Suthers, Attorney General

By: _____
Signature - Assistant Attorney General

Date: _____

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
David J. McDermott, CPA

By: _____

Colorado Department of Transportation

Date: _____

28. EXHIBIT A – SCOPE OF WORK

[

Exhibit A

Project: **I-25/US 34 and Crossroads Area Variable Message Signs**
Agency: **City of Loveland, Traffic Division**

Project: **Traveler Information Signs**

This project would add back to back electronic variable message signs(VMS) at 2 median locations to **inform regional, multi-modal travelers** including; passenger vehicles, motor freight, regional and local transit riders, cyclists and pedestrians. This project is in concert with ITS plans previously approved in Tier 1 and 2 regionally significant corridors and would complement existing ITS devices and signs in the area.

US 34 travelers east of I-25, westbound approaching the highest volume interchange in Northern Colorado and those going east toward Greeley would directly benefit from this project. **US 34 travelers** such as tourists going west to **Rocky Mtn. National Park and east to Greeley** from the park in the region will benefit new back-to-back VMS signs. The second location, just south of The Ranch/Budweiser Events Center on Fairgrounds Ave. north of Crossroads Blvd just east of the I-25 interchange will also get back to back VMS signs. These will help regional travelers on this north-south corridor adjacent to I-25.

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY ORDINANCE or RESOLUTION

29. EXHIBIT C – FUNDING PROVISIONS

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be $450,000.00 which is to be funded as follows:

1	**BUDGETED FUNDS**		
	a. Federal Funds (82.79% of Participating Costs)		$370,000.00
	b. Local Agency Matching Funds		$76,914.00
	c. Local Agency Matching for CDOT - Incurred Non-Participating Costs [AND/OR] Overmatch (Including Non-Participating Indirects)		$3,086.00
	TOTAL BUDGETED FUNDS		$450,000.00
2	**ESTIMATED CDOT-INCURRED COSTS**		
	a. Federal Share (10%of Participating Costs)		$0.00
	b. Local Agency		
	Local Agency Share of Participating Costs	$0.00	
	Non-Participating Costs (Including Non-Participating Indirects)	$0.00	
	Estimated to be Billed to Local Agency		$0.00
	TOTAL ESTIMATED CDOT-INCURRED COSTS		$0.00
3	**ESTIMATED PAYMENT TO LOCAL AGENCY**		
	a. Federal Funds Budgeted (1a)		$370,000.00
	b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)		$0.00
	TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		$370,000.00
	FOR CDOT ENCUMBRANCE PURPOSES		
	Note - $0.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment.		$450,000.00
	Less ROW Acquisition 3111 and/or ROW Relocation 3109		$0.00
	Net to be encumbered as follows:		$0.00

	WBS Element 18119.20.10	Const.	3301	$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20 2050) to 17.21% Local Agency funds and 0% State Funds, it being understood that such ratio applies only to the $370,000.00 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 $370,000.00, and additional federal funds are made available for the Work, the Local Agency shall pay 17.21% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than $370,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be $370,000 (For CDOT accounting purposes, the federal funds of $370,000, Local Agency matching funds of $76,914, and Local Agency Overmatch Funds of $3,086 will be encumbered for a total encumbrance of $450,000), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. 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 Agencys receiving more than $500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to Sub-The Local Agencys receiving federal funds are as follows:

i. Expenditure less than $500,000

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

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

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

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

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

iv. Independent CPA

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

30. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)
NOTE: This option is limited to the specific contract scenarios listed below
AND may be used in place of exercising a formal amendment.

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

Vendor name: _____

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

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

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

(Insert the following language for use with Option #1):
In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The Agreement is now increased by (*indicate additional dollars here*) specified in Paragraph/Section/Provision _____ of the original Agreement.

(Insert the following language for use with Option #2):
In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # Basic Contract)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to add an overlapping phase in *(indicate Fiscal Year here)* that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*). Total funds for this Agreement remain the same (*indicate total dollars here*) as referenced in Paragraph/Section/Provision/Exhibit _____of the original Agreement.

(Insert the following language for use with Option #3):
In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The Agreement is now (*select one: increased and/or decreased)* by (*insert dollars here*) specified in Paragraph/-Section/-Provision/Exhibit _____ of the original Agreement. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. (The following is a NOTE only so please delete when

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

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

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

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

APPROVALS:

For the The Local Agency:
Legal Name of the Local Agency

_____

By: _____
Print Name of Authorized Individual

Signature: _____
Date: _____

Title: Official Title of Authorized Individual

_____

State of Colorado:
Bill Ritter, Jr., Governor

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

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
David J. McDermott, CPA

By: _____

Date: _____

Form Updated: June 12, 2008

31. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

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

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

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code	Region
AQC M830-059	SNSF 5173.037	18119	04

Project Location	Date
City of Loveland	04/1/2011

Project Description
Loveland I-25/US34/Crossroads VMS

Local Agency	Local Agency Project Manager
City of Loveland	Bill Hange
CDOT Resident Engineer	**CDOT Project Manager**
Pete Graham	Tim Tuttle

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

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

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

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

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2-1	Review Project to ensure consistency with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5-1	Prepare Design Data - CDOT Form 463	X	X
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
5-4	Conduct Design Scoping Review meeting	X	
5-5	Conduct Public Involvement	X	
5-6	Conduct Field Inspection Review (FIR)	X	X
5-7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	X
5-8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5-9	Obtain Utility and Railroad Agreements	X	
5-10	Conduct Final Office Review (FOR)	X	X
5-11	Justify Force Account Work by the Local Agency	X	#
5-12	Justify Proprietary, Sole Source, or Local Agency Furnished items	X	#
5-13	Document Design Exceptions - CDOT Form 464	X	#
5-14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5-15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	RESPONSIBLE PARTY CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ 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.) Pete Graham — CDOT Resident Engineer(Signature on File) 04/1/2011 — 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
ADVERTISE, BID AND AWARD			
7-1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7-2	Advertise for Bids	X	
7-3	Distribute "Advertisement Set" of Plans and Specifications	X	
7-4	Review Worksite and Plan Details with Prospective Bidders While Project is Under Advertisement	X	
7-5	Open Bids	X	
7-6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7-7	Concurrence from CDOT to Award		X
7-8	Approve Rejection of Low Bidder		X
7-9	Award Contract	X	
7-10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8-1	Issue Notice to Proceed to the Contractor	X	
8-2	Project Safety	X	#
8-3	Conduct Conferences:		
	Pre-construction Conference (Appendix B)	X	
	Presurvey • Construction staking • Monumentation	 X X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual)*	X	
	Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual)*	X	
	HMA Pre-Paving (Agenda is in *CDOT Construction Manual)*	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." Bill Hange — Local Agency Professional Engineer or CDOT Resident Engineer 970-962-2528 — Phone number	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 Provide the name and phone number of the person authorized for this task. Bill Hange — 970-962-2528 Local Agency Representative — Phone number	X	
8-11	Prepare and Approve Interim and Final Utility/Railroad Billings	X	
8-12	Prepare Local Agency Reimbursement Requests	X	
8-13	Prepare and Authorize Change Orders	X	
8-14	Approve All Change Orders		X
8-15	Monitor Project Financial Status	X	
8-16	Prepare and Submit Monthly Progress Reports	X	X
8-17	Resolve Contractor Claims and Disputes	X	
8-18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. Pete Graham — 970-350-2126 CDOT Resident Engineer — Phone number		X
MATERIALS			
9-1	Conduct Materials Preconstruction Meeting	X	
9-2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	 X X	X
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures ☒ CDOT Procedures ☒ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	 X X	X
9-8	Approve Mix Designs • Concrete • Hot Mix Asphalt	 X X	
9-9	Check Final Materials Documentation	X	
9-10	Complete and Distribute Final Materials Documentation	X	

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

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

32. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

Required by 23 CFR 635.112

33. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

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

SECTION 2. DBE Obligation.

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

SECTION 3 DBE Program.

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

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

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 23.41

34. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

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

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

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

   a. Qualifications,

   b. Approach to the Work,

   c. Ability to furnish professional services.

   d. Anticipated design concepts, and

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

Evaluation factors for final selection are the consultant's:

a. Abilities of their personnel,

b. Past performance,

c. Willingness to meet the time and budget requirement,

d. Location,

e. Current and projected work load,

f. Volume of previously awarded contracts, and

g. Involvement of minority consultants.

6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than $50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.

8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

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

35. EXHIBIT I -- FEDERAL-AID CONTRACT PROVISIONS

FHWA Form 1273

FHWA-1273 Electronic version -- March 10, 1994

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal

Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

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

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

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

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

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

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

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

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

6. **Training and Promotion:**

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

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

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

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

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

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

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

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

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

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

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

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to

be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

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

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

2. Classification:

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

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

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

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

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

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

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

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

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

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed

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

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

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

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

b. Trainees:

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

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

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

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

c. Helpers:

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

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

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

6. Withholding:

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

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages:

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

V. STATEMENTS AND PAYROLLS

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

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

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

2. Payrolls and Payroll Records:

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

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

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

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

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

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

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

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

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

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

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

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

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

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

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

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

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise

disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

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

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

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

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification - Primary Covered Transactions:

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

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

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

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

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

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

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

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency

entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

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

*****

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

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

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

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

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

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

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

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2. **Instructions for Certification - Lower Tier Covered Transactions:**

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

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

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

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

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

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

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

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

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

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

*****

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

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

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

*****

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of

any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

36. 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:

i. the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);

ii. 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;

iii. the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements;

iv. 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;

v. 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 Agencys and their contractors or sub-the Local Agencys).

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 Agencys and sub-the Local Agencys 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 Agencys and sub-the Local Agencys in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

F. **Clear Air Act**

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

G. **Energy Policy and Conservation Act**

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Compliance with Regulations
The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation

(Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

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

Supplemental Provisions for Contracts, Grants, and Purchase Orders for Federal Funds received pursuant to the Federal Funding Accountability and Transparency Act (FFATA) of 2006 and 2008. Amendments As of October 1, 2010

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with 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 does not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a)),
      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, or
      1.1.10. Other financial assistance transactions that authorize the non-Federal Entities' expenditure of Federal Funds.

      Award does *not* include:

      1.1.11. Technical assistance, which provides services in lieu of money;
      1.1.12. A transfer of title to Federally-owned property provided in lieu of money, even if the award is called a grant;
      1.1.13. Any classified award; or
      1.1.14. 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 (Pub. L. 111-5)

   1.2. **"Central Contractor Registration (CCR)"** means the Federal repository into which an Entity must provide information required for the conduct of business as a recipient.

   1.3. **"Data Universal Numbering System (DUNS) Number"** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify business entities.

   1.4. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;

      1.4.1. A governmental organization, which is a State, local government, or Indian Tribe,
      1.4.2. A foreign public entity,
      1.4.3. A domestic or foreign non-profit organization,
      1.4.4. A domestic or foreign for-profit organization, and
      1.4.5. A Federal Agency, but only a subrecipient under an award or subaward to a non-Federal entity.

   1.5. **"Subaward"** means a legal instrument to provide support for the performance of any portion of the substantive project or program funded by federal funds to a Prime Recipient that a Prime Recipient awards to a Subrecipient.

   1.6. **"Contract"** means the contract to which these Supplemental Provisions are attached and includes all award types in §1.1.

1.7. **"Contractor"** means the party or parties to the Contract other than the Prime Recipient and includes a grantee, subgrantee, Subrecipient, or a borrower. For purposes of FFATA reporting, Contractor is either a Subrecipient or a Vendor under this Contract.

1.8. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282). Also referred to as the "Transparency Act."

1.9. **"Prime Recipient"** means a Colorado State Agency or Institution of Higher Education that receives federal funds directly from a Federal Agency in the form of an award in §1.1.

1.10. **"Subrecipient"** means 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.

1.11. **"Supplemental Provisions"** means these Supplemental Provisions for Contracts, Grants, and Purchase Orders using Federal funds except those funds provided under the American Recovery and Reinvestment Act of 2009, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado Agency or Institution of Higher Education.

1.12. **"Total Compensation"** means the cash and noncash dollar value earned by the executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following

- **1.12.1.** Salary and bonus,
- **1.12.2.** Awards of stock, stock options, and stock appreciation rights. This amount shall equal 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,
- **1.12.3.** Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees,
- **1.12.4.** Change in pension value, this amount shall equal the change in present value of defined benefit and actuarial pension plans,
- **1.12.5.** Above-market earnings on deferred compensation which is not tax-qualified, and
- **1.12.6.** 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.

"Vendor" means a dealer, distributor, merchant or other seller providing goods or services required for a project or program funded by Federal funds. A Vendor is not subject to all the terms and conditions of the Federal award, and all program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparence Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. **Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements.**

- **3.1. CCR** - Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under this award or receives final payment, whichever is later. Contractor shall review and update the CCR information at least annually after the initial registration, and more frequently if required by changes in its information
- **3.2. DUNS** – Contractor shall provide its DUNS number to its Prime Recipient, and shall update its information in Dun & Bradstreet at least annually after the initial registration, and more frequently if required by changes in its information.

4. **Total Compensation** – Contractor shall include total compensation in CCR for each of its five most highly compensated executives for the preceding completed fiscal year if:

4.1. the total Federal funding authorized to date under this award is $25,000 or more, and
4.2. in the preceding fiscal year, Contractor received:
4.2.1. 80 percent or more of its annual gross revenues from Federal procurement contracts and subcontracts and Federal financial assistance 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 Federal financial assistance subject to the Transparency Act, and
4.3. the public does not have access to information about the compensation of the 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 section 6104 of the Internal Revenue Code of 1986.

5. **Reporting.** Contractor shall include data elements in its CCR and report to its Prime Recipient Entity the data elements required in §7 if Contractor is a Subrecipient for the award types of grants, contracts, and cooperative agreements (which does not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a). No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions, as the cost of producing such reports shall be deemed included in the Contract price. The reporting requirements in §7 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. The State may provide written notice to Contractor of any such change in accordance with §2 above, but such notice shall not be a condition precedent to Contractor's duty to comply with revised OMB reporting requirements. The Colorado Office of the State Controller shall 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 reporting requirements in §7 apply for new Federal grants, contracts, and cooperative agreements (except CRDA) 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 continues to be subject to the reporting requirements.

7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 **To CCR.** A Subrecipient shall register in CCR and report the following data elements in CCR:
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 Officers' Names of top 5 highly compensated officials if the criteria in §4 are met.
7.1.6 Subrecipient Officers' Total Compensation of top 5 highly compensated officials if criteria in §4 met

7.2 **To Prime Contractor.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the contract, the following data elements:
38. 7.2.1 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. **Vendor** – There are no Transparency Act reporting requirements for vendors.

9. **Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the 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.

RESOLUTION #R-33-2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR TRAFFIC RESPONSIVE SIGNAL TIMING IMPROVEMENTS IN THE I-25/US34 AND CROSSROADS/CENTERRA AREAS

WHEREAS, the City of Loveland desires to the install traffic responsive signal timing plans and improvements in the I-25 / US 34 and Crossroads Boulevard/Centerra areas in Loveland (the "Project"), which is to be funded by federal-aid funds administered and made available through the State of Colorado, acting through the Colorado Department of Transportation ("CDOT"); and

WHEREAS, federal-aid funds are available for the Project in the amount of $130,000; and

WHEREAS, the City and CDOT desire to enter into an intergovernmental agreement, a copy of which is attached hereto Exhibit A and incorporated herein by this reference (the "Agreement"), to define the division of responsibilities with regard to the Project; and

WHEREAS, as governmental entities in Colorado, the City of Loveland 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 Intergovernmental Agreement in the form substantially similar to that attached hereto as Exhibit A and incorporated herein by reference, is hereby approved and 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 2. That the City Manager and the City Clerk are authorized and directed to execute the Contract on behalf of the City.

Section 3. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 17th day of May, 2011.

_____

Cecil Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
_____
Deputy City Attorney

EXHIBIT A

(FMLAWRK)
PROJECT 17564 AQC M830-051
REGION 4 (PCO)

Rev 7/8/09
Routing # 11 HA4 30703
ID O/L# 331000414

STATE OF COLORADO
Department of Transportation
Agreement
with
City of Loveland

TABLE OF CONTENTS

1. PARTIES

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

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

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

3. RECITALS

A. Authority, Appropriation, And Approval

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

i. Federal Authority

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

ii. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-14.

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 provide for traffic responsive/interactive signal timing plans along (4) four miles of roadway in the City of Loveland.

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) and **Exhibit J** (Federal Requirements).

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

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

b) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

c) The Local Agency shall be responsible for the following:

(1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.

(2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23

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

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

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

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

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

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

(b) An alternative to the preceeding 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.

iv. 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**,

v. ROW and Acquistion/Relocation

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

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

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

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

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

vi. 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.

vii. Railroads

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

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

viii. 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.

ix. Maintenance Obligations

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

7. OPTION LETTER MODIFICATION

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

A. **Option 1- Level of service change within current term due to unexpected overmatch in an overbid situation only.**

In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding. The State may unilaterally increase the total dollars of this contract as stipulated by the

executed Option Letter (**Exhibit D**), which will bring the maximum amount payable under this contract to the amount indicated in **Exhibit C-1** attached to the executed Option Letter (future changes to **Exhibit C** shall be labeled as **C-2, C-3**, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

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

C. **Option 3 - To update funding (increases and/or decreases) with a new Exhibit C.** This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (**Exhibit C**) in the Original Contract with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc). The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in **Exhibit C-1**, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

8. PAYMENTS

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

A. **Maximum Amount**

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

B. **Payment**

i. Advance, Interim and Final Payments

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

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 reimubursement 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

Resonable 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. Withold 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 forgegoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

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

A. **State:**

Tim Tuttle
CDOT – Region 4
1420 2nd Street
Greeley, Colorado 80631
(970)350-2211

B. **Local Agency:**

Bill Hange
City of Loveland
105 West 5th Street
Loveland, Co 80537
(970)962-2528

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 Agencys's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

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

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

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may

result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

22. FEDERAL REQUIREMENTS

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. A listing of certain federal and state laws that may be applicable are described in **Exhibit J** (Section 37) and **Exhibit K** (Section 38 - Supplemental Federal Provisions).

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. **Jurisdction and Venue**

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

H. **Limitations of Liability**

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

I. **Modification**

i. By the Parties

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

ii. By Operation of Law

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

J. **Order of Precedence**

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

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

K. **Severability**

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

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

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

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

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

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26. COLORADO SPECIAL PROVISIONS

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

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

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

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

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

3. GOVERNMENTAL IMMUNITY.

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

4. INDEPENDENT CONTRACTOR

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

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

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

7. BINDING ARBITRATION PROHIBITED.

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

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

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

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

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

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

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

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

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

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

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

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

SPs Effective 1/1/09

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27. SIGNATURE PAGE
Agreement Routing Number 11 HA4 30703

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.**

City of Loveland

By: _____

Title: _____

_____
*Signature

Date: _____

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Colorado Department of Transportation
Donald E. Hunt, Executive Director

_____
By: Pam Hutton, CDOT Chief Engineer

Date: _____

2nd The Local Agency Signature if Needed

By: _____

Title: _____

_____
*Signature

Date: _____

LEGAL REVIEW
John W. Suthers, Attorney General

By: _____
Signature - Assistant Attorney General

Date: _____

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
David J. McDermott, CPA

By: _____

Colorado Department of Transportation

Date: _____

EXHIBIT A – SCOPE OF WORK

Exhibit A

Agency: **City of Loveland, Traffic Division**

Project: **Traffic Responsive Signal Timing at I-25/Crossroads/Centerra Area**

This project will provide for traffic responsive/interactive signal timing plans along 4 miles of roadways that include the following: 2 intersecting regional corridors, two major I-25 interchanges, and 6 signalized intersections. The limits for the project for Crossroads/Fairgrounds-Centerra Roadway Corridors would be from The Ranch/Larimer County Fairgrounds on the north to US 34 on the south, along Crossroads Blvd. to Byrd Drive on the west, and on Crossroads to just east of its intersection with Fairgrounds/Crossroads on the east (6 traffic signals total).

The project would include adding or using existing advanced vehicle detection at a dozen key locations including near the I-25/Crossroads Interchange and on Fairgrounds at the access to The Ranch the Larimer County Fairgrounds Complex. Integrating existing CCTV camera count locations such as those at I-25/US34 Interchange and Centerra/Kendall Parkway is part of the project. The signal system improvements would interconnecting signals and count stations to adjust the area's signal timings, based on directional traffic volumes, for peak hours, special events, construction traffic, and for incident management in the I-25 and US 34 corridors (Tier 1).

Several new timing plans would be designed and added to the existing controller plans for more flexibility and automatic selection by the central traffic signal control system. Traffic responsive control would be achieved via Ethernet interconnection to the city's fiber optic backbone and on to the existing central system located in the Loveland Traffic Operations Center in Downtown Loveland.

Short communication links may need to be added via fiber or Ethernet radio for signal interconnects to existing signals and/or the added traffic count/sampling stations.

It has been estimated that travel delay can be reduced by at least 10-20% daily during the peak hours. Other heavily congested traffic periods occur because of regional events and/or incidents on I-25. Automatic adjustments of corridor timing will reduce travel times, delay, congestion, and therefore associated emissions. Numerous events at The Ranch are what generate various high levels of traffic that are now manually controlled depending on traffic impacts of each event (such as concerts,

Larimer County Fair and Rodeo, Good Guys Car Show, etc.), Securing the services of a traffic engineering consultant for system design and implementation is expected to occur with the project.

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28. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY ORDINANCE or RESOLUTION

29. EXHIBIT C – FUNDING PROVISIONS

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be $165,000.00 which is to be funded as follows:

1	**BUDGETED FUNDS**		
	a. Federal Funds (82.79% of Participating Costs)		$130,000.00
	b. Local Agency Matching Funds (17.21% of Participating Costs)		$27,024.00
	c.. Local Agency Matching for CDOT - Incurred Non-Participating Costs [AND/OR] Overmatch (Including Non-Participating Indirects)		$7,976.00
	TOTAL BUDGETED FUNDS		$165,000.00
2	**ESTIMATED CDOT-INCURRED COSTS**		
	a. Federal Share (10%of Participating Costs)		$0.00
	b. Local Agency		
	Local Agency Share of Participating Costs	$0.00	
	Non-Participating Costs (Including Non-Participating Indirects)	$0.00	
	Estimated to be Billed to Local Agency		$0.00
	TOTAL ESTIMATED CDOT-INCURRED COSTS		$0.00
3	**ESTIMATED PAYMENT TO LOCAL AGENCY**		
	a. Federal Funds Budgeted (1a)		$130,000.00
	b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)		$0.00
	TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		$130,000.00
	FOR CDOT ENCUMBRANCE PURPOSES		
	Note - $0.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment.		$165,000.00
	Less ROW Acquisition 3111 and/or ROW Relocation 3109		$0.00
	Net to be encumbered as follows:		$0.00

Less ROW Acquisition 3111 and/or ROW Relocation 3109				$0.00
Net to be encumbered as follows:				$0.00
WBS Element 17564.20.10		Const.	3301	$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20 2050) to 17.21% Local Agency funds and 0% State Funds, it being understood that such ratio applies only to the $157,024.00 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 $157,024.00, and additional federal funds are made available for the Work, the Local Agency shall pay 0% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than $157,024.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be $130,000 (For CDOT accounting purposes, the federal funds of $130,000, Local Agency matching funds of $27,024, State funds of $0, and Local Agency Overmatch Funds of $7,976 will be encumbered for a total encumbrance of $165,000), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. 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 Agencys receiving more than $500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to Sub-The Local Agencys receiving federal funds are as follows:

i. Expenditure less than $500,000

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

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

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

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

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

iv. Independent CPA

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

30. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)
NOTE: This option is limited to the specific contract scenarios listed below AND may be used in place of exercising a formal amendment.

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

Vendor name: _____

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

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

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

(Insert the following language for use with Option #1):
In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The Agreement is now increased by (*indicate additional dollars here*) specified in Paragraph/Section/Provision _____ of the original Agreement.

(Insert the following language for use with Option #2):
In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # Basic Contract)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to add an overlapping phase in *(indicate Fiscal Year here)* that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*). Total funds for this Agreement remain the same (*indicate total dollars here*) as referenced in Paragraph/Section/Provision/Exhibit _____of the original Agreement.

(Insert the following language for use with Option #3):
In accordance with the terms of the original Agreement (*insert FY, Agency code & CLIN routing # of Basic Contract)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The Agreement is now (*select one: increased and/or decreased)* by (*insert dollars here*) specified in Paragraph/-Section/-Provision/Exhibit _____ of the original Agreement. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. (The following is a NOTE only so please delete when

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

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

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

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

APPROVALS:

For the The Local Agency:
Legal Name of the Local Agency

_____

By: _____
Print Name of Authorized Individual

Signature: _____
Date: _____

Title: Official Title of Authorized Individual

_____

State of Colorado:
Bill Ritter, Jr., Governor

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

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
David J. McDermott, CPA

By: _____

Date: _____

Form Updated: June 12, 2008

31. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code	Region
AQC M830-051	SNSF 5173.028	17564	04

Project Location	Date
City of Loveland	03/23/2011

Project Description
Loveland Centerra Area ITS Project

Local Agency	Local Agency Project Manager
City of Loveland	Bill Hange
CDOT Resident Engineer	**CDOT Project Manager**
Pete Graham	Tim Tuttle

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

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

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

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

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2-1	Review Project to ensure consistency with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5-1	Prepare Design Data - CDOT Form 463	X	X
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
5-4	Conduct Design Scoping Review meeting	X	
5-5	Conduct Public Involvement	X	
5-6	Conduct Field Inspection Review (FIR)	X	X
5-7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	X
5-8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5-9	Obtain Utility and Railroad Agreements	X	
5-10	Conduct Final Office Review (FOR)	X	X
5-11	Justify Force Account Work by the Local Agency	X	#
5-12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
5-13	Document Design Exceptions - CDOT Form 464	X	#
5-14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5-15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine Applicability of Davis-Bacon Act This project ☒ is ☐ 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.) Pete Graham — 03/23/2011 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
ADVERTISE, BID AND AWARD			
7-1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7-2	Advertise for Bids	X	
7-3	Distribute "Advertisement Set" of Plans and Specifications	X	
7-4	Review Worksite and Plan Details with Prospective Bidders While Project is Under Advertisement	X	
7-5	Open Bids	X	
7-6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7-7	Concurrence from CDOT to Award		X
7-8	Approve Rejection of Low Bidder		X
7-9	Award Contract	X	
7-10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8-1	Issue Notice to Proceed to the Contractor	X	
8-2	Project Safety	X	#
8-3	Conduct Conferences:		
	Pre-construction Conference (Appendix B)	X	
	Presurvey • Construction staking • Monumentation	X X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual*)	X	
	Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual*)	X	
	HMA Pre-Paving (Agenda is in *CDOT Construction Manual*)	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." Bill Hange — 970-962-2528 Local Agency Professional Engineer or CDOT Resident Engineer — Phone number	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 Provide the name and phone number of the person authorized for this task. Bill Hange — Local Agency Representative 970-962-2528 — Phone number	X	
8-11	Prepare and Approve Interim and Final Utility/Railroad Billings	X	
8-12	Prepare Local Agency Reimbursement Requests	X	
8-13	Prepare and Authorize Change Orders	X	
8-14	Approve All Change Orders		X
8-15	Monitor Project Financial Status	X	
8-16	Prepare and Submit Monthly Progress Reports	X	X
8-17	Resolve Contractor Claims and Disputes	X	
8-18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. Pete Graham — CDOT Resident Engineer 970-350-2126 — Phone number		X
MATERIALS			
9-1	Conduct Materials Preconstruction Meeting	X	
9-2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	 X X	X
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures ☒ CDOT Procedures ☒ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	 X X	X
9-8	Approve Mix Designs • Concrete • Hot Mix Asphalt	 X X	
9-9	Check Final Materials Documentation	X	
9-10	Complete and Distribute Final Materials Documentation	X	

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

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

32. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

Required by 23 CFR 635.112

33. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

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

SECTION 2. DBE Obligation.

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

SECTION 3 DBE Program.

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

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

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 23.41

34. 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 preceeding eight (8) steps.

35. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA Form 1273

FHWA-1273 Electronic version – March 10, 1994

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. GENERAL

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

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

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

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

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

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

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

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal

Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

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

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

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

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

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

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

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

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

6. **Training and Promotion:**

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

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

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

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

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

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

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

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

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

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

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

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to

be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

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

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

2. Classification:

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

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

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

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

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

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

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

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

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

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed

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

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

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

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

b. Trainees:

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

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

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

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

c. Helpers:

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

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

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

6. Withholding:

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

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages:

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

V. STATEMENTS AND PAYROLLS

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

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

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

2. Payrolls and Payroll Records:

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

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

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

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

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

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

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

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

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

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

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

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

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

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

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

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

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise

disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

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

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

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

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification - Primary Covered Transactions:

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

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

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

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

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

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

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

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency

entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

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

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

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

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

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

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

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

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

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2. **Instructions for Certification - Lower Tier Covered Transactions:**

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

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

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

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

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

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

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

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

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

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

*****

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

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

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

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XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of

any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

36. 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:

i. the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);

ii. 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;

iii. the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements;

iv. 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;

v. 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 Agencys and their contractors or sub-the Local Agencys).

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 Agencys and sub-the Local Agencys 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 Agencys and sub-the Local Agencys in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

F. **Clear Air Act**

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

G. **Energy Policy and Conservation Act**

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

H. **OMB Circulars**

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

I. **Hatch Act**

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

J. **Nondiscrimination**

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

K. **ADA**

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

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

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

M. **Drug-Free Workplace Act**

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

N. **Age Discrimination Act of 1975**

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

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

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

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

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

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

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

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

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

S. **Nondiscrimination Provisions:**

S. Nondiscrimination Provisions:

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

I. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation

(Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

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

Supplemental Provisions for Contracts, Grants, and Purchase Orders for Federal Funds received pursuant to the Federal Funding Accountability and Transparency Act (FFATA) of 2006 and 2008. Amendments As of October 1, 2010

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with 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 does not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a)),
      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, or
      1.1.10. Other financial assistance transactions that authorize the non-Federal Entities' expenditure of Federal Funds.

      Award does *not* include:

      1.1.11. Technical assistance, which provides services in lieu of money;
      1.1.12. A transfer of title to Federally-owned property provided in lieu of money, even if the award is called a grant;
      1.1.13. Any classified award; or
      1.1.14. 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 (Pub. L. 111-5)

   1.2. **"Central Contractor Registration (CCR)"** means the Federal repository into which an Entity must provide information required for the conduct of business as a recipient.

   1.3. **"Data Universal Numbering System (DUNS) Number"** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify business entities.

   1.4. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;

      1.4.1. A governmental organization, which is a State, local government, or Indian Tribe,
      1.4.2. A foreign public entity,
      1.4.3. A domestic or foreign non-profit organization,
      1.4.4. A domestic or foreign for-profit organization, and
      1.4.5. A Federal Agency, but only a subrecipient under an award or subaward to a non-Federal entity.

   1.5. **"Subaward"** means a legal instrument to provide support for the performance of any portion of the substantive project or program funded by federal funds to a Prime Recipient that a Prime Recipient awards to a Subrecipient.

   1.6. **"Contract"** means the contract to which these Supplemental Provisions are attached and includes all award types in §1.1.

1.7. **"Contractor"** means the party or parties to the Contract other than the Prime Recipient and includes a grantee, subgrantee, Subrecipient, or a borrower. For purposes of FFATA reporting, Contractor is either a Subrecipient or a Vendor under this Contract.

1.8. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282). Also referred to as the "Transparency Act."

1.9. **"Prime Recipient"** means a Colorado State Agency or Institution of Higher Education that receives federal funds directly from a Federal Agency in the form of an award in §1.1.

1.10. **"Subrecipient"** means 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.

1.11. **"Supplemental Provisions"** means these Supplemental Provisions for Contracts, Grants, and Purchase Orders using Federal funds except those funds provided under the American Recovery and Reinvestment Act of 2009, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado Agency or Institution of Higher Education.

1.12. **"Total Compensation"** means the cash and noncash dollar value earned by the executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following

- **1.12.1.** Salary and bonus,
- **1.12.2.** Awards of stock, stock options, and stock appreciation rights. This amount shall equal 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,
- **1.12.3.** Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees,
- **1.12.4.** Change in pension value, this amount shall equal the change in present value of defined benefit and actuarial pension plans,
- **1.12.5.** Above-market earnings on deferred compensation which is not tax-qualified, and
- **1.12.6.** 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.

"Vendor" means a dealer, distributor, merchant or other seller providing goods or services required for a project or program funded by Federal funds. A Vendor is not subject to all the terms and conditions of the Federal award, and all program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparence Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. **Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements.**

- **3.1. CCR** - Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under this award or receives final payment, whichever is later. Contractor shall review and update the CCR information at least annually after the initial registration, and more frequently if required by changes in its information
- **3.2. DUNS** – Contractor shall provide its DUNS number to its Prime Recipient, and shall update its information in Dun & Bradstreet at least annually after the initial registration, and more frequently if required by changes in its information.

4. **Total Compensation** – Contractor shall include total compensation in CCR for each of its five most highly compensated executives for the preceding completed fiscal year if:

4.1. the total Federal funding authorized to date under this award is $25,000 or more, and
4.2. in the preceding fiscal year, Contractor received:
  4.2.1. 80 percent or more of its annual gross revenues from Federal procurement contracts and subcontracts and Federal financial assistance 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 Federal financial assistance subject to the Transparency Act, and
4.3. the public does not have access to information about the compensation of the 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 section 6104 of the Internal Revenue Code of 1986.

5. **Reporting.** Contractor shall include data elements in its CCR and report to its Prime Recipient Entity the data elements required in §7 if Contractor is a Subrecipient for the award types of grants, contracts, and cooperative agreements (which does not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a). No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions, as the cost of producing such reports shall be deemed included in the Contract price. The reporting requirements in §7 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. The State may provide written notice to Contractor of any such change in accordance with §2 above, but such notice shall not be a condition precedent to Contractor's duty to comply with revised OMB reporting requirements. The Colorado Office of the State Controller shall 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 reporting requirements in §7 apply for new Federal grants, contracts, and cooperative agreements (except CRDA) 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 continues to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

  7.1 **To CCR.** A Subrecipient shall register in CCR and report the following data elements in CCR:
    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 Officers' Names of top 5 highly compensated officials if the criteria in §4 are met.
    7.1.6 Subrecipient Officers' Total Compensation of top 5 highly compensated officials if criteria in §4 met
  7.2 **To Prime Contractor.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the contract, the following data elements:
    38. 7.2.1 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. **Vendor** – There are no Transparency Act reporting requirements for vendors.
9. **Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the 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 May 17, 2011

SECOND READING _____

ORDINANCE NO. _____

AN O RDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO TH E 2011 CITY O F L OVELAND B UDGET FOR INSTALLATION O F VARI ABLE M ESSAGE S IGNAGE AND T RAFFIC RESPONSIVE SIGNAL TIMING PLANS AND IMPROVEMENTS

WHEREAS, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2011; 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 2011, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE I T O RDAINED B Y T HE CI TY CO UNCIL O F T HE CITY OF LOVELAND, COLORADO:

Section 1. That revenues in the amount of $500,000 from Federal Congestion Mitigation and Air Quality Grants in the Capital Projects Fund 002 are available for appropriation. Revenues in the total amount of $500,000 are hereby appropriated for variable message signage and signal timing improvements and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Capital Projects Fund 002 - Transportation Capital Program

Revenues		
002-0270-334.48-00-TS1103	Federal Congestion Mitigation Air Quality Grant	370,000
002-0270-334.48-00-TS1002	Federal Congestion Mitigation Air Quality Grant	130,000
Total Revenue		**500,000**
Appropriations		
002-0270-409-09-60-TS1103	Construction -Transportation Program -Variable Message Signs	450,000
002-0270-409-09-60-TS1002	Construction - Transportation Program - Interactive Signal Timing	165,000
002-0270-409-09-60-EN0332	Construction -Transportation Program - Miscellaneous Projects	(16,000)
002-0270-409-09-60-EN0223	Construction -Transportation Program - Small Capital Projects	(64,000)
002-0270-409-09-60-EN0332	Construction -Transportation Program - Miscellaneous Projects	(7,000)
002-0270-409-09-60-EN0223	Construction -Transportation Program - Small Capital Projects	(28,000)
Total Appropriations		**500,000**

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

ADOPTED this ___ day of June, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt

Deputy 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: **12**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Keith Reester, Public Works Department

PRESENTER: Marcy Abreo, Transit Manager

TITLE:
Public Hearing and consideration of an ordinance on First Reading enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for improvements to the Orchards Regional Transit Center and the replacement and retrofit of one bus with Lightning Hybrid**.**

DESCRIPTION:
This is an administrative action.

BUDGET IMPACT:

☒ Yes ☐ No

The projects are funded with Federal and State Grants, with the local match from a reallocation of Transportation Capital funds and fund balance in the Fleet Fund.

Orchards Regional Transit Center		Lightning Hybrid Bus Retrofit	
Total Project Cost:	$280,700	Total Project Cost:	$148,320
State Funding:	$224,500	Federal Funding:	$103,360
Local Match:	$56,200	Local Match:	$44,960

SUMMARY:
Orchards Regional Transit Center

The transit division has been awarded Funding Advancements for Surface Transportation and Economic Recovery (FASTER) monies through the Colorado Department of Transportation (CDOT) for construction and related costs for improvements to the regional transfer facility between Loveland and Fort Collins. Due to the growth and expansion of the local and regional bus service it is necessary to expand the transfer facility to accommodate more riders, larger buses and ease of access, mitigate traffic, and enhance pedestrian safety.

Since 1999, Loveland and Fort Collins have participated in regional bus service with a transfer point in downtown Loveland. In 2005, due to ridership growth and an increase in traffic on Hwy 287, the transfer point for the regional bus service between the two communities was relocated to the Orchards Shopping Center located at Hwy 287 and 29th Street and referred to as the "North Transfer Center". This was made possible through a partnership with Waterbury Properties, Inc. via contract with terms allowing for 5-year renewals. Since then the local and regional service has seen tremendous growth in ridership especially with the addition of the FLEX route that now connects the communities along Hwy 287 from Fort Collins to Longmont. With the increase in ridership the need for larger buses and more space is critical in continuing to provide safe and efficient service between the communities as well as local transit service.

The North Transfer Center currently consists of a concrete bus pad and two bus shelters in a location that has seen an increase in both pedestrian and vehicle traffic due to the addition of the King Soopers fueling station. The proposed location not only addresses the need for better transit amenities for passenger access and comfort but also improves the traffic flow on the site and safer pedestrian movement. The proposed location will have a bus pullout, turnaround, passenger shelters, a driver break area, and space for park-n-ride users. In addition, a bike library is being considered in future years at this location.

Lightning Hybrid Bus Retrofit

Through the federal Section 5309 Bus and Bus Facilities program in support of the State of Good Repair (SGR) initiative, the transit division has been awarded a grant to replace and retrofit a bus. The project will replace a bus that is identified in the fleet replacement plan and Install a hydraulic hybrid system on above mentioned bus which will be the first "green" bus in the transit fleet. This advanced vehicle technology provides fuel mileage increases of over 40% and reduces emissions by 50%. Lightning Hybrids Inc. (LHI) along with the City of Loveland are working together to promote energy efficiency in the fleet.

This grant will help the City of Loveland Transit begin the transition of its fleet to clean energy and will encourage other fleets to use hydraulic hybrids to reduce their fuel costs and cut emissions. The bus will be retrofit with the LHI HyPER Assist™ (Hydraulic Power & Energy Recovery) technology and will be used in every day operation. COLT's bus will be used to provide service to the elderly, disabled, and general population to the community in Loveland. Over five years the City of Loveland will save over 5,000 gallons of fuel and more than $15,000 (based on gas average of $3 a gallon for the five years) due to this one system. In addition, this bus will be a great ambassador for hydraulic hybrid technology which is proven safe and clean and will establish Loveland Colorado transit fleets on the leading edge of emerging energy efficient vehicle technology. This grant proposal is a great example of what can be accomplished with public/private partnerships as Lightning Hybrids is a local Loveland company.

LIST OF ATTACHMENTS:

1. An ordinance on First Reading enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for improvements to the Orchards Regional Transit Center and the replacement and retrofit of one bus with Lightning Hybrid**.**

RECOMMENDED CITY COUNCIL ACTION:

Conduct a Public Hearing and approve the ordinance on First Reading.

REVIEWED BY CITY MANAGER:

FIRST READING May 17, 2011

SECOND READING _____

ORDINANCE NO. _____

AN O RDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO TH E 2011 CITY O F L OVELAND B UDGET FOR IMPROVEMENTS T O T HE ORCHARDS RE GIONAL T RANSIT CENTER AND T HE REPLACEMENT AN D RE TROFIT O F O NE BUS WITH LIGHTNING HYBRID

WHEREAS, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2011; 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 2011, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE I T O RDAINED B Y T HE CI TY CO UNCIL O F T HE CITY OF LOVELAND, COLORADO:

Section 1. That revenues and/or reserves in the total amount of $372,820, consisting of $224,500 from a State of Colorado Department of Transportation Grant in the Capital Projects Fund 02 and $103,360 from a Federal Transit Administration Grant and $44,960 from fund balance in the Fleet Fund 080, are available for appropriation. Revenues in the total amount of $372,820 are hereby appropriated for improvements to Transit Center, the replacement of one bus and the retrofit of one bus with Lightning Hybrid's fuel efficient hydraulic hybrid drivetrain system, and are transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Capital Projects Fund 002 - Orchards Regional Transit Center

Revenues		
002-2302-335.30-01	State Department of Transportation Grant	224,500
Total Revenue		**224,500**
Appropriations		
002-0270-409-09-60-EN0332	Transportation Program -Miscellaneous Projects	(56,200)
002-2304-409-09-60-TR1101	Construction - Transit Center	280,700
Total Appropriations		**224,500**

Supplemental Budget
Fleet Fund 080 - Bus Replacement and Retrofit

Revenues		
Fund Balance		44,960
080-0000-338.90-00	Federal Transit Grant	103,360
Total Revenue		**148,320**
Appropriations		
080-2360-409-09-44	Motor Vehicle	148,320
Total Appropriations		**148,320**

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 June, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
_____
Deputy City Attorney

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

AGENDA ITEM: **13**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Jim Lees, Utility Accounting Manager, Water & Power
Steve Adams, Interim Director, Water & Power

PRESENTER: Jim Lees

TITLE:
Public Hearing and Consideration on First Reading of an ordinance amending the Loveland Municipal Code at Section 13.08.100 concerning the Wastewater Charge and authorizing a refund to certain nonresidential wastewater customers who receive metered water service from non-City providers.

DESCRIPTION:
This is a legislative action. Staff is seeking to change the way we bill our commercial wastewater customers who receive their water from another water utility. Currently, these customers are being billed a flat rate which is based on the overall average monthly water consumption for the commercial rate class. We are proposing instead to obtain their actual water consumption from their water utility, and bill for their wastewater service based on their actual water consumption.

BUDGET IMPACT:
☉ Yes ☐ No

SUMMARY:
In the spring of 2009, all three utilities were investigating ways in which we could reduce our expenses (this was the period when there were 11.5 positions eliminated in W&P). One of the areas that was a focus for cost reduction was overtime expense, and Utility Billing (UB) was included in this assessment. At this time, there were about 1,325 customers who were on the City's wastewater system, but received their water from a different water utility. The normal method for billing these customers for their wastewater service was to use a flat monthly rate based on the average monthly water usage for the appropriate rate class (residential was 4,600 gallons per month and commercial was 33,400 gallons per month). 1,252 of the 1,325 customers were billed on the flat monthly rate. For many years, our UB division made another option available to these customers. They could bring a copy of their water bill to UB, and UB

would do a manual calculation of their wastewater bill based on the water consumption information from their water utility. At this time (Spring of 2009), there were a total of 73 customers who were taking advantage of this offer (68 residential and 5 commercial), and a lot of UB staff time was required to do these manual calculations. So, in order to streamline operations and save on some overtime costs in the UB area, the decision was made to discontinue the option to bring in water bills and have UB manually calculate wastewater bills. As a result, these 73 customers were put on the flat rate billing starting in 2010.

Shortly after the first bill of 2010 was sent out that reflected the change to the flat rate billing for these customers, we heard from one of the five commercial customers who previously had their wastewater bill manually calculated by UB. This customer informed us that their wastewater bill had nearly quadrupled, and that they were paying nearly $130 more per month than their previous wastewater bills. This led us to investigate what the impact was for the other four commercial customers who formerly had their wastewater bills manually calculated by UB. Of those four, none had water usage that was close to the 33,400 gallons per month average that we were using to calculate the wastewater commercial flat rate. Staff then gave consideration to a number of options to address how these commercial customers could more accurately be billed for their wastewater service. We ultimately decided to pursue obtaining their actual water usage from their water utility (either Little Thompson Water District or Fort Collins-Loveland Water District) and use that as the basis for billing for their wastewater service. Staff felt that this would be the most fair and accurate way to bill them, and that it would not be too time-consuming administratively since there are only ten commercial customers who fit into this category. It also is consistent with how we bill for wastewater service for commercial customers who are on our water system. In addition, it is consistent with how other Northern Colorado utilities are billing their commercial wastewater customers who are served by a different water utility. It is estimated that implementing this change will increase annual wastewater revenues by $14,000.

In addition to making this change going forward, staff would recommend making the change retroactive to billings starting in January of 2010 for customers who have been overbilled for their wastewater service. We would propose refunding to customers the total amount overbilled from January 1, 2010 through June 30, 2011. For customers who have been underbilled for their wastewater service, in comparison to what they would have paid based on their actual water usage, we would propose just implementing the new billing process starting with bills generated after June 30, 2011, and not attempt to collect amounts that were underbilled from January 1, 2010 through June 30, 2011. The estimated one-time total payout to all customers who qualify for the refund is $13,000.

Part of implementing this change involves getting the customers to sign a release form permitting the City to have ongoing access to the customer’s water consumption data from their water utility. Staff recommends that for future customers, signing this release form be a requirement for receiving wastewater service from the City.

LIST OF ATTACHMENTS:

1) Redline version of Ordinance showing changes to current City Code
2) Ordinance

RECOMMENDED CITY COUNCIL ACTION:

Approve the Ordinance on first reading.

REVIEWED BY CITY MANAGER:

FIRST READING May 17, 2011

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT SECTION 13.08.100 CONCERNING THE WASTEWATER CHARGE AND AUTHORIZING A REFUND TO CERTAIN NONRESIDENTIAL WASTEWATER CUSTOMERS WHO RECEIVE METERED WATER SERVICE FROM NON-CITY PROVIDERS

WHEREAS, in January 2010, the City implemented a new flat rate for wastewater service to the City's nonresidential wastewater customers who receive metered water service from non-City providers; and

WHEREAS, shortly after the new flat rate went into effect, Water & Power staff discovered that said flat rate disproportionately billed most of the customers within this customer class, resulting in significant increases to the wastewater bills received by many customers, and significant decreases to the wastewater bills received by a few customers; and

WHEREAS, Water & Power staff has studied this issue and now recommends that the City Council amend Section 13.08.100 of the Loveland Municipal Code to adopt a new billing method for wastewater service provided to nonresidential wastewater customers who receive metered water service from non-City providers to be based on metered water consumption, which staff believes would be the most accurate and equitable method for billing this customer class; and

WHEREAS, on April 20, 2011, the Loveland Utilities Commission adopted a motion recommending that the City Council: (1) adopt an ordinance so amending Section 13.08.100; and (2) authorize a refund to those nonresidential wastewater customers who receive metered water service from non-City providers who, by virtue of the flat rate, overpaid for City wastewater service between January 1, 2010 until implementation of the corrected rate; and

WHEREAS, the City Council desires to adopt the above-described billing method and authorize the above-described refund as being in the best interests of the City and its wastewater ratepayers.

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

Section 1. That Section 13.08.100 of the Loveland Municipal Code is hereby amended to read as follows:

13.08.100 ~~Sewer rental~~Wastewater charge~~s~~.

Every property upon which is located any building connected with the ~~sewage~~ City's wastewater system ~~of the city~~ shall pay a monthly ~~sewer rental~~wastewater charge~~,~~ set by resolution of the city council adopted after two readings. The wastewater charge shall be ~~payable at the time of water billing, according to the following schedule~~determined as follows:

~~A. Monthly Flat Rate, Inside City. The monthly flat rate shall apply to all properties that do not qualify for billing based on water consumption as provided for in subsections B.1. and B.2. of this section and shall be as set by resolution of the city council adopted after two readings.~~

~~B. Metered Water Services – Inside City.~~

~~1~~A. For all residential properties with metered city water service~~s~~, the ~~sewer rental~~wastewater charge~~s~~ shall be ~~determined~~ as follows: (a) for the months of December, January, and February, the ~~sewer rental~~wastewater charge~~s~~ ~~for each of these months~~ shall be based on the ~~actual~~ metered water consumption for the month being billed; and (b) for the months of March through November, the ~~sewer rental~~wastewater charge~~s~~ ~~for each of these months~~ shall be based on the lesser of the average monthly water consumption determined by the meter readings shown in the immediately preceding December, January, and February utility billings (the "winter quarter average") or the ~~actual~~ metered water consumption for the month being billed. However, a customer may request, in writing, to be charged the monthly flat rate provided for in subsection C, below, for the months of March through November. The request must demonstrate to the satisfaction of the city's water and power director that the ~~Where either such determination is considered by the city's water and wastewater director as~~ property's winter quarter average is not representative of ~~sewer~~the property's wastewater discharge~~,~~. If the request is approved, the property shall be charged the monthly flat rate set forth in subsection C, below, for the months of March through November. Said approval shall be valid only for that calendar year. ~~the monthly flat rate charge in subsection A of this section shall be used.~~

~~2~~B. For all nonresidential properties with metered ~~city~~ water service~~s~~, the ~~sewer rental~~wastewater charge~~s~~ for all months ~~wi~~shall be based on ~~actual~~ metered water consumption.~~, except as follows:~~ ~~A~~However, a customer may request, in writing, that it be billed for the months of March through November based on the lesser of the property's winter quarter average or the metered water consumption for the month being billed.~~, at his option, demonstrate~~ The request must demonstrate to the satisfaction of the city's water and ~~wastewater~~ power director that only a portion of the metered water consumption is discharged to the wastewater system. If ~~such demonstration of water consumption~~the request is approved, the property shall be billed for the months of March through November based on the lesser of the property's winter quarter average or the metered water consumption for the month being billed. Said approval ~~it~~ shall be valid only for that calendar year. ~~and may be renewed once a year in order for~~

~~the adjusted consumption to be applicable for the following year.~~ For all nonresidential properties with metered water service from non-city providers, the customer must sign a release permitting the city to have ongoing access to the customer's water consumption data. The city shall not be obligated to provide wastewater service to any customer with water service from a non-city provider who refuses or fails to sign the release required herein.

~~3. Sewer rental charges in this regard shall be the sum of the service charge per billing and the volume charge per one thousand gallons, which charge amounts shall be set by resolution of the city council adopted after two readings.~~

C. ~~Monthly Flat Rate, Outside City.~~ The monthly flat rate for residential and nonresidential properties shall apply to all properties that do not qualify for billing based on metered water consumption as provided ~~for~~ in subsections ~~D.1. and D.2.~~A and B above ~~of this section and shall be as set by resolution of the city council~~.

~~D. Metered Water Services—Outside City.~~

~~1. For all residential properties with metered city water services, the sewer rental charges shall be determined as follows: (a) for the months of December, January, and February, the sewer rental charges for each of these months shall be based on the actual water consumption for the month being billed; and (b) for the months of March through November, the sewer rental charges for each of these months shall be based on the lesser of the average monthly water consumption determined by the meter readings show in the immediately preceding December, January, and February utility billings or the actual water consumption for the month being billed. Where either such determination is considered by the city's water and wastewater director as not representative of sewage discharge, the monthly flat rate charge in subsection C of this section shall be used.~~

~~2. For all nonresidential properties with metered city water services, the sewer rental charges will be based on actual water consumption, except as follows: A customer may, at his option, demonstrate to the satisfaction of the city's water and wastewater director that only a portion of the metered water consumption is discharged to the wastewater system. If such demonstration of water consumption is approved, it shall be valid only for that calendar year and may be renewed once a year in order for the adjusted consumption to be applicable for the following year. Sewer rental charges in this regard shall be the sum of the service charge per billing and the volume charge per one thousand gallons, which charge amounts shall be set by resolution of the city council.~~

Section 2. That nonresidential wastewater customers with metered water service from non-City providers shall be entitled to a refund for the difference, if any, in the amount paid by said customers for City wastewater service from January 1, 2010 to June 30, 2011 under the flat

rate applicable to that customer class, and the amount they would have paid under a billing method based on metered water consumption had said method then been in effect; provided, however, that only those customers who provide the City's Water & Power Department with a signed release on or before July 1, 2011 permitting the City to have ongoing access to the customer's water consumption data shall be entitled to said refund.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b); provided, however that implementation of its provisions shall take effect for all billings mailed on or after July 1, 2011.

ADOPTED this _____ day of June, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

FIRST READING May 17, 2011

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT SECTION 13.08.100 CONCERNING THE WASTEWATER CHARGE AND AUTHORIZING A REFUND TO CERTAIN NONRESIDENTIAL WASTEWATER CUSTOMERS WHO RECEIVE METERED WATER SERVICE FROM NON-CITY PROVIDERS

WHEREAS, in January 2010, the City implemented a new flat rate for wastewater service to the City's nonresidential wastewater customers who receive metered water service from non-City providers; and

WHEREAS, shortly after the new flat rate went into effect, Water & Power staff discovered that said flat rate disproportionately billed most of the customers within this customer class, resulting in significant increases to the wastewater bills received by many customers, and significant decreases to the wastewater bills received by a few customers; and

WHEREAS, Water & Power staff has studied this issue and now recommends that the City Council amend Section 13.08.100 of the Loveland Municipal Code to adopt a new billing method for wastewater service provided to nonresidential wastewater customers who receive metered water service from non-City providers to be based on metered water consumption, which staff believes would be the most accurate and equitable method for billing this customer class; and

WHEREAS, on April 20, 2011, the Loveland Utilities Commission adopted a motion recommending that the City Council: (1) adopt an ordinance so amending Section 13.08.100; and (2) authorize a refund to those nonresidential wastewater customers who receive metered water service from non-City providers who, by virtue of the flat rate, overpaid for City wastewater service between January 1, 2010 until implementation of the corrected rate; and

WHEREAS, the City Council desires to adopt the above-described billing method and authorize the above-described refund as being in the best interests of the City and its wastewater ratepayers.

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

Section 1. That Section 13.08.100 of the Loveland Municipal Code is hereby amended to read as follows:

13.08.100 Wastewater charge.

Every property upon which is located any building connected with the City's wastewater system shall pay a monthly wastewater charge set by resolution of the city council adopted after two readings. The wastewater charge shall be determined as follows:

A. For all residential properties with metered city water service, the wastewater charge shall be as follows: (a) for the months of December, January, and February, the wastewater charge shall be based on the metered water consumption for the month being billed; and (b) for the months of March through November, the wastewater charge shall be based on the lesser of the average monthly water consumption determined by the meter readings shown in the immediately preceding December, January, and February utility billings (the "winter quarter average") or the metered water consumption for the month being billed. However, a customer may request, in writing, to be charged the monthly flat rate provided for in subsection C, below, for the months of March through November. The request must demonstrate to the satisfaction of the city's water and power director that the property's winter quarter average is not representative of the property's wastewater discharge. If the request is approved, the property shall be charged the monthly flat rate set forth in subsection C, below, for the months of March through November. Said approval shall be valid only for that calendar year.

B. For all nonresidential properties with metered water service, the wastewater charge for all months shall be based on metered water consumption. However, a customer may request, in writing, that it be billed for the months of March through November based on the lesser of the property's winter quarter average or the metered water consumption for the month being billed. The request must demonstrate to the satisfaction of the city's water and power director that only a portion of the metered water consumption is discharged to the wastewater system. If the request is approved, the property shall be billed for the months of March through November based on the lesser of the property's winter quarter average or the metered water consumption for the month being billed. Said approval shall be valid only for that calendar year. For all nonresidential properties with metered water service from non-city providers, the customer must sign a release permitting the city to have ongoing access to the customer's water consumption data. The city shall not be obligated to provide wastewater service to any customer with water service from a non-city provider who refuses or fails to sign the release required herein.

C. The monthly flat rate for residential and nonresidential properties shall apply to all properties that do not qualify for billing based on metered water consumption as provided in subsections A and B above.

Section 2. That nonresidential wastewater customers with metered water service from non-City providers shall be entitled to a refund for the difference, if any, in the amount paid by

said customers for City wastewater service from January 1, 2010 to June 30, 2011 under the flat rate applicable to that customer class, and the amount they would have paid under a billing method based on metered water consumption had said method then been in effect; provided, however, that only those customers who provide the City's Water & Power Department with a signed release on or before July 1, 2011 permitting the City to have ongoing access to the customer's water consumption data shall be entitled to said refund.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b); provided, however that implementation of its provisions shall take effect for all billings mailed on or after July 1, 2011.

ADOPTED this _____ day of June, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

CITY OF LOVELAND
COMMUNITY PARTNERSHIP OFFICE
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AGENDA ITEM: **14**

MEETING DATE: May 17, 2011

TO: City Council

FROM: Greg George, Development Services Director

PRESENTER: Alison Hade, Community Partnership Office

TITLE:
A Resolution waiving certain development fees for construction of the tenant finish at the Food Bank for Larimer County facility located at 2600 N. Lincoln Avenue in Loveland, Colorado

DESCRIPTION:
This is an administrative action to consider a resolution waiving fees in an amount not to exceed $7,727.04 for the tenant finish of 2600 N. Lincoln Avenue by the Food Bank for Larimer County.

BUDGET IMPACT:

● Yes ○ No

Total fees for the project are estimated at $7,727.04.

SUMMARY:

The Food Bank for Larimer County has requested waiver of all fees to complete the tenant finish at 2600 N. Lincoln Avenue (see map on page 2). The Food Bank for Larimer County provides free food for Loveland residents with incomes at or below 185% of poverty, which for a family of four is $40,793. The property will be renovated to include a 4,200 SF “shopping” area for clients, a 1,000 SF area dedicated to office space and almost 11,000 SF to be used for food storage and distribution. This building is situated on approximately 5.5 acres of land, much of which is paved but available for future use if needed. The building was selected because it requires minimal modifications, resulting in a significant cost and time savings compared to other available options.

Section 16.38.075 of the Loveland Municipal Code permits the City Council to waive permit fees on behalf of non-profit entities without transferring funds to cover the cost.

2600 NORTH LINCOLN AVENUE – LOVELAND FOOD BANK

LIST OF ATTACHMENTS:

- Resolution
- Estimate of permit fees for tenant finish
- Summary of the need for additional space to provide food for Loveland residents

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RECOMMENDED CITY COUNCIL ACTION: City staff recommends the following motion for Council action:

Move to adopt A RESOLUTION WAIVING CERTAIN DEVELOPMENT FEES FOR CONSTRUCTION OF THE TENANT FINISH AT THE FOOD BANK FOR LARIMER COUNTY FACILITY LOCATED AT 2600 N. LINCOLN AVENUE IN LOVELAND, COLORADO.

REVIEWED BY CITY MANAGER:

RESOLUTION #R-34-2011

A RESOLUTION WAIVING CERTAIN DEVELOPMENT FEES FOR CONSTRUCTION OF THE TENANT FINISH AT THE FOOD BANK FOR LARIMER COUNTY FACILITY LOCATED AT 2600 N. LINCOLN AVENUE IN LOVELAND, COLORADO

WHEREAS, the Food Bank for Larimer County has requested the waiver of certain City-imposed development fees for construction of the tenant finish at its facility located at 2600 N. Lincoln Avenue in Loveland, Colorado, legally described as Lot 2, Block 1, Ferrero 1st Addition, Amended Lots 1 & 2, Block 1, City of Loveland, County of Larimer, State of Colorado (the "Facility"), construction of which is to begin in 2011; and

WHEREAS, Section 16.38.075 of the Loveland Municipal Code provides that the City Council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed by the City upon new development, whether for capital or other purposes, upon a finding, set forth in a development agreement, that the project for which the fees would otherwise be imposed will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City at taxpayer expense, that such facilities relieve the pressures of growth on City-provided facilities, and that such facilities do not create growth or growth impacts; and

WHEREAS, the Food Bank of Larimer County is willing and able to enter into a development agreement with the City whereby it will construct the tenant finish at the Facility; and

WHEREAS, the City Council finds that the waiver of development fees that will result from adoption of this Resolution will provide a not-for-profit facility open to Loveland area residents that might otherwise be provided by the City at taxpayer expense, and that such facility relieves the pressures of growth on City-provided facilities and does not create growth or growth impacts.

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

Section 1. That development fees, including without limitation all building permit fees, plan review fees, and any and all other fees due and payable between permit application and final certificate of occupancy (excluding capital expansion fees, system impact fees, raw water fees, tap fees, or any other enterprise fees), in an amount not to exceed $7,727.04, that are payable to the City for construction of the tenant finish at the Facility are hereby waived.

Section 2. That pursuant to Section 16.38.075, no reimbursement to the capital expansion fund or any enterprise fund by the general fund is necessary because the development fees waived in Section 1 above do not include capital expansion fees, system impact fees, raw water fees, tap fees, or any other enterprise fees.

Section 3. That the fee waiver set forth in Section 1 above is conditioned upon the City, through its City Manager, and the Food Bank for Larimer County entering into a development agreement, which agreement shall provide for the waiver of said fees in an amount not to exceed $7,727.04 in exchange for construction of the tenant finish at the Facility, as well as such other conditions as the City Manager deems necessary.

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

ADOPTED this 17th day of May, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Shawn L. Otten
Assistant City Attorney

City of Loveland

Permit Statement

Permit	Statement Printed Date:
BP-11-00533:Tenant Finish - Retail 589A-01-002-589A-01-002 2600 N LINCOLN AVE Food Bank of Larimer County	04/22/2011

Description	Item Amount	Total Due on Statement
A05a N-R Bldg PC (Other)	$2,101.94	$2,101.94
D05b N-R Bldg Permit Fee (Other)	$3,233.75	$3,233.75
D05c N-R Mech Permit Fee (Other)	$1,010.55	$1,010.55
D05d N-R Elec Permit Fee (Other)	$958.75	$958.75
D05e N-R Plum Permit Fee (Other)	$422.05	$422.05
Sub Total		**$7,727.04**
		$7,727.04

The Food Bank for Larimer County provides free food to low-income individuals and families in Loveland, which allows scarce financial resources to be spent on housing, utilities, transportation, child-care, medical care and other necessities. Income-eligible families are able to choose their own food twice a week from a "grocery" style pantry that includes dairy, fresh produce and bread. In addition, one time each month clients are able to receive government commodities, including various non-perishable food items to supplement their fresh food choices, such as cheese, peanut butter, and tuna. Since opening the Food Share pantry in Loveland in 2006, more than 6.5 million pounds of food have been provided, thereby reducing food insecurity, which is defined as limited or uncertain availability of nutritionally adequate and safe foods, or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.

In 2010, 9,378 unduplicated individuals received 2,017,213 pounds of free, nutritious food through Loveland Food Share. Since 2006, the number of individuals requesting assistance has grown by over 300%, from 3,000 to nearly 10,000 clients annually; approximately 50% of the clients served through Food Share are children and seniors.

To qualify for Food Share, clients must have income at or below 185% of the federal poverty level, which is $40,793 annual gross income for a family of four, although many live well below that amount. **The increase in food distribution has made it evident that operating out of our current, leased facility in Loveland is not a long term option as we have simply outgrown the space and are no longer able to efficiently run the program at this location.** With a larger location, the Food Bank can obtain and distribute more food so that struggling families can maintain or regain self-sufficiency.

Significant Milestones:

2006 Food Share pantry opens in Loveland at 245 S. Madison Avenue.
2009 Loveland donors double in number from 2006, and triple annual support to the Food Bank from $131,526 to $425,306.
2010 Loveland Food Share reaches capacity serving 215 people each day.
2011 Grand opening for new Loveland Food Share pantry.

CITY OF LOVELAND
CITY COUNCIL
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AGENDA ITEM: **15**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Greg George, Development Services

PRESENTER: Kerri Burchett, Current Planning

TITLE:

AN ORDINANCE AMENDING TITLE 18 OF THE LOVELAND MUNICIPAL CODE TO ALLOW FOR OFF-TRACK BETTING FACILITIES IN CERTAIN DISTRICTS WITHIN THE CITY OF LOVELAND.

DESCRIPTION:

A public hearing to consider a legislative action to adopt an ordinance on first reading amending Title 18 relating to off-track betting facilities.

BUDGET IMPACT:

☐ Yes ☒ No

SUMMARY:

The proposed code amendment for off-track betting facilities provides a definition, clarifies what zone districts the use is permitted and establishes parameters under which the use is considered a use by right or a use by special review. An off-track betting facility is generally defined as a business that accepts wagers on horse and greyhound races away from a racetrack. The use is licensed and regulated by the State's Division of Gaming and the Colorado Racing Commission. The Planning Division has recently received inquiries regarding the establishment of such a facility within the City. As the Municipal Code is silent with respect to this land use, the codification of the use is necessary. The Planning Commission conducted a public hearing on April 25, 2011 and is recommending approval of the amendment by a vote of 7 to 2.

LIST OF ATTACHMENTS:

A. Ordinance amending Title 18
B. City Council staff memorandum, May 17, 2011

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for City Council action:

> Move to adopt on first reading: AN ORDINANCE AMENDING TITLE 18 OF THE LOVELAND MUNICIPAL CODE TO ALLOW FOR OFF-TRACK BETTING FACILITIES IN CERTAIN DISTRICTS WITHIN THE CITY OF LOVELAND.

REVIEWED BY CITY MANAGER:

First Reading May 17, 2011
Second Reading _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 18 OF THE LOVELAND MUNICIPAL CODE TO ALLOW FOR OFF-TRACK BETTING FACILITIES IN CERTAIN DISTRICTS WITHIN THE CITY OF LOVELAND

WHEREAS, City Council finds that updates to Title 18 Zoning Code are necessary and required in the interest of the health, safety and welfare of the people; and

WHEREAS, the City Council desires to revise certain sections of the code regarding off-track betting facilities; and

WHEREAS, a public hearing was held with the Planning Commission on April 25, 2011, regarding allowance of off-track betting facilities within certain districts within the city, and the Planning Commission is in support of the recommended changes; and

WHEREAS, the City Council finds that such revisions to the following sections of the code are necessary to implement these changes.

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

Section 1. Chapter 18.04 of the Loveland Municipal Code is amended by the addition of a new Section 18.04.279 to read as follows:

18.04.279 Off-Track Betting Facility defined.
A facility which is in the business of accepting wagers on horseraces or dog races at locations other than the place where the race is run, which business is licensed by the State of Colorado.

Section 2. Chapter 18.24 of the Loveland Municipal Code, Be District - Established Business District, is amended by the addition of a new Section 18.24.020.UU to read as follows:

Section 18.24.020 Uses Permitted By Right
UU. Off-Track Betting Facility located more than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 300 feet from any residential property within a Planned Unit Development.

Section 3. Chapter 18.24 of the Loveland Municipal Code, Be District - Established Business District, is amended by the addition of a new Section 18.24.030.Y to read as follows:

Section 18.24.030 Uses Permitted By Special Review
Y. Off-Track Betting Facility located less than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 300 feet or less from any residential property within a Planned Unit Development.

Section 4. Chapter 18.28 of the Loveland Municipal Code, B District – Developing Business District, is amended by the addition of a new Section 18.28.010.RR to read as follows:

Section 18.28.010 Uses Permitted By Right
RR. Off-Track Betting Facility located more than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 300 feet from any residential property within a Planned Unit Development.

Section 5. Chapter 18.28 of the Loveland Municipal Code, B District – Developing Business District, is amended by the addition of a new Section 18.28.020.NN to read as follows:

Section 18.28.020 Uses Permitted By Special Review
NN. Off-Track Betting Facility located less than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 300 feet or less from any residential property within a Planned Unit Development.

Section 6. Chapter 18.29 of the Loveland Municipal Code, MAC District – Mixed-Use Activity Center District, is amended by the addition of a new Section 18.29.020.SS to read as follows:

Section 18.29.020 Uses Permitted By Right
SS. Off-Track Betting Facility located more than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 300 feet from any residential property within a Planned Unit Development.

Section 7. Chapter 18.29 of the Loveland Municipal Code, MAC District – Mixed-Use Activity Center District, is amended by the addition of a new Section 18.29.030.P to read as follows:

Section 18.29.030 Uses Permitted By Special Review
P. Off-Track Betting Facility located less than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 300 feet or less from any residential property within a Planned Unit Development.

Section 8. Chapter 18.30 of the Loveland Municipal Code, E District – Employment District, is amended by the addition of a new Section 18.30.020.MM to read as follows:

Section 18.30.020 Uses Permitted By Right
MM. Off-Track Betting Facility located more than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 300 feet from any residential property within a Planned Unit Development.

Section 9. Chapter 18.30 of the Loveland Municipal Code, E District – Employment District, is amended by the addition of a new Section 18.30.030.W to read as follows:

Section 18.30.030 Uses Permitted By Special Review
W. Off-Track Betting Facility located less than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 300 feet or less from any residential property within a Planned Unit Development.

Section 10. Chapter 18.36 of the Loveland Municipal Code, I District – Developing Industrial District, is amended by the addition of a new Section 18.36.010.TT to read as follows:

Section 18.36.010 Uses Permitted By Right
TT. Off-Track Betting Facility located more than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 300 feet from any residential property within a Planned Unit Development.

Section 11. Chapter 18.36 of the Loveland Municipal Code, I District – Developing Industrial District, is amended by the addition of a new Section 18.36.020.V to read as follows:

Section 18.36.020 Uses Permitted By Special Review
V. Off-Track Betting Facility located less than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 300 feet or less from any residential property within a Planned Unit Development.

Section 12. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Signed this _____ day of _____, 2011.

ATTESTED: CITY OF LOVELAND, COLORADO

_____ _____
City Clerk Mayor

APPROVED AS TO FORM:

Assistant City Attorney

City of Loveland

Development Services
Current Planning
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MEMORANDUM

TO: City Council

FROM: Kerri Burchett, Current Planning

DATE: May 17, 2011

SUBJECT: Amendment to Title 18 of the Municipal Code: Off-Track Betting Facility

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I. EXHIBITS

A. Planning Commission Minutes from April 25, 2011
B. Planning Commission Staff Report from April 25, 2011 including;
   1. Redline version of proposed amendment

II. BACKGROUND

This is an amendment to Title 18 of the Municipal Code regarding off-track betting facilities. An off-track betting (OTB) facility is generally defined as a business that accepts wagers on horse and greyhound races away from a racetrack. The use is licensed and regulated by the State's Division of Gaming and the Colorado Racing Commission. The Planning Division has recently received inquiries regarding the establishment of OTB facilities within the City. As the Municipal Code is silent with respect to this land use, codification of the use is necessary. This amendment essentially serves to define the land use, clarify what zone districts the use is permitted and establish the parameters under which the use is considered a use by right or a special review.

The Planning Commission, Title 18 Committee and City staff are recommending that OTB's be permitted as a use by right within the following non-residential zone districts: Be Established Business, B Developing Business, E Employment, MAC Mixed Activity Center and I Industrial. The amendment would permit OTB facilities as a use by right if the use is located more than 300 feet from a residential zone district. An OTB facility proposed 300 feet or less from a residential zone district would be permitted as a special review. The special review provisions require an additional review process by City Development Review staff coupled with a neighborhood notification and input process. This would allow City staff the ability to evaluate the specific location of the OTB in relation to the surrounding uses and allow the neighborhood an opportunity for input. The recommended 300 foot radius from a residential zone district is equivalent to a

City block. The radius is commonly used in the Municipal Code and is the notification distance required for special review uses.

III. PLANNING COMMISSION CONSIDERATIONS

On April 25, 2011, the Planning Commission reviewed the proposed amendment. By a vote of 7 to 2, the Commission is recommending approval of the amendment. At the public hearing, the Commissioner's raised general questions concerning the following:

1. Is off-track betting limited to horse and dog races?
   The State of Colorado permits wagers on only horse and greyhound racing. Occasionally there are harness races, which is a form of horseracing where a horse pulls a two-wheeled cart.

2. Would the City receive sales tax revenues from the wagers?
   This question required further research to be conducted after the Planning Commission hearing. City staff confirmed with the State's Racing Commission that moneys paid out to those making wagers is not subject to city sales or use taxes. The only revenue that a city would receive from an OTB facility would be from the sale of food and beverages.

3. Is there a State regulation concerning the maximum number of OTB facilities in a community?
   The Racing Commission has its own set of rules and regulations with respect to licensing and control over such facilities, including some locational restrictions such as the wagering on a simulcast greyhound race may not take place in an in-state facility which is located within 50 miles of the greyhound track on the day on which the live greyhound race occurs except with permission of the greyhound track licensee. The Commission does not allow greyhound racing tracks or horseracing tracks to be located within a certain distance from one another (usually 40 or 50 miles, depending on a number of factors). Other than location restrictions based on proximity to a live race track or another gaming facility, there are no further locational restrictions or maximum number of facilities within a community.

   Each OTB facility in Colorado is also licensed through Mile High Racing and Entertainment, which is headquartered in Aurora. The company has a maximum of 12 licenses which they can provide to off-track betting facilities. Currently there are 7 OTB's in operation. These facilities are located in Aurora, Commerce City, Sheridan, Colorado Springs, Pueblo, Denver and Grand Junction.

4. Is there a maximum limitation on wagers?
   There is not a State regulated maximum wager for off-track betting facilities.

5. Are off-track betting facilities always located in bars and are alcoholic beverages always served?
   Of the 7 OTB facilities in Colorado, 6 are located within bars or entertainment complexes that serve alcoholic beverages. There is one OTB facility located in Colorado Springs that is open part-time and does not serve alcohol.

6. Is the proposed amendment consistent with the land use provisions for a bar or tavern?
   The proposed amendment for off-track betting facilities is more restrictive than the land use provisions for a bar or tavern. Bars and taverns are permitted as a use by right in the City's non-residential zones. The amendment for OTB facilities would require a special review permit for facilities within 300 feet of a residential zone to allow for neighborhood input. Bars, taverns and OTB facilities serving alcohol would be subject to the State's liquor license restrictions.

7. What specific impacts does an off-track betting facility have that would be different than a bar?
   In conducting research for this amendment, staff contacted planners and law enforcement officers from Sheridan, which is the location of a recently opened OTB facility. Staff also contacted the Enforcement Division of the Racing Commission to discuss what, if any, negative impacts were typically associated with an off-track betting facility. Generally, no issues or concerns were identified as being associated solely with an OTB facility. The Enforcement Division of the Racing Commission indicated that theft of tickets being left on a table/bar was the primary enforcement item that they were aware of.

III. SUMMARY OF AMENDMENT

Below is a summary of the main components of the proposed amendment:

1. Definition. A standard definition of an off-track betting facility is provided as follows:

   A facility which is in the business of accepting wagers on horseraces and dog races at locations other than the place where the race is run, which business is licensed by the State of Colorado.

2. Zone Districts: The following zone districts would permit an off track betting facility:

   - Be Established Business
   - B Business
   - MAC Mixed Activity Center
   - E Employment
   - I Industrial

3. Location: Within each zone district listed above, an off-track betting facility would be considered a use by right if located more than 300 feet from a residential zone district or PUD that contains residential uses. The use would be permitted as a special review if located 300 feet or less from a residential zone district or PUD that contains residential uses. A neighborhood meeting is required prior to City staff approving a special review permit. Owners of property within the notice area for the neighborhood meeting have standing to appeal approval of the special review permit to the Planning Commission at a fully noticed public hearing. Any decision of the Planning Commission could be appealed to City Council.

acknowledged, however, that he should have informed the Planning Commission that staff was going to make a recommendation that was different from the Commission's. He stated that in the future he would inform the Commission whenever staff was going to make a recommendation to City Council that differed from that of the Planning Commission. He reiterated that it was not his intention to inadequately convey the Commission's recommendation.

Vice Chair Meyers requested that the Commission be notified prior to a City Council hearing, if there is a differing opinion between staff and the Commission.

REGULAR AGENDA

→ **1. Amendment to Title 18 of the Municipal Code regarding Off-Track Betting Facilities.**

This is a public hearing to consider an amendment to Title 18 regarding off-track betting facilities. An off-track betting (OTB) facility is considered a business that accepts wagers on horseraces and greyhound races away from a racetrack. The Municipal Code is silent with respect to this land use. The Planning Division has received inquiries on establishing an OTB in Loveland which has prompted the need to clarify where an OTB facility is permitted. This item requires Legislative Action from the Planning Commission.

Kerri Burchett, Project Planner, gave a brief history of this proposed code amendment. She clarified the definition of an Off-Track Betting (OTB) facility and discussed the proposed zoning districts where the use would be permitted:

- Be Established Business
- B Business
- MAC Mixed Activity Center
- E Employment
- I Industrial

Ms. Burchett reported on the special considerations for uses by special review. She clarified that an OTB facility as proposed would be considered a Use by Right if located more than 300 feet from a residential zone district/residential PUD. She stated that the use would be a Use by Special Review if the facility would locate 300 feet or less from a residential zone district/residential PUD. She stated that the 300-foot distance would allow the neighborhood opportunity for their input.

Commissioner Dowding asked if a residential use were to move in the proximity of an OTB site, would the OTB use be forced to discontinue. She commented that she did not support gambling but stating that if it is allowed she would like the districts in which the use would be allowed to be significantly reduced.

Ms. Burchett responded to questions regarding the 300 ft. radius and stated that if an OTB facility was established as a use by right, located more than 300 feet from a residential zone, and a rezoning application to a residential zone was approved, the OTB facility would not be forced to discontinue. She also clarified that the 300 foot radius is the city's standard distance for notification of a special review.

Commissioner Middleton asked if the city would be receiving any tax revenues and would it limited to be greyhound and horse betting only.

Ms. Burchett commented that she would need to further research if such a facility would be required to pay sales tax on the wagers.

Commissioner Crescibene questioned if there would be a limited number of OTB locations.

Ms. Burchett reported that the State of Colorado regulates OTB and that the only criteria she was aware of is that it must be a certain distance from a live race track. She stated there is one live track and it is located in Aurora Colorado. She further commented that it appears to be a raffle type situation if they draw the permit to open a site, then they would proceed from there. Again, she reiterated that it is regulated by the Colorado Gaming Commission and that the State does regulate the distance and the number of OTB facilities.

Commissioner Krenning questioned if they would be obtaining a liquor license.

Ms. Burchett commented that she would anticipate that an applicant would request a liquor license and clarified that the City has not received any applications for an OTB facility, only a general inquiry. She stated that since there were no provisions in the Code addressing OTB facilities, staff felt it was necessary to add language addressing the issue. She further reported that in researching OTB facilities, she talked with the police departments in communities that have these facilities. She reported that the police departments indicated that they have not had any specific issues with increased crime resulting from such a facility.

Commissioner Middleton stated that he was confident that there would be extremely thorough background investigations on anyone wishing to open an establishment.

Commissioner Dowding questioned why the standard for an OTB would not be the same for a liquor license and stated that she would support the amendment if it required all OTB's be a special review use in all zoning districts.

Commissioner Middleton stated that an OTB facility is not only gambling and briefly explained how it operated.

Commissioner Crescibene commented the issue was more of what zoning district it fits into, not whether it will be allowed.

Commissioners Krenning and Meyers spoke in support of the amendment.

Commissioner Fancher made a motion to recommend that City Council approve the amendment to Title 18 regarding off-track betting facilities as described in this staff report and as amended on the record. Upon a second by Vice Chair Meyers the motion was adopted 7-2. Yeas: Chair Molloy, Vice Chair Meyers, Commissioners: Krenning, Leadbetter, Crescibene, Ray and Fancher. Nays: Commissioners Dowding and Middleton.

City of Loveland

Development Services
Current Planning
500 East Third Street, Suite 310 • Loveland, CO 80537
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www.cityofloveland.org

Planning Commission Staff Report

April 25, 2011

Agenda #: Regular Agenda - 1

Title: Amendment to Title 18 of the Municipal Code regarding Off-Track Betting Facilities

Applicant: City of Loveland
Current Planning Division

Location: City-wide

Request: **Amendment to Title 18**

Staff Planner: Kerri Burchett

Staff Recommendation

Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

Recommended Motion:

1. *Move to recommend that City Council approve the amendment to Title 18 regarding off-track betting facilities as described in this staff report and as amended on the record.*

Summary of Analysis

This is a public hearing to consider an amendment to Title 18 regarding off-track betting facilities. An off-track betting (OTB) facility is considered a business that accepts wagers on horseraces and greyhound races away from a racetrack. The Municipal Code is silent with respect to this land use. The Planning Division has received inquiries on establishing an OTB in Loveland which has prompted the need to clarify where an OTB facility is permitted.

The Title 18 Committee is recommending that off-track betting facilities be permitted as a use by right within the following non-residential zone districts: Be, B, E, MAC and I, if the use is located more than 300 feet from a residential zone district. The Committee is further recommending that an OTB facility be permitted as a special review if located within 300 feet of a residential zone district to allow for neighborhood input. The recommended 300 foot radius is equivalent to a City block and is the notification distance required in the Municipal Code for special review uses.

EXHIBIT B

I. SUMMARY

This is an amendment to Title 18 of the Municipal Code regarding off-track betting facilities. An off-track betting (OTB) facility is generally defined as a business that accepts wagers on horse and greyhound races away from a racetrack. The use is licensed and regulated by State's Division of Gaming and the Colorado Racing Commission. The Planning Division has recently received inquiries regarding the establishment of OTB facilities within the City. The Municipal Code is silent with respect to this land use. This amendment essentially serves to define the land use, clarify what zone districts the use is permitted and establish the parameters under which the use is considered a use by right or a special review.

The Title 18 Committee and City staff are recommending that OTB's be permitted as a use by right within the following non-residential zone districts: Be Established Business, B Developing Business, E Employment, MAC Mixed Activity Center and I Industrial. If the use is located more than 300 feet from a residential zone district, the use would be considered a use by right, subject to approval of a building permit. An OTB facility proposed 300 feet or less from a residential zone district would be permitted as a special review. The special review provisions require an additional review process by City Development Review staff coupled with a neighborhood notification and input process. This would allow City staff the ability to evaluate the specific location of the OTB in relation to the surrounding uses and allow the neighborhood an opportunity for input. The recommended 300 foot radius from a residential zone district is equivalent to a City block. The radius is commonly used in the Municipal Code and is the notification distance required for special review uses.

II. ATTACHMENTS

1. Redline version of the Title 18 Amendment

III. BACKGROUND

In terms of State regulations, off-track betting is regulated under the State's Division of Gaming and the Colorado Racing Commission (CRS 12-60-501 et. seq.) which regulates the licensing and registration of race-related businesses such as facilities which offer simulcast racing and wagering. The Commission promulgates all rules and regulations governing greyhound and horse racing, and has final authority over all racing licenses issued in the state. This is different from bingos and raffles that are licensed with the Colorado Secretary of State and other forms of gaming such as slot machines, blackjack, etc. which are only allowed in the cities of Black Hawk, Cripple Creek and Central City.

The Racing Commission has its own set of rules and regulations with respect to licensing and control over such facilities, including some locational restrictions such as the wagering on a simulcast greyhound race may not take place in an in-state facility which is located within 50 miles of the greyhound track on the day on which the live greyhound race occurs except with permission of the greyhound track licensee. The Commission does not allow greyhound racing tracks or horseracing tracks to be located within a certain distance from one another (usually 40 or 50 miles, depending on a number of factors). Other than location restrictions based on proximity to a live race track or another gaming facility, there are no further locational restrictions.

Currently there are seven off-track betting facilities statewide, offering wagering on simulcast horse and greyhound racing year round. These facilities are located in Aurora, Commerce City, Sheridan, Colorado Springs, Pueblo, Denver and Grand Junction.

The City's Title 18 Committee reviewed the proposed amendment on March 10, 2011, in which four options were discussed in considering the regulations of OTB's. The Committee was in support of the option that is incorporated into this amendment, which allows an OTB as a use by right or by special review based on the proximity to a residential zone district.

IV. DESCRIPTION OF PROPOSED AMENDMENT

Below is a summary of the main components of the proposed amendments:

1. Definition. A standard definition of an off-track betting facility is provided as follows:

   A facility which is in the business of accepting wagers on horseraces and dog races at locations other than the place where the race is run, which business is licensed by the State of Colorado.

2. Zone Districts: The following zone districts would permit an off track betting facility:
   - Be Established Business
   - B Business
   - MAC Mixed Activity Center
   - E Employment
   - I Industrial

3. Location: Within each zone district listed above, an off-track betting facility would be considered a use by right if located more than 300 feet from a residential zone district or PUD that contains residential uses. The use would be permitted as a special review if located 300 feet or less from a residential zone district or PUD that contains residential uses.

Text shown in red indicates new language proposed with this amendment.

18.04.279 Off-Track Betting Facility defined.
A facility which is in the business of accepting wagers on horseraces or dog races at locations other than the place where the race is run, which business is licensed by the State of Colorado.

Be DISTRICT - ESTABLISHED BUSINESS DISTRICT
Section 18.24.020 Uses Permitted By Right
UU. Off-Track Betting Facility located more than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 300 feet from any residential property within a Planned Unit Development.

Section 18.24.030 Uses Permitted By Special Review
Y. Off-Track Betting Facility located less than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 300 feet or less from any residential property within a Planned Unit Development.

B DISTRICT - DEVELOPING BUSINESS DISTRICT
Section 18.28.010 Uses Permitted By Right
RR. Off-Track Betting Facility located more than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 300 feet from any residential property within a Planned Unit Development.

Section 18.28.020 Uses Permitted By Special Review
NN. Off-Track Betting Facility located less than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 300 feet or less from any residential property within a Planned Unit Development.

MAC DISTRICT - MIXED-USE ACTIVITY CENTER DISTRICT
Section 18.29.020 Uses Permitted By Right
SS. Off-Track Betting Facility located more than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 300 feet from any residential property within a Planned Unit Development.

Section 18.29.030 Uses Permitted By Special Review
P. Off-Track Betting Facility located less than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 300 feet or less from any residential property within a Planned Unit Development.

E DISTRICT - EMPLOYMENT DISTRICT
Section 18.30.020 Uses Permitted By Right
MM. Off-Track Betting Facility located more than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 300 feet from any residential property within a Planned Unit Development.

Attachment 1

Section 18.30.030 Uses Permitted By Special Review

W. Off-Track Betting Facility located less than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 300 feet or less from any residential property within a Planned Unit Development.

I DISTRICT - DEVELOPING INDUSTRIAL DISTRICT

Section 18.36.010 Uses Permitted By Right

TT. Off-Track Betting Facility located more than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 300 feet from any residential property within a Planned Unit Development.

Section 18.36.020 Uses Permitted By Special Review

V. Off-Track Betting Facility located less than 300 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 300 feet or less from any residential property within a Planned Unit Development.

Attachment 1

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

AGENDA ITEM: **16**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Greg George, Development Services Director

PRESENTER: Troy Bliss, Current Planning

TITLE:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING AN AMENDMENT TO THE ANNEXATION AGREEMENT FOR CERTAIN PROPERTY LOCATED WITHIN THE CHURCH AT LOVELAND ADDITION, CITY OF LOVELAND, COUNTY OF LARIMER, COLORADO

DESCRIPTION:
A public hearing to consider a legislative action for adoption of an ordinance on first reading to amend The Church at Loveland Addition Annexation Agreement. The agreement pertains to a property located north of 14th Street S.W. between Angora Drive and South County Road 21 west of South Wilson Avenue at 3835 14th Street S.W. The property is approximately 5.9 acres in size and zoned B – Developing Business. The current use on the property is the Church at Loveland. The applicant is Loveland Classical School represented by Tamara Cramer. The owner of the property is CDF Holdings, LLC.

BUDGET IMPACT:
☐ Yes ☒ No

SUMMARY:
This proposed amendment focuses primarily on paragraph 8 of the original agreement pertaining to the limitations on allowable land uses. Loveland Classical School is seeking to expand the existing church building for operating a charter school including grades kindergarten through ninth grade initially. Under the current agreement, use of the property is limited to a church. The proposed amendment to paragraph 8 would allow a variety of uses, including public and private schools and accessory uses (see Exhibit A to the ordinance). Paragraph 5 of the amended agreement would establish a sunset clause in the event Loveland Classical School does not select this site. Paragraph 7 would require street improvements on 14th Street

S.W. to allow left turns exiting the property. The proposed amendments to the annexation agreement have been agreed to by all parties and are being presented to City Council for consideration.

LIST OF ATTACHMENTS:

A. Ordinance
B. Staff Memorandum

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for City Council action:

Move to adopt on first reading AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING AN AMENDMENT TO THE ANNEXATION AGREEMENT FOR CERTAIN PROPERTY LOCATED WITHIN THE CHURCH AT LOVELAND ADDITION, CITY OF LOVELAND, COUNTY OF LARIMER, COLORADO

REVIEWED BY CITY MANAGER:

FIRST READING: May 17, 2011

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING AN AMENDMENT TO THE ANNEXATION AGREEMENT FOR CERTAIN PROPERTY LOCATED WITHIN THE CHURCH AT LOVELAND ADDITION, CITY OF LOVELAND, COUNTY OF LARIMER, COLORADO

WHEREAS, on December 5, 2006, under Ordinance No. 5151, the Loveland City Council approved annexation of certain property known as the Church at Loveland Addition to the City of Loveland, Colorado, more particularly described in Attachment 1, attached hereto and incorporated herein, (the "Property"); and

WHEREAS, the Church at Loveland Addition is subject to an Annexation Agreement which was approved by Loveland City Council also under Ordinance No. 5151; and

WHEREAS, the Annexation Agreement requires that the primary use of the Property shall be limited to a Place of Worship or Assembly, and any accessory uses associated therewith; and

WHEREAS, the future owners of the Property desire to build a charter school on the Property, which under the Annexation Agreement was allowed as an accessory use, but not as a primary use; and

WHEREAS, City staff has reviewed the future owners' request and have no objection to an Amendment to the Annexation Agreement allowing a charter school on the Property as a primary use.

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

Section 1. That an amendment to the Annexation Agreement Pertaining to The Church at Loveland Addition to The City of Loveland, Larimer County, Colorado, attached hereto and incorporated herein by reference as **Exhibit A,** is hereby approved.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form of the Amended Annexation Agreement provided that such changes do not impair the intended purpose of the Amended Annexation Agreement as approved by this Ordinance. The City Manager and the City Clerk are authorized and directed to execute the Amended Annexation Agreement on behalf of the City of Loveland.

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

Section 4. That the City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with state statutes.

Dated this____day of _____, 2011.

ATTEST:

_____
City Clerk

CITY OF LOVELAND, COLORADO:

_____
Mayor

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT A

FIRST AMENDMENT TO THE ANNEXATION AGREEMENT PERTAINING TO THE CHURCH AT LOVELAND ADDITION TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO

This FIRST AMENDMENT to the Annexation Agreement for The Church at Loveland Addition to the City of Loveland, Larimer County, Colorado, is entered into this _____ day of _____, 2011 ("First Amendment"), by and among the CITY OF LOVELAND, COLORADO, a home rule municipality ("City"); and CDF Holdings, LLC, a Colorado limited liability company, jointly referred to herein as ("the Parties").

WITNESSETH

WHEREAS, on January 5, 2007, the Parties entered into an Annexation Agreement Pertaining to the Church at Loveland Addition to the City of Loveland, Larimer County, Colorado ("the Annexation Agreement") more particularly described in **Attachment 1**, attached hereto and incorporated herein, ("the Property"); and

WHEREAS, on December 5, 2006, the Loveland City Council passed on second reading, Ordinance No. 5151 approving the Annexation Agreement, which was recorded in the Larimer County Records on February 13, 2007 at Reception No. 20070011386; and

WHEREAS, the Annexation Agreement provides that it may only be amended by the City and the Developer which at the time of the Agreement consisted of the Church at Loveland; and

WHEREAS, the current owner, CDF Holdings, LLC is in the process of selling the Property, and Loveland Classical School Project Development LLC, or a related entity is in the process of purchasing the property for the use and benefit of Loveland Classical Schools, a Colorado nonprofit corporation and public charter school, and will thereby take on the responsibilities, benefits and burdens of the Developer; and

WHEREAS, the Parties now desire to make certain changes to the Annexation Agreement.

NOW, THEREFORE, by and in consideration of mutual covenants contained herein and other good and valuable consideration, the parties hereto agree to the following:

1. The numeric paragraph 7. of the Annexation Agreement is amended to read in full as follows:

7. Public Street Improvements. If the Property is used as a public or private school, in order to safely accommodate the traffic associated with such school use within the Property, the Developer shall modify the existing center median in 14th Street

Southwest, per the approval of the City Engineer, to allow exiting left-turns from the Property's site access onto 14th Street Southwest. The Developer shall design and construct these improvements per the approval of the City Engineer prior to the opening of the public or private school.

2. The numeric paragraph 8. of the Annexation Agreement is amended to read in full as follows:

8. Limitation on Allowable Land Uses. Notwithstanding the provisions of the B-Developing Business Zone District, use of the Property shall be limited to a Place of Worship or Assembly; Public and Private schools; and Accessory Uses associated therewith. Allowable Accessory Uses shall include, without limitation, the following uses provided that such uses are in compliance with all other applicable provisions of Chapter 18.48 of the Loveland Municipal Code.

a. Single-family dwelling(s) – strictly for staff housing;
b. Two-family dwelling(s) – strictly for staff housing;
c. Accessory buildings, fields, and play areas for public or private schools;
d. Commercial day-care center licensed by the state;
e. Pre-school or before and after school program operated in conjunction with a Public or Private school;
f. Community facility; and
g. Conference Center.

3. The numeric paragraph 10. of the Annexation Agreement is amended to read in full as follows:

10. Compliance of Exterior Architecture. The initial improvements by Developer to the Property for use as a public school have been approved by the City Planning Manager. Any future phases of improvements constructed on the Property shall remain consistent with the architectural features and standards of the existing buildings on the Property.

4. Except for the changes set forth above, all of the terms and conditions of the Annexation Agreement shall continue in full force and effect and shall continue to be binding on all parties thereto, except to the extent that a public school owner or user of the Property is otherwise specifically exempt from the same pursuant to C.R.S. §22-32-124. Notwithstanding the foregoing sentence of this paragraph, the parties acknowledge and agree that the City is not hereby waiving or releasing any future rights or claims it may have to enforce the terms and conditions of the Annexation Agreement, as herein amended, with respect to any future use or development of the Property by any such school or by any of its successors or assigns.

5. This First Amendment shall be null and void if a public or private school does not occupy the Property by December 31, 2011. In such instance, the original Annexation Agreement Pertaining To The Church At Loveland Addition To The City Of Loveland, Larimer

County, Colorado shall remain in effect as originally recorded at Reception No. 20070011386 on February 13, 2007.

6. The City shall record this First Amendment with the Larimer County Clerk and Recorder.

ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

William D. Cahill, City Manager

APPROVED AS TO FORM:

Assistant City Attorney

CDF Holdings, LLC,
a Colorado limited liability company

By: _____

Title: VP

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
}
County of ORANGE }

On MAY 9, 2011 before me, RANDY S. CRANE, NOTARY PUBLIC,
Date Here Insert Name and Title of the Officer

personally appeared CHRIS BERRY,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity~~(ies)~~, and that by ~~his/her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

RANDY S. CRANE
COMM. #1781632
Notary Public - California
Orange County
My Comm. Expires Nov. 23, 2011

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

ATTACHMENT 1

That portion of Section 21, Township 5 North, Range 69 West of the 6th Principal Meridian, County of Larimer, State of Colorado, described as follows: Beginning at the Southwest corner of said Section 21; thence along the centerline of that certain parcel of land described in deed recorded in Book 1028 Page 527 records of said County, North 00°56'30" East 543.02 feet; thence North 89°43'30" East 30.01 feet to the Southwest corner of that certain parcel of land described in instrument recorded in Book 1333 Page 39 records of said County; thence along the Southerly line of said land recorded in Book 1333 Page 39, North 89°43'30" East 502.10 feet; thence South 89°50'00" East 637.74 feet to the TRUE POINT OF BEGINNING; thence continuing South 89°50'00" East 513.46 feet to the Southeast corner of said land recorded in Book 1333 Page 39; thence South 00°56'30" West 509.07 feet to a line that is parallel with and 40.00 feet North (measured at right angles) of the South line of the Southwest Quarter of Section 21; thence along said parallel line North 89°46'02" West 513.45 feet to a line that bears North 00°56'30" East and passes through the TRUE POINT OF BEGINNING; thence along said line North 00°56'30" East 508.48 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 5.996 acres, more or less, and is subject to all existing easements and/or rights of way of record.

City of Loveland

Development Services
Current Planning
500 East Third Street, Suite 310 • Loveland, CO 80537
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www.cityofloveland.org

MEMORANDUM

TO: City Council

FROM: Troy Bliss, Senior Planner

DATE: May 17, 2011

RE: Loveland Classical School, Church at Loveland Addition Annexation Agreement Amendment

---

I. ATTACHMENT:

1. Letter of request to amend the Church at Loveland Addition Annexation Agreement.
2. Church at Loveland Addition Annexation Agreement (recorded copy for reference).
3. Loveland Classical School Site Development Plan (for reference).

II. SUMMARY

A. Property Location:

B. Project Description: Loveland Classical School is a charter school seeking to develop a facility north of 14th Street S.W. between Angora Drive and S. County Road 21 west of S. Wilson Avenue at 3835 14th Street S.W. The property is approximately 5.9 acres in size, is zoned B – Developing Business and contains an existing church assembly use (Church at Loveland). Loveland Classical School (applicant) is seeking to build a two story addition (25,270 total building square feet) onto the church building for their facility which would include grades kindergarten through ninth initially. Future plans anticipate the eventual expansion to a twelfth grade program. Attached to this memorandum (**Attachment 3**) is a Site Development Plan which illustrates the proposed development.

C. Planning Commission Referral: As stipulated by State Statutes, the Planning Commission was referred this proposal on March 28, 2011. Citing conformance to the City of Loveland Comprehensive Plan, Planning Commission found no objection to the proposal, understanding that the subject annexation agreement must be amended by City Council before further consideration could be given.

D. Purpose for Amendment: Churches and schools are uses by right in the B district. However the Church at Loveland Addition Annexation Agreement (entered into in January of 2007) limited the principal use of the property to only Place of Worship or Assembly (with applicable accessory uses). The Loveland Classical School proposal includes a principal use (not accessory to the church) for a charter school. Consequently, this requires an amendment to be processed focusing primarily on paragraph 8 of the agreement pertaining to the *Limitation on allowable land uses* (see attached **Attachment 1**).

E. Mitigation of Traffic Impacts: City staff has reached an agreement (see paragraph 7 in **Exhibit 1** of the ordinance) for the Charter School to make improvements to 14th Street S.W. at the property's access. Generally these improvements include:

- Expanding the entrance to the property;
- Providing a new crosswalk extending to Bengal Avenue across 14th Street S.W., including school flashers; and
- Removing a large portion of the existing median in 14th Street S.W. to accommodate a left (east bound) turn out of the site.

These traffic improvements have been agreed to by the City Engineer.

F. Key Issues: The Blackbird Knolls Subdivision Home Owners Association, which is a residential subdivision directly south of the subject property, is currently maintaining the median in 14th Street S.W. as part of their common open space.

Notice was posted on site and mailed to property owners within 500 feet of the subject property 15 days prior to the May 17, 2011 City Council hearing. While no verbal or written correspondence has been received as of the date of this memorandum, it is anticipated that there could be some concerns raised by neighbors. It is important to point out that the notification was prepared relative to the amendment of the annexation agreement. Neighbors have not been apprised of the details associated with the proposed modifications to the median or the actual site development.

April 20, 2011

Bob Paulsen- Planning Manager
VIA EMAIL TO: paulsr@ci.loveland.co.us (c/o blisst@ci.loveland.co.us)

Re: Loveland Classical Schools (LCS) Request for Modification to Annexation Agreement

Mr. Paulsen:

Education Facility Solutions, LLC is working with Loveland Classical Schools ("LCS"), assisting them with the facility process associated with opening the new charter school for Fall of 2011. This letter is being sent at the request, and on behalf of LCS.

As you are aware from our prior submittal of a notification letter to you dated March 10, 2011, LCS plans to purchase or lease certain real property located at 3835 SW 14th Street, Loveland, CO 80537 (the "Property") for operation of a charter school facility and previously submitted its notice as required by C.R.S. § 22-32-124 (1.5)(a) (the "Statute"). It is our understanding that the City of Loveland ("City") is not requiring submittal of a site plan under the Statute; however, as you are aware, our development team is working with the respective City departments to address relevant issues that have been raised by staff.

Although it is the position of LCS, that as a public charter school, under the Statute they are exempt from zoning and other development related requirements pursuant to the Statute, at the request of the City and in a effort to create a positive working relationship with the City from the outset, LCS would like to request that the current recorded Annexation Agreement that is in place with respect to the Property be amended to include public school uses under allowable uses for the site. LCS acknowledges that this is a formal process requiring approval of the City Council, but since no site plan was requested or other formal comments were made under the Statute, LCS intends to proceed with its plans for the site, while the amendment process for the Annexation Agreement is completed. We do appreciate your assisting the school in accelerating this process.

The facility will initially serve approximately 600 students in grades Kindergarten through 9th grade, eventually expanding to a full K-12th grade program. As you are aware, as a public school, LCS will have its building plans reviewed and approved by the appropriate personnel in the Division of Fire Safety in the Office of Preparedness, Security, and Fire Safety in the Department of Public Safety (the "Division"), in accordance with the Statute referenced above.

We look forward to continue working with the City in opening the new facility at this location. If you have any questions or comments please feel free to contact me at 720-897-6607.

Thank you in advance for your help and cooperation with the process.

Sincerely,

Dustin Jones

cc: Ms. Tamara Cramer

ATTACHMENT 1

RECEPTION#: 20070011386, 02/13/2007 at
08:21:09 AM,
1 OF 8, R $41.00
Scott Doyle, Larimer County, CO

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

THIS ANNEXATION AGREEMENT ("this Agreement") is entered into this 5th day of January, 2007, by and between THE CHURCH AT LOVELAND, a Colorado non-profit corporation (the "Developer"), and the CITY OF LOVELAND, COLORADO, a home rule municipality (the "City").

RECITALS

WHEREAS, the Developer owns 5 .996 acres, more or less, of real property located in Larimer County, Colorado, more particularly described in Exhibit A attached hereto, but not including any existing public streets and highways which may be included in said description, which description, by this reference, is incorporated herein and designated as "the Property"; and

WHEREAS, Developer has acquired a legal equitable interest in the Property; and

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

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

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

AGREEMENT

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

2. Plat note regarding the surcharge for the sale of electric power. The Developer shall ensure that the following note shall be included on each final plat for the Property:

ATTACHMENT 2

"A surcharge of 5% will be added to all bills for the sale of electric power to additional services which came into the existence after January 31, 1987, within the territory herein annexed which surcharge will expire ten years after effective date of this annexation."

3. Compliance of transportation facilities with the adopted Larimer County Urban Area Street Standards and Transportation Plan. The Developer shall ensure that all future development within the Property shall comply with the Larimer County Urban Area Street Standards (LCUASS), adopted October 2002, and the Transportation Plan, adopted October 2001, and any updates to either in effect at the time of a site specific development application. Any and all variances from these standards and plans shall require specific written approval by the City Engineer.

4. Location and configuration of transportation improvements to be determined at time of development plans. Notwithstanding any conceptual information presented in the Annexation application, street layout, street alignments, access locations, intersection configurations and intersection operations (traffic controls) shall be determined by the City at the time of application for site specific development of the Property.

5. Dedication of adjacent or internal street rights-of-way for transportation facilities. The Developer shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, the Property that are shown on the adopted Transportation Plan. Unless otherwise approved by the City Engineer, the right-of-way for 14th Street Southwest shall be dedicated prior to approval of any site specific development plan within the Property.

6. Acquisition of off-site street rights-of-way for needed transportation facilities. The Developer shall dedicate, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of any site specific development applications within the Property, the Developer shall submit documentation satisfactory to the City Attorney and the City Engineer, establishing the Developer's unrestricted ability to acquire sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.

7. Design and construction of adjacent ultimate roadway improvements. Unless designed and constructed by others, the Developer shall design and construct the ultimate roadway improvements for 14th Street SW, including sidewalk and right-turn lane, adjacent to the Property. A cash-in-lieu payment may be accepted for all or part of the improvements, if approved by the City Engineer. The timing and detailed scope of these improvements will be determined by the City through review and approval of the site specific development plans.

8. Limitation on allowable land uses. Notwithstanding the provisions of the B-Developing Business Zone District, use of the Property shall be limited to a Place of Worship or Assembly, and Accessory Uses associated therewith. Allowable Accessory Uses shall include, without limitation, the following uses provided that such uses are in compliance with all other applicable provisions of Chapter 18.48 of the Loveland Municipal Code:

a. Single–family dwelling(s) - strictly for staff housing;
b. Two-family dwelling(s) – strictly for staff housing;
c. Public and private schools;
d. Commercial day-care center licensed by the state;
e. Community facility;
f. Conference center.

9. Final technical amendments to the annexation map. If, the annexation map for Dakota Glen Addition has been recorded before submittal of the annexation map mylar for Property, the annexation map for the Property shall be modified/updated by the Developer to reflect that the property to the east and northeast, lying within the Dakota Glen Addition, is within the City limits.

10. Compliance of exterior architecture with adopted City standards. The Developer shall ensure that the exterior architectural design of all non-residential buildings on the site shall be substantially consistent with the provisions and requirements of Chapter 18.53 of the Loveland Municipal Code, as determined by the City of Loveland Current Planning Manager.

11. Waiver of Damages. In the future, the Developer may be granted vested property rights associated with the approval of a site specific development plan within the Property. In the event that such vested property rights are granted, and the City applies an initiated or referred measure to the property which would (a) change any term or condition of this Agreement, (b) impose a moratorium on development within the Property, or otherwise materially delay the development of the Property, or (c) limit the number of building or utility permits to which the Developer would otherwise be entitled, the Developer agrees to waive any right to damages against the City to which Developer may otherwise be entitled under the Vested Rights Statute.

12. Incorporation. The terms and conditions of this Agreement shall be deemed to be incorporated into the Landowner's Petition for annexation of the Property.

13. Integration and Amendment. This Agreement represents the entire Agreement between the parties with respect to the Property and supersedes all prior written or oral agreements or understandings with regard to the obligations of the parties with regard to the Property. If conflicts between the Annexation Conditions listed in the Staff Report for City Council on March 7, 2006, and the terms and conditions of this Annexation Agreement occur, this Annexation Agreement shall prevail. This

Agreement may only be amended by written agreement signed by the Landowner, Developer and the City. Only the City Council, as a representative of the City, shall have authority to amend this Agreement.

14. Remedies. In the event that a party breaches its obligations under this Agreement, the injured party shall be entitled only to equitable relief, including specific performance, and such other equitable remedies as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party, whether plaintiff or defendant, shall be entitled to recover costs and reasonable attorneys' fees.

15. Effective Date. This Agreement shall become effective on the date that it is executed and delivered and has been approved by the City Council. If the City does not annex the Property, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the Property, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to the potential annexation of the Property.

16. Binding Effect and Recordation. The promises made in this Agreement by the Developer shall be deemed to have been made by any corporation or other business affiliated with Developer that acquires ownership or possession of all or any portion of the Property. The parties agree to execute a memorandum of this Agreement that the City shall record with the Clerk and Recorder for Larimer County, Colorado. It is the intent of the parties that their respective rights and obligations set forth in this Agreement shall constitute equitable servitudes that run with the Property and shall benefit and burden any successors to the parties. The Final Annexation Map for the Property shall be recorded by the Developer within sixty (60) days of final adoption of the ordinance annexing the Property, such Map shall contain a note that the Property is subject to this Agreement. The Developer agrees to all promises made by the Developer, which shall constitute equitable servitudes that run with the land.

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

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

To Developer: Church at Loveland
Attention: Lloyd Nichols
4115 Ebony Ct.
Loveland, CO 80538

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

18. Waiver. No waiver by the City or Developer of any term or condition of this Agreement shall be deemed to be or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.

19. Applicable Law/Severability. This Agreement shall be construed in accordance with the laws of the State of Colorado. The parties to this Agreement recognize that there are legal restraints imposed upon the City by the constitution, statutes and laws of the State of Colorado, and that, subject to such restraints, the parties intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement. Provided, however, if any obligation of this Agreement is declared invalid, the party deprived of the benefit thereof, shall be entitled to an equitable adjustment in its corresponding obligations and/or benefits and, in that event, the parties agree to negotiate in good faith to accomplish such equitable adjustment.

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

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

CITY:

THE CITY OF LOVELAND, COLORADO

By: Don F Williams
City Manager

ATTEST:

Teresa L. Andrews
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

STATE OF COLORADO)
) ss
County of Larimer)

The foregoing Agreement was executed before me this 5th day of ~~November,~~ January 2006, by Don F. Williams as City Manager, and by Teresa G. Andrews as City Clerk, of the CITY OF LOVELAND, COLORADO, a home rule municipality.

WITNESS my hand an official seal.

My commission expires 10/23/2010.

SEAL

Mary Skipworth
Notary Public

DEVELOPER:

THE CHURCH AT LOVELAND,
a Colorado non-profit corporation

By:

Gary Nichols, President

Lloyd Nichols, Vice-President

STATE OF COLORADO)
) ss
County of LARIMER)

The foregoing Agreement was executed before me this 29th day of November, 2006 by Gary Nichols, as President, and Lloyd Nichols, as Vice-President, of The Church at Loveland, a Colorado non-profit corporation.

Judith McKnight NOTARY PUBLIC STATE OF COLORADO

WITNESS my hand and official seal.

My commission expires 4-5-07.

SEAL

Judith McKnight
Notary Public

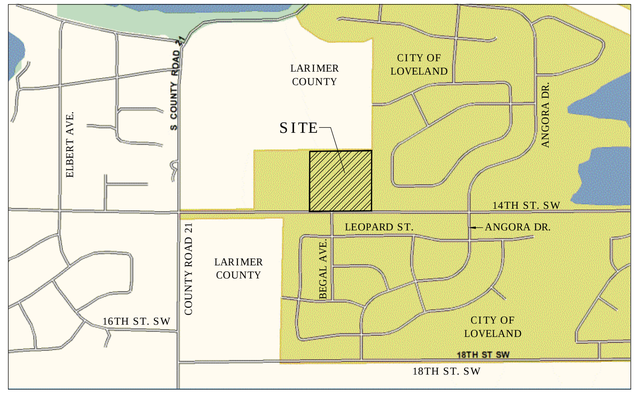
EXHIBIT A
(legal description)

PARCEL C of the Troutner Exemption, Larimer County, Colorado, being more particularly described as follows:

That portion of Section 21, Township 5 North, Range 69 West of the 6th Principal Meridian, County of Larimer, State of Colorado, described as follows: Beginning at the Southwest corner of said Section 21; thence along the centerline of that certain parcel of land described in deed recorded in Book 1028 Page 527 records of said County, North 00°56'30" East 543.02 feet; thence North 89°43'30" East 30.01 feet to the Southwest corner of that certain parcel of land described in instrument recorded in Book 1333 Page 39 records of said County; thence along the Southerly line of said land recorded in Book 1333 Page 39, North 89°43'30" East 502.10 feet; thence South 89°50'00" East 637.74 feet to the TRUE POINT OF BEGINNING; thence continuing South 89°50'00" East 513.46 feet to the Southeast corner of said land recorded in Book 1333 Page 39; thence South 00°56'30" West 509.07 feet to a line that is parallel with and 40.00 feet North (measured at right angles) of the South line of the Southwest Quarter of Section 21; thence along said parallel line North 89°46'02" West 513.45 feet to a line that bears North 00°56'30" East and passes through the TRUE POINT OF BEGINNING; thence along said line North 00°56'30" East 508.48 feet to the TRUE POINT OF BEGINNING; said parcel containing 5.996 acres, more or less.

LOVELAND CLASSICAL SCHOOL

LOT 1, BLOCK 1, CHURCH AT LOVELAND 1ST SUBDIVISION
A PART OF THE SW 1/4 OF SECTION 21, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M.
CITY OF LOVELAND, LARIMER COUNTY, COLORADO
SITE DEVELOPMENT PLAN



VICINITY MAP
NO SCALE

SHEET INDEX:

STREET ADDRESS:

3835 14TH STREET SW
LOVELAND, CO 80537

PROPERTY OWNER:

EDUCATION CAPITAL SOLUTIONS, LLC
909 WALNUT SUITE 200
KANSAS CITY, MO 64106

PROPERTY TENANT:

LOVELAND CLASSICAL SCHOOL PROJECT DEVELOPMENT, LLC
6900 SOUTH 900 EAST SUITE 200
MIDVALE, UT 84047

DEVELOPER:

BOUMA CONSTRUCTION
4101 R. B. CHAFFEE BLVD SE
GRAND RAPIDS, MI 49548
616-538-1900
CONTACT: TAMMY SWEERIS 616-292-8554

SITE DATA			
ZONING	B (DEVELOPING BUSINESS)		
LAND USE	CHARTER SCHOOL		
BUILDING OCCUPANCY	E		
TYPE OF CONSTRUCTION	TYPE V-B		
FEMA FLOOD PLAIN	ZONE X		
PARKING SPACES	PROVIDED	REQUIRED	
TOTAL (STANDARD) (HANDICAP)	134 (129) (5)	134 (129) (5)	
SITE ACREAGE	256,078 SF 5.8787 AC		100%
EXISTING BUILDING FOOTPRINT	15,938 SF		6.22%
BUILDING ADDITION FOOTPRINT	12,903 SF		5.04%
LANDSCAPING	103,030 SF		50.78%
CONCRETE / ASPHALT	90,859 SF		35.48%
GRAVEL	6,348 SF		2.48%

NOTES:
1. BUILDING ADDITION 2ND FLOOR 12,367 SF
   TOTAL BUILDING ADDITION 25,270 SF

2. PARKING:
   A. 1 SPACE FOR EACH 3 SEATS IN PLACE OF ASSEMBLY.
   B. 400 ASSEMBLY SEATS, THEREFORE 134 SPACES REQUIRED.
   C. 26 CLASSROOMS.

PROPERTY OWNER:

The undersigned agree that the real property described in the application for Site Development Plan filed herewith, and as shown on the site plan, shall be subject to the requirements of Chapter 18.46 of the Municipal Code of the City of Loveland, Colorado, and any other ordinances of the City of Loveland thereto. The undersigned also understands that if construction of all improvements is not completed and if the Site Development Plan uses are not established within three years of the date of approval, or other completions date or dates established in a development agreement approved by the City, the City may take an action to declare the Site Development Plan abandoned and null and void.

_____
(Owner's Signature)
_____
(Title)

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing agreement was acknowledged before me this _____day of, _____, 2011 , by _____.

Witness my hand and official seal.
My commission expires: _____.
Notary Public

City approval block:

a. Approved this _____ day of _____, 2011, by the Current Planning Manager of the City of Loveland, Colorado.

_____
Current Planning Manager

BASIS OF BEARINGS:

BASIS OF BEARINGS FOR THIS SURVEY ARE BASED ON THE RECORD BEARING OF SOUTH 89°46'02" EAST ON THE SOUTH LINE OF SECTION 21, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO. RECORD BEARING DERIVED FROM THE CHURCH AT LOVELAND 1ST SUBDIVISION, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO AS FILED FOR RECORD IN THE REAL PROPERTY RECORDS OF THE OFFICE OF THE CLERK AND RECORDER OF LARIMER COUNTY, COLORADO. NOTE: MONUMENTATION OF SAID LINE AS SHOWN ON MAP.

ATTACHMENT 3

THIS SITE DEVELOPMENT PLAN WAS PREPARED BY ME (OR UNDER MY DIRECT SUPERVISION) IN ACCORDANCE WITH THE CITY OF LOVELAND.

JAMIE OVERGAARD, PE 32256
FOR AND ON BEHALF OF THE LUND PARTNERSHIP, INC.

LUND PARTNERSHIP
12265 W. Bayaud Avenue, Suite 130
Lakewood, Colorado 80228
P:303.989.1461 F: 303.989.4094
CIVIL ENGINEERING & SURVEYING

DATE: APRIL 19, 2011
SCALE: AS SHOWN
JOB NO. 560-0201

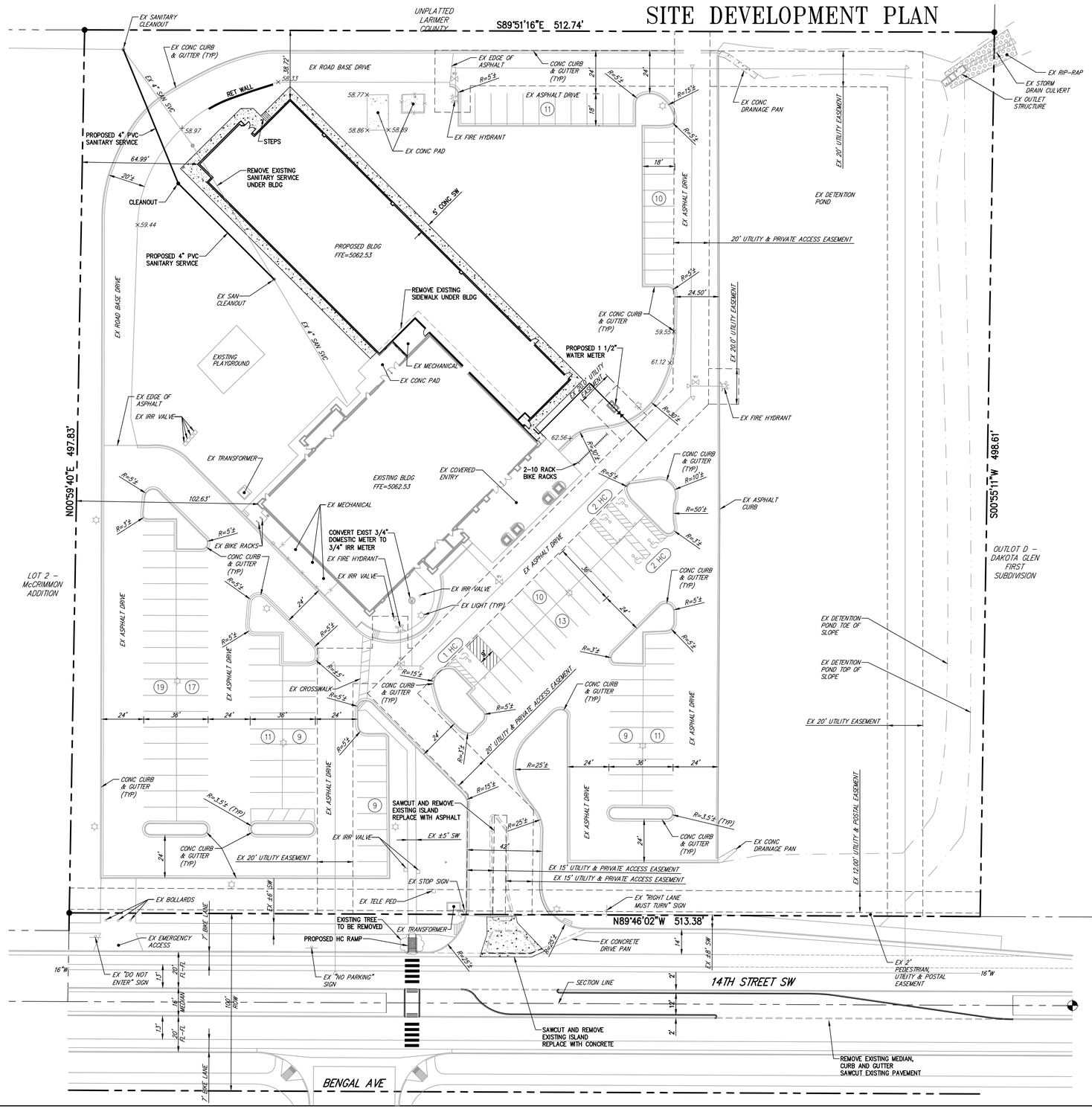
LOVELAND CLASSICAL SCHOOL

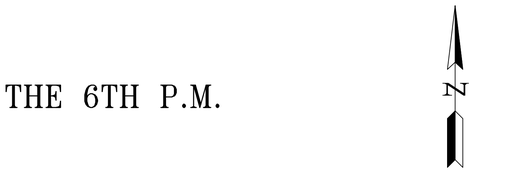
LOT 1, BLOCK 1, CHURCH AT LOVELAND 1ST SUBDIVISION

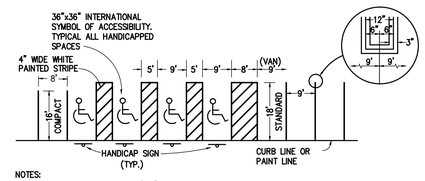
A PART OF THE SW 1/4 OF SECTION 21, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M.

CITY OF LOVELAND, LARIMER COUNTY, COLORADO

SITE DEVELOPMENT PLAN







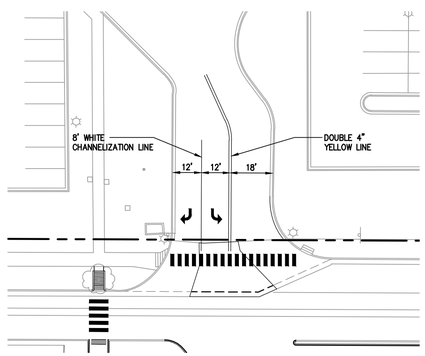
NOTES:
1. MINIMUM STALL SHALL BE 9'-0", HANDICAP SPACES SHALL BE 14'-0" (9' STALL W/ 5' STRIPED MEDIAN) AND VAN HANDICAP SPACES SHALL BE 17'-0" (9' STALL W/ 8' STRIPED MEDIAN).
2. STRIPING SHALL BE 4" WIDE AND SHALL BE PAINTED WITH A NON-REFLECTORIZED WHITE PAINT.

TYPICAL 90° AND HANDICAP PARKING DETAIL

NO SCALE

LEGEND:

- LOT LINE / RIGHT-OF-WAY
- (X) EXISTING PARKING COUNT PER ROW
- EXISTING FIRE HYDRANT
- EXISTING LIGHT
- EXISTING 6" VERTICAL CURB AND GUTTER



ENTRANCE ULTIMATE CONFIGURATION

SCALE: 1"=30'

LUND PARTNERSHIP
12265 W. Bayaud Avenue, Suite 130
Lakewood, Colorado 80228
P:303.989.1461 F: 303.989.4094
CIVIL ENGINEERING & SURVEYING

No.	Revision	Date	By

LOVELAND CLASSICAL SCHOOL
1ST SUBDIVION, BLOCK 1, LOT 1
SITE PLAN

PREPARED FOR: EDUCATION CAPITAL SOLUTIONS, LLC
ADDRESS: 909 WALNUT SUITE 200
KANSAS, MO 64106

CALL UTILITY NOTIFICATION CENTER OF COLORADO
811
CALL 2 BUSINESS DAYS IN ADVANCE BEFORE YOU DIG, GRADE, OR EXCAVATE FOR THE MARKING OF UNDERGROUND MEMBER UTILITIES

DATE: APRIL 19, 2011
JOB NUMBER: 560-0201
SCALE: 1"=30'

SHEET
2 OF 3

P:\560\0201\Plot\L&E\02-Site Plan.dwg, L&E, 4/18/2011 4:31:57 PM, 1:1, JKO

LOVELAND CLASSICAL SCHOOL

LOT 1, BLOCK 1, CHURCH AT LOVELAND 1ST SUBDIVISION
A PART OF THE SW 1/4 OF SECTION 21, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M.
CITY OF LOVELAND, LARIMER COUNTY, COLORADO
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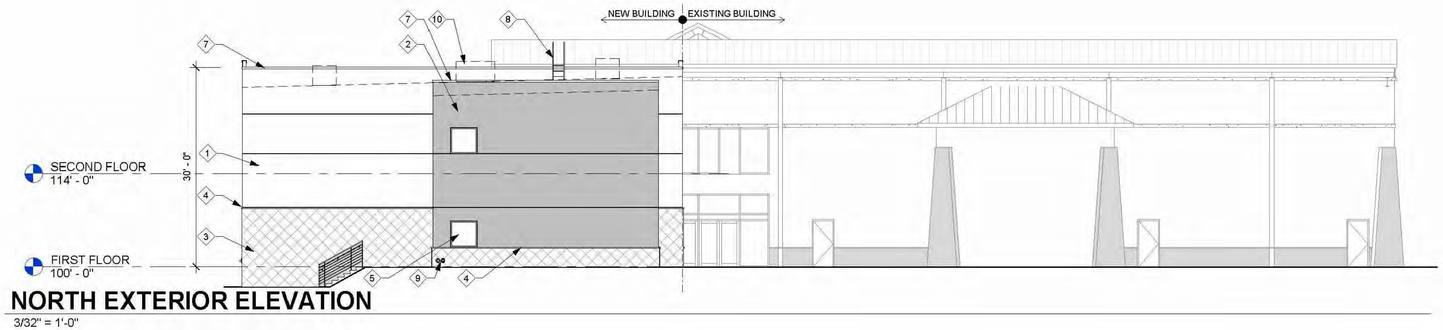
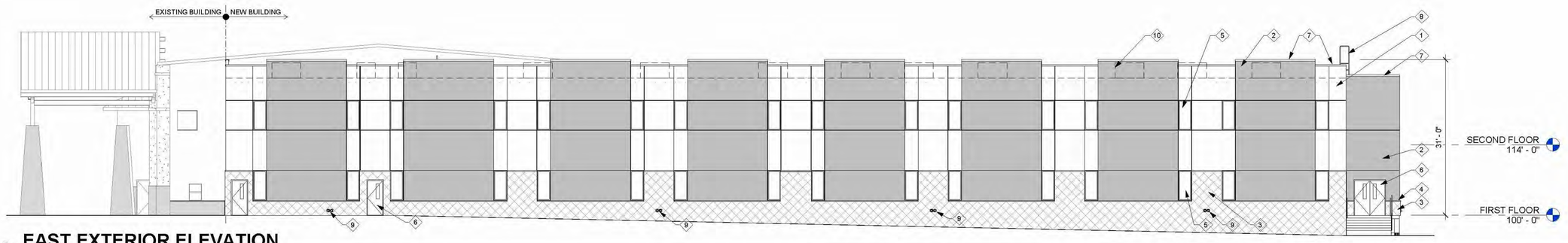
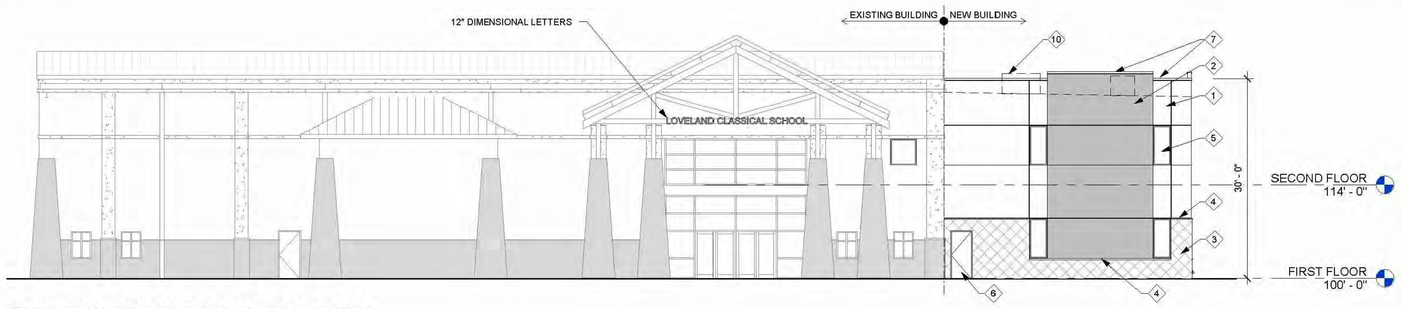


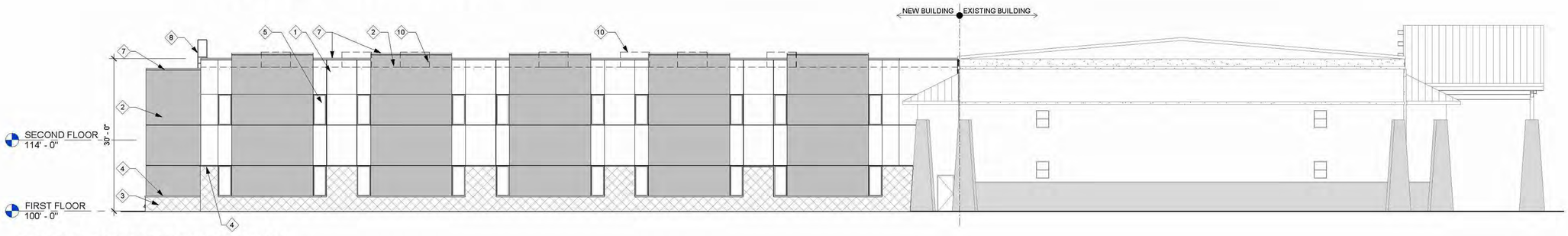
1 NORTH EXTERIOR ELEVATION
3/32" = 1'-0"



2 EAST EXTERIOR ELEVATION
3/32" = 1'-0"



3 SOUTH EXTERIOR ELEVATION
3/32" = 1'-0"



4 WEST EXTERIOR ELEVATION
3/32" = 1'-0"

ELEVATION KEYNOTES

1. CEMENTITIOUS PANEL SIDING - PAINT, BEIGE COLOR TO MATCH EXISTING CHURCH COLOR
2. CEMENTITIOUS PANEL SIDING - PAINT, EARTH TONE RED COLOR
3. MANUFACTURED STONE VENEER - MATCH EXISTING CHURCH STONE VENEER
4. MANUFACTURED STONE SILL - MATCH EXISTING STONE
5. ALUM CLAD WOOD WINDOW - MATCH EXISTING WINDOW COLOR
6. HOLLOW METAL DOORS & FRAMES - PAINT TO MATCH EXISTING
7. PREFINISHED METAL COPING - PARCHMENT COLOR
8. ROOF LADDER - PAINT TO MATCH WALL COLOR
9. LAMBS TONGUE DOWNSPOUT ROOF DRAIN
10. MECHANICAL UNIT, SHOWN DASHED, TYP.

LUND PARTNERSHIP
12265 W. Bayaud Avenue, Suite 130
Lakewood, Colorado 80228
P:303.989.1461 F: 303.989.4094
CIVIL ENGINEERING & SURVEYING

No.	Revision	Date	By

LOVELAND CLASSICAL SCHOOL
1ST SUBDIVION, BLOCK 1, LOT 1
BUILDING ELEVATIONS

PREPARED FOR: EDUCATION CAPITAL SOLUTIONS, LLC
ADDRESS: 909 WALNUT SUITE 200
KANSAS, MO 64106

CALL UTILITY NOTIFICATION CENTER OF COLORADO
811
CALL 2 BUSINESS DAYS IN ADVANCE BEFORE YOU DIG, GRADE, OR EXCAVATE FOR THE MARKING OF UNDERGROUND MEMBER UTILITIES

DATE: APRIL 19, 2011
JOB NUMBER: 560-0201
SCALE: 3/32"=1'-0

SHEET
3 OF 3

CITY OF LOVELAND
CITY MANAGER'S OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: **17**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Alan Krcmarik, Executive Fiscal Advisor

PRESENTER: Alan Krcmarik

TITLE: PUBLIC HEARING AND FIRST READING OF AN ORDINANCE REPEALING ORDINANCE NO. 5540 WHICH SUSPENDED THE ANNUAL INFLATION INCREASES IN CAPITAL EXPANSION FEES PURSUANT TO SECTION 16.38.110 OF THE LOVELAND MUNICIPAL CODE FOR 2011

DESCRIPTION: This is an administrative action to consider an ordinance on first reading to repeal Ordinance No. 5540. Ordinance No. 5540 suspended the annual inflation increases to the capital expansion fees for 2011 pending the outcomes of a public comment process that was completed in April, 2011. The inflationary increases based on the construction cost index would have been 8.62%. Based on the suspension there was no increase in capital expansion fees for 2011. If this Ordinance is approved by a majority of Council, the fee increases would be effective beginning July 1, 2011.

BUDGET IMPACT: The City's Capital Expansion Fee program is based on equitable cost recovery and the concept that growth should pay for growth. The inflation adjustment required by the Code provides that, from year to year, the replacement value of the City's capital infrastructure and equipment increases in value. New development is expected to pay approximately the same inflation-adjusted cost as past development. If inflationary adjustments are not made on a regular basis, other sources of City revenue will be needed to back fill the fees that do not keep up with inflation or service levels will decline.

☒ Yes ☐ No

SUMMARY: The City of Loveland adopted a capital expansion fee system in 1984. The system was designed to ensure the future ability of the City to adequately provide infrastructure and capital equipment to support provision of services to its residents. One of the key elements of the fee system is to track the cost of construction an adjustment for inflation. The annual inflation adjustment is written into the Municipal Code at section 16.38.110. For 2011, the increase in the construction cost index was 8.62%. When the 2011 Budget was adopted Council voted to approve Ordinance No. 5540 suspending the annual inflation adjustments pending a public outreach and review process. Staff conducted the process in January through

March of 2011 and reported to the Council on April 26th. Council directed staff to bring an item back to Council so that a vote could be undertaken on repealing or continuing the 2011 suspension of the capital expansion fee inflation adjustment.

LIST OF ATTACHMENTS:

Ordinance on First Reading
Capital Expansion Fee Schedule for 2011 with markup showing increases

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RECOMMENDED CITY COUNCIL ACTION: For Council's consideration.

To repeal the suspension of the inflationary increases for 2011 and have the adjusted fees go into effect on July 1, 2011, Council members would vote for a motion to approve this ordinance. Council may also amend the percentage increase to something less than 8.62%. The schedule in Exhibit A would have to be adjusted to match the percentage and could be done on second reading.

To keep the fees at their current levels for the rest of 2011, Council members would vote against the motion to approve this ordinance.

REVIEWED BY CITY MANAGER:

FIRST READING May 17, 2011

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE REPEALING ORDINANCE NO. 5540 WHICH SUSPENDED THE ANNUAL INFLATION INCREASES IN CAPITAL EXPANSION FEES PURSUANT TO SECTION 16.38.110 OF THE LOVELAND MUNICIPAL CODE FOR 2011

WHEREAS, pursuant to City Code Section 16.38.110, certain capital expansion fees ("CEF's") are imposed on development within the City to provide a source of funding for new and expanded capital facilities associated with growth; and

WHEREAS, CEF's are adjusted for inflation annually effective January 1 of each year on the basis of the percentage changes in specified indices pursuant to City Code Section 16.38.110; and

WHEREAS, by adoption of Ordinance No. 5540 on October 19, 2010, City Council suspended the annual adjustment of the CEF's for calendar year 2011, pending outcome of a public comment process that has subsequently been completed; and

WHEREAS, City Council desires to repeal Ordinance No. 5540 so that adjusted CEF's will become effective July 1, 2011.

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

Section 1. That Ordinance No. 5540 is hereby repealed effective July 1, 2011.

Section 2. That the 2010 CEF's as adjusted pursuant to City Code Section 16.38.110 set forth on **Exhibit A** attached hereto and incorporated herein by this reference and labeled as "2011 Revised" are hereby adopted to be effective on the date on which this Ordinance is in full force and effect pursuant to Section 3 below or July 1, 2011, whichever date is later.

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

ADOPTED this _____ day of _____, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

EXHIBIT A

Capital Expansion Fees

The Capital Expansion Fees were established by ordinance and incorporated into the Loveland Municipal Code in Section 16.38.020 et seq. Section 16.38.110 requires the fees to be adjusted annually based on the percentage change in the Construction Cost Index for the Denver area as set forth in the preceding year's September issue of the Engineering News-Record published by McGraw Hill Companies. For the Street Capital Fee, the adjustment factor shall be equal to the most current preceding eight quarters' average annual percentage change in the construction costs as determined by the Colorado Department of Transportation Construction Cost Index.

The Engineering News-Record index percentage change is 8.62%. The CDOT Construction Cost index percentage change is 0.0%. Below are the current 2011 Fees (the same as the 2010 Fees) and the 2011 fees based on the 8.62% index change.

	2011 (2010)	**2011 Revised**
Residential (amount charged per residential unit)		
Fire & Rescue	$ 678.00	$ 736.00
Police	881.00	957.00
General Government	968.00	1,052.00
Library	627.00	680.00
Cultural Services & Museum	505.00	549.00
Parks	3,085.00	3,351.00
Recreation	1,546.00	1,679.00
Trails	489.00	532.00
Open Lands	778.00	824.00
Commercial (amount charged per square foot)		
Fire & Rescue	$ 0.29	$ 0.29
Police	0.37	0.38
General Government	0.40	0.41
Industrial (amount charged per square foot)		
Fire & Rescue	$ 0.03	$ 0.03
Police	0.04	0.04
General Government	0.05	0.05

The Street Capital Expansion calculation includes as estimated number of trips generated by the type of use based on the ITE Trip Generation tables and based on the Average Daily Traffic. The current fee basis of $226.71 per trip will be unchanged since the CDOT index is at 0.0%.

The System Impact Fees (SIF) and Plant Investment Fees (PIF) are included within the Stormwater Utility Schedule of Rates, Charges and Fees and the Schedule of Rates, Charges and Fees for the Water & Power Department.

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

AGENDA ITEM: **19**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Julia Garcia, Human Resources

PRESENTER: Julia Garcia, Human Resources Director

TITLE:
Discussion of the annual evaluation redevelopment process

DESCRIPTION:
This is an administrative action to discuss and receive direction from Council regarding the annual performance evaluation redevelopment process used for appointed City officials.

BUDGET IMPACT:

☒ Yes ☐ No

SUMMARY:
At the City Council Advance held on February 5, 2011 it was determined to redevelop the current evaluation process used for the City Manager, City Attorney, and Municipal Judge. An action plan and strategy will need to be developed as soon as possible so the new evaluation method can be implemented in September, 2011. It is recommended two members of Council participate in a sub-committee along with the Mayor for the redevelopment of the evaluation process.

LIST OF ATTACHMENTS:
None

RECOMMENDED CITY COUNCIL ACTION:
Appoint two Council members to participate in the development of a new evaluation process for appointed City officials

REVIEWED BY CITY MANAGER:

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

AGENDA ITEM: **21**

MEETING DATE: 5/17/2011

TO: City Council

FROM: Julia Garcia, Human Resources

PRESENTER: Julia Garcia, Human Resources Director

TITLE:
a) A Resolution of the Loveland City Council regarding the compensation of the City Attorney
b) A Resolution of the Loveland City Council regarding the compensation of the Municipal Judge

DESCRIPTION:
These are an administrative actions to approve the distribution of lump sum merit payments based on performance for the City Attorney and Municipal Judge.

BUDGET IMPACT:

☒ Yes ☐ No

SUMMARY:
Due to the positive General Fund budget performance the budget allowed for the 2010 ending fund balance to exceed the projected ending fund balance. One quarter of the additional fund balance was approved by Council to be used to recognize employees with a lump sum merit payment based on performance in 2010. Based on Council's approval of lump sum merit payments for employees, a discussion regarding the approval and/or eligibility for the City Attorney and Municipal Judge is requested for administrative action.

LIST OF ATTACHMENTS:
Resolution approving a lump sum merit payment based on performance for the City Attorney and Municipal Judge.

RECOMMENDED CITY COUNCIL ACTION: Approve the Resolutions

REVIEWED BY CITY MANAGER:

RESOLUTION #R-35-2011

A RESOLUTION OF THE LOVELAND CITY COUNCIL REGARDING THE COMPENSATION OF THE CITY ATTORNEY

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

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

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

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

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

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

WHEREAS, on May 3, 2011, City Council adopted ordinances providing for an employee merit-based recognition program due to the positive 2010 General Fund budget performance and now undertakes consideration of a similar increase in compensation for the City Attorney; and

WHEREAS, the City and Duval desire to amend the Agreement as previously amended by the First Addendum, Second Addendum, and Third Addendum to increase Duval's compensation for 2011 with a one-time, merit-based payment of _____ percent (__%) of Duval's current annual base salary as reflected in the "Fourth Addendum to Employment Agreement" (the "Fourth Addendum") attached hereto as Exhibit A and incorporated by reference herein.

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

Section 1. The Fourth Addendum is hereby approved and the Mayor is authorized to enter into the Fourth Addendum on behalf of the City to increase Duval's compensation for 2011 with a one-time merit-based payment of _____ percent (__%) of Duval's current annual base salary.

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

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

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

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

ADOPTED this ___ day of May, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT A

FOURTH ADDENDUM TO EMPLOYMENT AGREEMENT

THIS FOURTH ADDENDUM is made and entered into this ____ day of May, 2011, by and between the CITY OF LOVELAND, a Colorado municipal corporation (the "City") and JOHN R. DUVAL ("Duval") (collectively referred to herein as the "Parties).

WITNESSETH:

WHEREAS, on April 23, 2001, the City and Duval entered into an Agreement appointing Duval as Loveland's City Attorney effective May 8, 2001 (the "Agreement"); and

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

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

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

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

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

WHEREAS, on May 3, 2011, City Council adopted ordinances providing for an employee merit-based recognition program due to the positive 2010 General Fund budget performance and now undertakes consideration of a similar increase in compensation for the City Attorney; and

WHEREAS, the City and Duval desire to amend the Agreement as previously amended by the First Addendum, Second Addendum, and Third Addendum to increase Duval's compensation for 2011 with a one-time, merit-based payment of _____ percent (__%) of Duval's current annual base salary.

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

1. The Parties agree to add a new section 11. to the Agreement that shall read as follows:

   11. In 2011 Duval shall receive a one-time, merit based payment of ___ percent (__%) of Duval's then current annual base salary, payable prior to July 1, 2011.

2. That except as expressly amended in this Fourth Addendum, and except for any salary increases approved by City Council by resolution, all other terms and conditions of the Agreement, the First Addendum, Second Addendum and Third Addendum shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Fourth Addendum to Employment Agreement to be executed as of the day and year first written above.

CITY OF LOVELAND

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

_____
John R. Duval

RESOLUTION #R-36-2011

A RESOLUTION OF THE LOVELAND CITY COUNCIL REGARDING THE COMPENSATION OF THE MUNICIPAL JUDGE

WHEREAS, on February 2, 1999, the City of Loveland (the "City") and William E. Starks ("Starks") entered into an agreement appointing Starks as Loveland's Municipal Judge for a two-year term effective February 15, 1999; and

WHEREAS, on February 20, 2001, the City and Starks entered into a second agreement reappointing Starks as Loveland's Municipal Judge for a second two-year term effective February 15, 2001 (the "Agreement"); and

WHEREAS, on February 4, 2003, the City and Starks entered into that certain "Addendum to Employment Agreement" (the "First Addendum") amending the Agreement to reflect Starks' reappointment for a third two-year term effective February 15, 2003; and

WHEREAS, in January of 2005, the City and Starks entered into that certain "Second Addendum to Employment Agreement" (the "Second Addendum") amending the Agreement to reflect Starks' reappointment for a fourth two-year term effective February 15, 2005; and

WHEREAS, on February 6, 2007, the City Council adopted Resolution #R-7-2007 reappointing Starks to a fifth two-year term effective February 15, 2007 as reflected in the "Third Addendum to Employment Agreement" which the City and Starks have entered into (the "Third Addendum"); and

WHEREAS, on February 17, 2009, the City Council adopted Resolution #R-13-2009 reappointing Starks to a sixth two-year term effective February 15, 2009 as reflected in the "Fourth Addendum to Employment Agreement" which the City and Starks have entered into (the "Fourth Addendum"); and

WHEREAS, on March 3, 2009 the City Council adopted Resolution #R-19-2009 increasing the compensation of Starks based on its annual evaluation of Starks in his capacity as Municipal Judge; and

WHEREAS, on November 3, 2009, the City Council adopted Resolution #R-106-2009 that decreased the compensation of Starks through the use of four furlough days based on the economic downturn and to be consistent with the 2010 budget which reduced pay to most city employees through the implementation of four furlough days; and

WHEREAS, on December 7, 2010, City Council adopted Resolution #R-68-2010 reappointing Starks to a seventh two-year term effective February 15, 2011, as reflected in the "Fifth Addendum to Employment Agreement" (the "Fifth Addendum") and excluded furlough days from Starks' compensation; and

WHEREAS, on May 3, 2011, City Council adopted ordinances providing for an employee merit-based recognition program due to the positive 2010 General Fund budget performance and now undertakes consideration of a similar increase in compensation for the Municipal Judge; and

WHEREAS, the City and Starks desire to amend the Agreement as previously amended by the First Addendum, Second Addendum, Third Addendum, Fourth Addendum, and Fifth Addendum to increase Starks' compensation for 2011 with a one-time, merit-based payment of _____ percent (__%) of Starks' current annual base salary as reflected in the "Sixth Addendum to Employment Agreement" (the "Sixth Addendum") attached hereto as Exhibit A and incorporated by reference herein.

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

Section 1. The Sixth Addendum is hereby approved and the Mayor is authorized to enter into the Sixth Addendum on behalf of the City to increase Starks' compensation for 2011 with a one-time, merit-based payment of _____ percent (__%) of Starks' current annual base salary.

Section 2. That the Agreement, as amended by the First Addendum, Second Addendum, Third Addendum, Fourth Addendum, Fifth Addendum and Sixth Addendum is hereby reaffirmed and ratified.

Section 3. Except as amended by this Resolution and the Sixth Addendum, Starks' compensation and benefits as set forth in the Agreement and Resolution #R-19-2009 shall remain unchanged and in full force and effect.

Section 4. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED this ____ day of May, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT A

SIXTH ADDENDUM TO EMPLOYMENT AGREEMENT

THIS SIXTH ADDENDUM is made and entered into this ____ day of May, 2011, by and between the CITY OF LOVELAND, a Colorado municipal corporation (the "City") and WILLIAM E. STARKS ("Starks") (collectively referred to herein as the "Parties).

WITNESSETH:

WHEREAS, on February 2, 1999, the City and Starks entered into an agreement appointing Starks as Loveland's Municipal Judge for a two-year term effective February 15, 1999; and

WHEREAS, on February 20, 2001, the City and Starks entered into a second agreement reappointing Starks as Loveland's Municipal Judge for a second two-year term effective February 15, 2001 (the "Agreement"); and

WHEREAS, on February 4, 2003, the City and Starks entered into that certain "Addendum to Employment Agreement" (the "First Addendum") amending the Agreement to reflect Starks' reappointment for a third two-year term effective February 15, 2003; and

WHEREAS, in January of 2005, the City and Starks entered into that certain "Second Addendum to Employment Agreement" (the "Second Addendum") amending the Agreement to reflect Starks' reappointment for a fourth two-year term effective February 15, 2005; and

WHEREAS, on February 6, 2007, the City Council adopted Resolution #R-7-2007 reappointing Starks to a fifth two-year term effective February 15, 2007 as reflected in the "Third Addendum to Employment Agreement" which the City and Starks have entered into (the "Third Addendum"); and

WHEREAS, on February 17, 2009, the City Council adopted Resolution #R-13-2009 reappointing Starks to a sixth two-year term effective February 15, 2009 as reflected in the "Fourth Addendum to Employment Agreement" which the City and Starks have entered into (the "Fourth Addendum"); and

WHEREAS, on November 3, 2009, the City Council adopted Resolution #R-106-2009 that decreased the compensation of Starks through the use of four furlough days based on the economic downturn and to be consistent with the 2010 budget which reduced pay to most city employees through the implementation of four furlough days; and

WHEREAS, on December 7, 2010, City Council adopted Resolution #R-68-2010 reappointing Starks to a seventh two-year term effective February 15, 2011, as reflected in the "Fifth Addendum to Employment Agreement" (the "Fifth Addendum") and excluded furlough days from Starks' compensation; and

WHEREAS, on May 3, 2011, City Council adopted ordinances providing for an employee merit-based recognition program due to the positive 2010 General Fund budget performance and now undertakes consideration of a similar increase in compensation for the Municipal Judge; and

WHEREAS, the City and Starks desire to amend the Agreement as previously amended by the First Addendum, Second Addendum, Third Addendum, Fourth Addendum, and Fifth Addendum to increase Starks' compensation for 2011 with a one-time, merit-based payment of _____ percent (__%) of Starks' current annual base salary.

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

1. The Parties agree to add a new section 12 to the Agreement that shall read as follows:

    12. In 2011 Starks shall receive a one-time, merit based payment of ___ percent (__%) of Starks' then current annual base salary, payable prior to July 1, 2011.

2. That except as expressly amended in this Sixth Addendum, and except for any salary increases approved by City Council by resolution, all other terms and conditions of the Agreement, the First Addendum, Second Addendum, Third Addendum, Fourth Addendum and Fifth Addendum shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Fifth Addendum to Employment Agreement to be executed as of the day and year first written above.

CITY OF LOVELAND

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

_____
William E. Starks