



## **PROCLAMATION**

**WHEREAS** Conductive Education (CE) was developed over sixty years ago in Hungary by Dr. Andras Peto; and

**WHEREAS** CE is a unique teaching system that maximizes the independence and mobility of children and adults with neuro-motor disabilities like stroke survivors, and those with cerebral palsy, multiple sclerosis, acquired brain injuries, Parkinson's disease and spina bifida; and

**WHEREAS** CE operates from a core belief in neuroplasticity - the lifelong ability of the brain to reorganize neural pathways based on new experiences - and on the premise that no matter how severe the disability, people can learn and improve when they are motivated

**WHEREAS** Conductive Education has the potential to make a significant, life-changing impact on the mobility and independence of close to 9 million people in Canada and the United States; and

**WHEREAS** Conductive Education helps individuals learn their way to independence;

**NOW, THEREFORE**, we, the City Council of Loveland, do hereby proclaim February 24 as

### **CONDUCTIVE EDUCATION DAY 2011**

in Loveland, Colorado, and encourage supporting this important program that increases the independence of people with disabilities in our community.

Signed this 15th day of February, 2011

Cecil A. Gutierrez  
Mayor



## 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](http://www.cityofloveland.org)

### PROCLAMATION

**WHEREAS** The city of Loveland recognizes the importance of citizen safety and the importance of protecting the lives and property of our citizens from threat of fire and to provide quality fire/rescue related services and;

**WHEREAS** On February 21, 1911, the Barthoff Hose Company and the Loveland Hook and Ladder Companies merged to form the Loveland Fire Department, which was adopted by resolution into the official records of the City of Loveland on this said day and;

**WHEREAS** For more than 100 years, the City of Loveland and its citizens have been protected through the dedication and selfless service of both the paid and volunteer members of the Loveland Fire Department and Loveland Fire and Rescue and;

**WHEREAS** To help in the recognition of the services of so many that have given of their time and their lives we take special privilege in honoring those who have served the City of Loveland and the Rural Fire Protection District, the Community of Loveland, to help make this city and community a safe place to live and raise a family.

**NOW, THEREFORE**, we, the City Council of Loveland, do hereby proclaim the week of February 21<sup>st</sup>, 2011 as Loveland Fire and Rescue Week in honor of the men and women who have served this community faithfully with **Compassion, Courage and Commitment**, and we hereby designate through this proclamation February 21st, 2011, as:

### LOVELAND FIRE AND RESCUE DAY

in Loveland, Colorado

In so doing, this City Council urges all citizens to join in a regional effort to raise awareness about the importance of our fire and rescue services and this great heritage that we have in our community.

Signed this 15<sup>th</sup> day of February, 2011

Cecil A. Gutierrez  
Mayor



**PROCLAMATION**

- WHEREAS,** National Engineers Week, founded in 1951 by the National Society of Professional Engineers, is always celebrated at the time of George Washington's birthday in February because he was our first president and a military engineer, and
- WHEREAS,** the purpose of National Engineers Week is to increase public awareness and appreciation of the engineering profession; and
- WHEREAS,** engineers are encouraging our young math and science students to realize the practical power of their knowledge; and
- WHEREAS,** the Engineers of the State of Colorado will actively help to maintain and sustain the vital infrastructure of our civilized and national environments; and
- WHEREAS,** engineers help America remain at the forefront of technological development and contribute to countless breakthroughs that improve the quality of life for people throughout the world.

**NOW, THEREFORE,** we, the Loveland City Council of the City of Loveland, do hereby proclaim February 20 through 26, 2011 as

**NATIONAL ENGINEERS WEEK**

in the City of Loveland.

Signed this 15th day of February, 2011

Cecil A. Gutierrez, Mayor

Mayor Gutierrez called the special meeting of the Loveland City Council to order at 9:44 p.m. on Tuesday, January 11, 2011.

Roll was called and the following responded: Gutierrez, Heckel, Johnson, Clark, Shaffer, McEwen, Klassen, McKean and Rice responded. .

Mayor Gutierrez explained that this Special City Council meeting was scheduled for the purpose of convening an executive session.

**Executive Session**

9:46 PM

Councilor Johnson moved that City Council go into executive session as authorized in C.R.S. § 24-6-402 (4) (a); (4)(b) (4)(e)and (4)(g) and in Loveland Charter section 4-4 (c)(1), (c)(2) (c)(3) and (c)(6) Pertaining to the prospect of the ACE Manufacturing and Innovation Park being located in Loveland, a matter subject to future negotiation and potentially involving the acquisition of real property, the details of which, if prematurely disclosed, could result in other parties gaining an unfair competitive or bargaining advantage; and related to this matter: to receive reports from negotiators, determine negotiation positions, develop negotiation strategy, and to instruct negotiators concerning such positions and strategy; to receive legal advice from the City Attorney; and to receive and review documents and information that are not subject to public inspection under the Colorado Open Records Act, such as work-product documents, at 9:46 p.m. Councilor Shaffer seconded the motion which carried with all present voting in favor thereof.

Council reconvened into the special meeting session at 12:10 a.m.

Having no further business to come before the Council the meeting was adjourned at 12:11 a.m.

Respectfully Submitted,

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Teresa G. Andrews, City Clerk

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Cecil A. Gutierrez, Mayor

Mayor Pro Tem Heckel called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Heckel, Solt, Rice, Johnson, Klassen, McEwen, McKean and Shaffer. Mayor Gutierrez was absent. City Manager, Bill Cahill was also present.

1. DEVELOPMENT SERVICES

NextMedia Billboard Reduction/Enhancement

Current Planning Manager, Bob Paulsen introduced this item to Council for a proposal that has been submitted by NextMedia Outdoor, Inc. to reduce the number of billboards within the City's Growth Management Area (GMA) in exchange for the ability to relocate and upgrade their remaining billboards. At the present time, NextMedia owns 19 billboards within the GMA; approximately one-half of these are within the City limits. The proposal would reduce the number of billboards to eight and allow four of the remaining billboards to have electronic display panels. Implementation of this proposal would require an agreement between the City and NextMedia along with associated amendments to the City's sign code. Carolynne White and Troy Hammond of NextMedia addressed concerns about the size, number and location of the signs. Chamber of Commerce President, Brian Willms came forward to give support to NextMedia's presentation. Brian submitted a letter to Council expressing the Chamber's willingness to oversee necessary public outreach or public hearings on this issue. Discussion ensued. Council gave direction to staff not to proceed with the proposal at this time. If, in the future, NextMedia can return with more tangible information by working with the Chamber or others, an opportunity to meet again with City staff and Council may be considered.

2. FINANCE

General Fund Financial Sustainability Challenge 2012-2020 and Principles to Guide Decision Making

City Manager, Bill Cahill introduced this item to Council to develop a clear understanding of the challenge the City of Loveland faces and to create a series of principles to use as a "yardstick" for evaluating ideas that are generated for addressing the challenge. The City's projected General Fund revenues and expenditures over the next 5-10 years will not allow for the city to continue providing services and programs at the current levels. Therefore the challenge is to close the \$3.0-\$3.5 million gap between the projected revenues available and the cost to provide service. Budget Manager, John Hartman presented an overview of the City's financial structure, reasons for the problem and the process that is proposed to meet the challenge, which includes a public engagement strategy. Finance Director, Renee Wheeler led Council in an activity to obtain some descriptive words to be used in drafting the "value" statements. Mr. Cahill thanked Council for their participation and told them they would still have two more opportunities for review of the statements and to define the service priorities.

City Council Study Session  
January 25, 2011  
Page 2 of 2

Mr. Cahill confirmed that the City Council Advance is scheduled from 8 a.m. to 5 p.m. on February 5, 2011.

The study session was adjourned at 9:27 p.m.

Respectfully Submitted,

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Jeannie M. Weaver, Deputy City Clerk

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Larry Heckel, Mayor Pro Tem

**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, Heckel, Klassen, Johnson, McKean, Shaffer, Rice and Solt. Councilor McEwen was absent.

**PROCLAMATION** Councilor Solt read a proclamation declaring February, 2011, as "Career & Technical Education Month". The proclamation was received by Kathy Gaasvig, Career and Technical Education Coordinator, Thompson School District R2-J.

**PROCLAMATION**

WHEREAS, the month of February, 2011, has been designated as "Career & Technical Education Month"; and

WHEREAS, the Thompson R2-J School District provides a Career & Technical Education program that focuses on preparing students to enter the 21st Century workforce; and

WHEREAS, we desire students to graduate from our schools with the motivation to continue to learn throughout their lives and be equipped with the knowledge and tools to make informed life choices; and

WHEREAS, the Business/Education Partnership Programs in cooperation with participating businesses in the communities offer all students the opportunity to gain employability skills through classroom education, leadership development, projects, shadows, mentors, apprenticeships, internships, cooperative programs; and

WHEREAS, the future of the City, State, and Nation depend upon the growth and development of our youth who will one day become our business leaders;

NOW, THEREFORE, we, the City Council of Loveland, Colorado, do hereby proclaim the month of February, 2011, as

**CAREER & TECHNICAL EDUCATION MONTH**

and strongly urge business, industry, education, government, and citizens of the community to lend their interest, assistance, and encouragement to the students participating in the program.

Signed this 1st day of February, 2011

Cecil Gutierrez, Mayor

**STAFF INTRODUCTION** Greg George, director of Development Services, introduced Alison Hade as the new administrator for the Community Partnership Office.

**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 Klassen pulled items 6 and 8. Councilor Johnson moved to approve the Consent Agenda with the exception of items 6 and 8. The motion was seconded by Councilor Heckel and a roll call vote was taken with all councilors present voting in favor thereof.

**1. MINUTES**

- a) Minutes for the January 11, 2011 study session were approved.
- b) Minutes for the January 18, 2011 regular meeting were approved.

**2. CITY MANAGER**

**Board & Commission Appointments**

**Motion**

Administrative Action: The following appointments were made:

Disabilities Advisory Commission ("DAC"): Angie Clayton was appointed to a term effective until June 30, 2013. Kathy Witcher was appointed as an Alternate for a one year term effective until February 1, 2012.

Planning Commission: Michael Ray was reappointed to a term effective to December 31, 2013.

Police Citizen Advisory Commission: Ed Gassman and Richard Hunsaker were reappointed and Swaine Skeen appointed all for three year terms effective until December 31, 2013. Joseph Hertwig was appointed as an Alternate for a one year term effective until February 1, 2012.

**3. PUBLIC WORKS**

**Supplemental Budget and Appropriation Transportation Grants**

**Ordinance #5559**

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR A FEDERAL HAZARD ELIMINATION GRANT AND A FEDERAL CONGESTION MITIGATION AND AIR QUALITY (CMAQ) GRANT FOR TRANSPORTATION PROJECTS" was approved and ordered published on second reading.

**4. DEVELOPMENT SERVICES**

**Utility Easement Vacation – Hile First Subdivision**

**1<sup>st</sup> Rdg Ord & P.H.**

Legislative Action: A public hearing was held and "AN ORDINANCE VACATING A PORTION OF A UTILITY EASEMENT OF LOT 2, BLOCK 1, HILE FIRST SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO" was approved and ordered published on first reading.

**5. DEVELOPMENT SERVICES**

**Petition for Annexation – Timka First Addition**

**Resolution #R-7-2011**

Legislative Action: Resolution #R-7-2010 finding a certain petition for annexation known as Timka First Addition, filed January 12, 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 was approved.

**RESOLUTION #R-7-2011**

A RESOLUTION FINDING A CERTAIN PETITION FOR ANNEXATION KNOWN AS TIMKA FIRST ADDITION, FILED JANUARY 12, 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 January 12, 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 March 15, 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 1st day of February, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

#### EXHIBIT A

##### Serial Parcel 1

Legal description of a parcel of land being a portion of the Northwest Quarter of the Northeast Quarter of Section 30, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, being more particularly described as follows:

Beginning at the North Quarter corner of said Section 30, thence along the North line of the Northeast Quarter of said Section 30 South 89°48'00" East 993.54 feet; thence departing said North line South 00°02'31" East 30.11 feet to the TRUE POINT OF BEGINNING; thence South 89°50'32" East 331.17 feet to a point on the East line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said East line South 00°01'35" East 652.39 feet; thence departing said East line North 89°45'46" West 331.00 feet to a point on the West line of the East Half of the East Half of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said West line North 00°02'31" West 651.93 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 4.957 acres, more or less and is subject to all easements, agreements and rights-of-way of record.

##### Serial Parcel 2

Legal description of a parcel of land being a portion of the Northwest Quarter of the Northeast Quarter of Section 30, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, being more particularly described as follows:

Beginning at the North Quarter corner of said Section 30, thence along the North line of the Northeast Quarter of said Section 30 South 89°48'00" East 993.54 feet; thence departing said North line South 00°02'31" East 30.11 feet; thence South 89°50'32" East 331.17 feet to a point on the East line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said East line South 00°01'35" East 652.39 feet to the TRUE POINT OF BEGINNING; thence continuing along said East line South 00°01'35" East 652.39 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said South line North 89°41'00" West 330.83 feet to a point on the West line of the East Half of the East Half of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said

West line North 00°02'31" West 651.93 feet; thence departing said West line South 89°45'46" East 331.00 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 4.954 acres, more or less and is subject to all easements, agreements and rights-of-way of record.

## **6. FINANCE**

### **Contract Renewal - Pinnacol**

#### **Motion**

This item was removed from the Consent Agenda.

## **7. WATER & POWER**

### **Residential Lease Agreement**

#### **Resolution #R-8-2011**

Administrative Action: Resolution #R-8-2011 approving a residential lease agreement with Paul Gilbert was approved.

#### **RESOLUTION #R-8-2011**

A RESOLUTION APPROVING A RESIDENTIAL LEASE AGREEMENT WITH PAUL GILBERT

WHEREAS, the City of Loveland owns a house and storage shed located at 3142 N. County Road 29, Loveland, Colorado 80537 on site of the City's Water Treatment Plant; and

WHEREAS, the City desires to lease the house and one bay of the storage shed (together, the "Premises"); and

WHEREAS, due to the use and security requirements specific to the Water Treatment Plant site, the Department of Water & Power deems it desirable to lease the Premises to a Water Treatment Plant Employee; and

WHEREAS, the City notified all Water Treatment Plant employees of the opportunity to lease the Premises, and only Paul Gilbert, Water Treatment Plant operator, expressed a desire to lease the Premises; and

WHEREAS, the City and Mr. Gilbert have negotiated a Residential Lease Agreement whereby the City will lease to Mr. Gilbert, and Mr. Gilbert will lease from the City, the Premises at a rent determined to be fair and equitable based on a third-party assessment of the Premises on a month-to-month basis for so long as Mr. Gilbert remains a City employee, unless the Agreement 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 Residential Lease Agreement ("Agreement"), attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

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

Section 3. That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form of the Agreement, provided that such changes do not impair the intended purposes of this Resolution.

Section 4. That concurrent with Mr. Gilbert's execution of the Agreement, Mr. Gilbert shall execute and deliver to the City Council a disclosure notice as set forth in Exhibit B of the Agreement in accordance with C.R.S. § 24-18-201.

Section 5. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 1st day of February, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

## **8. BUSINESS DEVELOPMENT**

### **Supplemental Budget and Appropriation – Lodging Tax Proceeds**

#### **1<sup>st</sup> Rdg Ord & P.H.**

This item was removed from the consent agenda.

## **9. DEVELOPMENT SERVICES**

### **Fee Waivers – Loveland Habitat for Humanity**

#### **Resolution #R-9-2011**

Administrative Action: Resolution #R-6-2011 waiving certain development fees for the construction of six residences by Loveland Habitat for Humanity was approved.

#### **RESOLUTION #R-6-2011**

A RESOLUTION WAIVING CERTAIN DEVELOPMENT FEES FOR THE CONSTRUCTION OF SIX RESIDENCES BY LOVELAND HABITAT FOR HUMANITY

WHEREAS, Loveland Habitat for Humanity ("Habitat") has requested the waiver of certain City-imposed development fees, including capital expansion fees, for six residences in Loveland, construction of which will commence 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, Habitat is willing and able to enter into a development agreement with the City whereby Habitat will construct these residences for the benefit of low and moderate income households; and

WHEREAS, the City Council finds that the waiver of the development fees, including the capital expansion fees, which results from the adoption of this Resolution will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City at taxpayer expense, and that such facilities relieve the pressures of growth on City-provided facilities and do not create growth or growth impacts.

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

Section 1. That capital expansion fees in an amount not to exceed \$70,359.66 for construction of up to six residences for the purpose described above are hereby waived.

Section 2. That as provided in Section 16.38.075 of the Loveland Municipal Code, when a capital-related fee is waived as set forth in Section 1, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund.

Section 3. That development fees, including, but not limited to, all building permit fees, plan review fees, and any and all other fees due and payable between permit application and final certificate of occupancy (but not including capital expansion fees, system impact fees, raw water fees, tap fees or any other enterprise fees) that are payable to the City in an amount not to exceed \$16,102.56 for construction of up to six residences for the purpose described above are hereby waived.

Section 4. That development fees, including system impact fees, raw water fees, tap fees, or any other enterprise fees that are payable to the City in an amount not to exceed \$65,000 for construction of up to six residences for the purpose described above are hereby waived.

Section 5. That as provided in Section 16.38.075 of the Loveland Municipal Code, when a utility fee or charge is waived as set forth in Section 4, the affected utility fund shall be reimbursed by the general fund.

Section 6. That the amount of the waived development fees, \$65,000, as set forth in Section 4 hereof, shall be paid by the City into the City's enterprise funds from the general fund of the City, and that such funds have been appropriated in the City's 2011 budget.

Section 7. That the waiver of the fees described in Sections 1, 3, and 4 hereof shall be conditioned upon the City, through its City Manager, and Habitat entering into a development agreement, which agreement shall provide for the waiver of said fees in exchange for the construction of the six residences, as well as such other conditions as the City Manager shall deem necessary.

Section 8. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 1st day of February, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

**10. CITY MANAGER'S OFFICE**

**2011 Legislative Policy Agenda Document**

**Motion**

A motion to approve the 2011 Legislative Policy Agenda as recommended by Councilors McEwen, Shaffer and Solt was approved.

## 11. DEVELOPMENT SERVICES

### Fee Waivers – Loveland-Berthoud Interfaith Hospitality Network

a) **Resolution #R-10-2011** Administrative Action: Resolution #R-10-2011 waiving certain development fees for the construction of one unit of transitional housing by the Loveland-Berthoud Interfaith Hospitality Network was approved.

#### RESOLUTION #R-10-2011

A RESOLUTION WAIVING CERTAIN DEVELOPMENT FEES FOR THE CONSTRUCTION OF ONE UNIT OF TRANSITIONAL HOUSING BY THE LOVELAND-BERTHOUD INTERFAITH HOSPITALITY NETWORK

WHEREAS, Loveland-Berthoud Interfaith Hospitality Network ("IHN") has requested the waiver of certain City-imposed development fees, including capital expansion fees, for one unit of transitional housing in Loveland, construction of which will commence 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, IHN is willing and able to enter into a development agreement with the City whereby IHN will construct one unit of transitional housing for the benefit of low and moderate income households; and

WHEREAS, the City Council finds that the waiver of the development fees, including the capital expansion fees, which results from the adoption of this Resolution will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City at taxpayer expense, and that such facilities relieve the pressures of growth on City-provided facilities and do not create growth or growth impacts.

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

Section 1. That capital expansion fees in an amount not to exceed \$11,726.61 for construction of one unit of transitional housing for the purpose described above are hereby waived.

Section 2. That as provided in Section 16.38.075 of the Loveland Municipal Code, when a capital-related fee is waived as set forth in Section 1, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund.

Section 3. That development fees, including, but not limited to, all building permit fees, plan review fees, and any and all other fees due and payable between permit application and final certificate of occupancy (but not including capital expansion fees, system impact fees, raw water fees, tap fees or any other enterprise fees) that are payable to the City in an amount not to exceed \$2,334.04 for construction of one unit of transitional housing for the purpose described above are hereby waived.

Section 4. That development fees, including system impact fees, raw water fees, tap fees, or any other enterprise fees that are payable to the City in an amount not to exceed \$11,910.24 for construction of one unit of transitional housing for the purpose described above are hereby waived.

Section 5. That as provided in Section 16.38.075 of the Loveland Municipal Code, when a utility fee or charge is waived as set forth in Section 4, the affected utility fund shall be reimbursed by the general fund.

Section 6. That the amount of the waived development fees, \$11,910.24, as set forth in Section 4 hereof, shall be paid by the City into the City's enterprise funds from the general fund of the City.

Section 7. That the waiver of the fees described in Sections 1, 3, and 4 hereof shall be conditioned upon the City, through its City Manager, and IHN entering into a development agreement, which agreement shall provide for the waiver of said fees in exchange for the construction of the one unit of transitional housing, as well as such other conditions as the City Manager shall deem necessary.

Section 8. That this Resolution shall be effective as of the date of its adoption; provided, however, that the City Council's waiver of IHN's development fees as set forth herein shall not go into effect until the City Council's adoption of an ordinance approving a supplemental appropriation of \$11,910.24 to reimburse the affected enterprise funds becomes effective.

ADOPTED this 1st day of February, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

- b) 1<sup>st</sup> Rdg Ord & P.H. A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR FEE WAIVERS FOR ONE HOUSING UNIT FOR THE BENEFIT OF LOW INCOME HOUSEHOLDS" was approved and ordered published on first reading.

## END OF CONSENT AGENDA

## CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

### CITY COUNCIL

Anyone who wishes to speak to an item NOT on the Agenda may address the Council under Citizens' Report.

#### a) Citizens' Reports

Jamie Felton, Miss Valentine 2011 spoke on what Loveland means to her.

#### b) City Council/City Manager Announcements

Shaffer Councilor Shaffer stated the North Front Range Metropolitan Planning Organization will hold their February 3<sup>rd</sup> meeting in Loveland.

Gutierrez Mayor Gutierrez mentioned Loveland's Valentine Remailing Program begins on February 3<sup>rd</sup>. He also mentioned receiving a letter about the Colfax marathon and a second letter thanking the citizens of Loveland for assisting an elderly family member while traveling through Loveland.

### 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

#### 6. FINANCE

##### Contract Renewal - Pinnacol

##### Motion

Administrative Action: Risk Manager, Bettie Greenberg, introduced this item to Council. This is an administrative action to allow the City Manager to enter into a contract for \$1,670,876 with Pinnacol Assurance Company for workers' compensation coverage required by the State of Colorado. The contract stipulates that Pinnacol will provide workers' compensation insurance with a per claim deductible of \$200,000 for 2011. The vendor will adjust workers' compensation claims in accordance with state law, pay claims and bill the City for the amount due under the deductible. They will provide loss control services to the City, including but not limited to industrial hygiene services, assistance with the development of training programs, resources and improvement of the City's safety programs. The contract also requires a security agreement granting Pinnacol a security interest in specified minimum collateral, initially a \$1M US Treasury Note held as a part of the City's investment portfolio, to secure the City's financial obligations under the insurance contract. Discussion ensued. Staff stated a request for proposal will occur in 2011 to evaluate other providers. Councilor Johnson made a motion to approve and authorize the City Manager to sign a contract and security agreement with Pinnacol Assurance Company for \$1,670,878 for workers' compensation coverage for 2011.

Councilor Heckel seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

## **8. BUSINESS DEVELOPMENT**

### **Supplemental Budget and Appropriation – Lodging Tax Proceeds**

1<sup>st</sup> Rdg Ord & P.H.

Administrative Action: Betsy Hale, Business Development Manager, introduced this item. This is a public hearing to consider an administrative action. The ordinance appropriates funding for operational costs and grant allocations using the 2011 projected revenue from the lodging tax proceeds. The Lodging Tax Fund was not included in the 2011 Adopted Budget. Revenues are projected to be similar to 2010 collections. Staff will bring a final draft of the Strategic Marketing Plan back to Council in the August time frame. Mayor opened the public hearing at 7:17p.m. and asked for public comment. Hearing none, the Mayor closed the public hearing at 7:17 p.m. Councilor Johnson made a motion to approve and ordered published on first reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR THE LODGING TAX PROCEEDS AND OPERATING AND GRANT BUDGET". Councilor Heckel seconded the motion and a roll call was taken with all Councilors present voting in favor thereof.

## **12. DEVELOPMENT SERVICES (CONTINUED FROM January 4, 2011)**

### **Namaqua Hills Central Second Subdivision, Preliminary Plat - Appeal**

Quasi-judicial Actions: Development Services Manager, Greg George introduced this item. He entered into the record the following documents: a letter from the Thompson R2J School District dated January 28, 2011; a letter from Larimer County dated January 25, 2011 and an email from Greg George to Council dated January 28, 2011. This is a quasi-judicial action to consider an appeal of the Planning Commission's decision on October 11, 2010 to approve a preliminary subdivision plat known as the Namaqua Hills Central Second Subdivision (Namaqua Central). The plat contains approximately 49.4 acres and proposes 38 single family lots. The western 27 acres of the site is zoned DR and reserved for open space through a conservation easement. The eastern 22 acres is zoned R1. The site is generally located west of North Wilson Avenue between future alignments of 29th and 22nd Streets, and north of the current terminus of Morning Drive within the Namaqua Hills neighborhood in Larimer County. As approved by the Planning Commission, Morning Drive would be extended north to connect to 29th Street and 22nd Street would be upgraded and opened to regular traffic. The extension of Morning Drive would be a public street and gated at the northern and southern entrances to Namaqua Central. Six parking spaces would be provided within Namaqua Central on the south side of the south gate to accommodate parking for users of a recreation trail to be located in the conservation easement within Namaqua Central. The appellant is Mike Thompson of 1713 Sunnyside Drive, Loveland, Colorado 80538. The public hearing was continued from January 4, 2011. The following citizens spoke in favor of "alternate b" as outlined in the Item 12 coversheet: Mike Thompson, 1713 Sunnyside; Cheryl Rimple, 2209 Morning Dr; Rod Village, 1800 Morning Dr; Chad Walker, 2173 Monte Vista; Keith Olson, 2140 Morning Dr; Michael McKenna, 2100 Morning Dr; Kevin Easling, 2109 Skyrock; Sherrie Valentine, 2201 Morning Dr. Mike Thompson, Rod Village, Chad Walker and Michael McKenna entered materials into the record. Councilor Solt made a motion to make the findings listed in Section V of the October 11, 2010 Planning Commission staff report, and based on those findings, approve Alternative B, subject to those conditions placed on the project by Planning Commission that are consistent with Alternative B, plus all of the following conditions: 1) the gate at the south entrance to the project shall be for emergency vehicles only. 2) Streets within the gated community shall be private. 3) 22<sup>nd</sup> Street shall remain restricted to emergency vehicle access only.

- 4) No parking spaces shall be provided for the recreational trail at the south entrance.
- 5) Prior to approval of the Namaqua Hills Central Second Subdivision final plat the developer shall submit to the City a plan satisfactory to the City that will impose on the property owners within the Namaqua Hills Central Second Subdivision a legally enforceable obligation to equitably share with County GID #8 its costs to maintain and repair Morning Drive if at any time in the future the south entrance is modified to allow unrestricted vehicular access to Morning Drive.

Councilor Shaffer seconded the motion and a roll call vote was taken with four councilors present voting in favor and Councilors McKean, Rice, Klassen and Johnson voted against. The motion failed. After further discussion, Councilor Klassen from the prevailing side requested the motion be reconsidered. Councilor Shaffer seconded the motion and a roll call vote was taken with six councilors voting in favor and Councilors Johnson and McKean voting against. The motion passed.

**\*TABLED ITEMS 15 & 16**

Mayor Gutierrez, with the consent of council, tabled Items 15 & 16 and requested Council send any questions on these items to staff. Any correspondence from staff regarding these items should be directed to all of Council.

**13. BUSINESS DEVELOPMENT**

**Amendments regarding Loveland Job Development Program**

**Two 1<sup>st</sup> Rdg Ords & P.H.**

Legislative Action: Business Development Manager Betsey Hale introduced this item to Council. This legislative action is a result of discussion from the November 2nd meeting of the City Council Economic Development Subcommittee, the November 16th City Council Meeting, the December 8th meeting of the Citizens' Finance Advisory Commission, and the January 11th Council Study Session. The amendments to the Municipal Code, Economic Development Policy, and Investment Policy will provide the City a means to invest in economic development and community redevelopment projects. This is the first reading of the amendments. If the Council adopts the Ordinances, up to \$5 million of the City's investment portfolio may be invested in projects that meet the criteria of the revised economic development policy and the credit review requirements of the Loveland Jobs Development Program third-party administrator. After a discussion, it was determined that generally Council was in support of moving forward with this program. Council directed staff to come back in the future after gathering input from Council. No public hearing was held and the ordinances were not considered. Tim Reecer with Lightening Hybrids spoke to Council encouraging them to move forward.

**14. BUSINESS DEVELOPMENT**

**ACE Manufacturing and Innovation Center**

**Resolution #R-11-2011**

Administrative Action: Business Development Manager Betsey Hale introduced this item to Council. This administrative action is a follow up to the January 18th City Council meeting. In that meeting City Council members considered a presentation from the Colorado Association of Manufacturing and Technology (CAMT) and discussed the City's support for a response to the site selection request for information for the Aerospace Clean Energy Manufacturing and Innovation Center (ACE). The City is proposing the ACE Center be located at the Agilent campus property. Councilor Johnson made a motion to approve Resolution #R-11-2011 supporting location of the ACE Manufacturing and Innovation Center at the Agilent Campus in Loveland, Colorado and authorizing the submission of an expression of interest. Councilor Klassen seconded the motion and a roll call vote was taken with all councilors present voting in favor thereof.

RESOLUTION #R-11-2011

A RESOLUTION SUPPORTING LOCATION OF THE ACE MANUFACTURING AND INNOVATION CENTER AT THE AGILENT CAMPUS IN LOVELAND, COLORADO AND AUTHORIZING THE SUBMISSION OF AN EXPRESSION OF INTEREST

WHEREAS, the Colorado Association for Manufacturing and Technology (CAMT) is a statewide manufacturing assistance center dedicated to increasing the competitiveness of Colorado manufacturers; and

WHEREAS, CAMT has entered into The Space Act Agreement creating a public-private partnership with NASA designed to strengthen Colorado's clean energy and aerospace manufacturing industries, to create CAMT's Technology Acceleration Program (TAP) to shorten the time between development and production of new clean energy and aerospace technologies, and to spearhead a regional innovation cluster to help Colorado companies leverage existing resources, share services and technology, engage business leaders, and strengthen Colorado's clean energy and aerospace workforce; and

WHEREAS, through the Space Act Agreement and regional innovation cluster, CAMT is connecting private and public enterprises, governmental entities and universities to focus on rapid commercialization of aerospace and clean energy technology; and

WHEREAS, CAMT projects that 10,000 jobs will be created across the state as a result of the regional innovation cluster, which is also anticipated to create a \$7 billion net economic output per year; and

WHEREAS, CAMT will partner with private sector companies to develop an Aerospace and Clean Energy (ACE) Manufacturing and Innovation Center, which will eventually house up to one hundred (100) businesses collaborating in sharing services, educational programs, equipment, and other resources, including access to public and private partner technology and expertise, thereby reducing the time between development and production of clean energy and aerospace technologies; and

WHEREAS, location of the ACE Manufacturing and Innovation Center at the Agilent Campus in the City of Loveland will provide CAMT with a move-in ready, high quality, research and manufacturing facility in a dynamic community with a history of supporting business innovation and collaboration, an existing cadre of businesses engaged in innovation cluster activities, an educated workforce, central access to Colorado's institutions of higher education, and a vibrant and welcoming place to live and work; and

WHEREAS, location of the ACE Manufacturing and Innovation Center at the Agilent Campus in Loveland will also provide significant benefits to the citizens of Loveland, Northern Colorado, and the State by creating jobs, enhancing economic development, creating opportunities for growth, and strengthening the business sector and community vitality; and

WHEREAS, CAMT has requested and the City desires to submit an expression of interest identifying potential sites for the ACE Manufacturing and Innovation Center.

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

Section 1. The City Council supports the location of the ACE Manufacturing and Innovation Center at the Agilent Campus in the City of Loveland.

Section 2. The City Council supports and authorizes the development and submission of an expression of interest by the City of Loveland to locate the ACE Manufacturing and Innovation Center at the Agilent Campus in Loveland.

Section 3. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this 1st day of February, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

**\*15. FINANCE**

**December 2010 Financial Report**

This item was tabled and not heard by Council.

**\*16. CITY MANAGER**

**Investment Report for December 2010**

This item was tabled and not heard by Council.



**NEW BUSINESS**

City Manager

City Manager Cahill reminded Council of the Advance meeting on Saturday, February 5<sup>th</sup>, from 8:00 a.m. to 4:00 p.m. at the Group Publishing building.

City Council

None

City Attorney

None

**17. CITY MANAGER**

**An executive session to consider a matter subject to negotiation, the prospect of the ACE Manufacturing and Innovation Park being located in Loveland**

At 11:12 p.m. Councilor Johnson moved that the City Council go into executive session as authorized in CRS Sections 24-6-402(4)(a), (4)(b), 4(e) and 4(g) and City Charter Sections 4-4(c)(1), (c)(2), (c)(3) and (c)(6) pertaining to the prospect of the ACE Manufacturing and Innovation Park being located in Loveland, a matter subject to future negotiation and potentially involving the acquisition of real property, the details of which, if prematurely disclosed, could result in other parties gaining an unfair competitive or bargaining advantage; and related to this matter: to receive reports from negotiators, determine negotiation positions, develop negotiation strategy, and to instruct negotiators concerning such positions and strategy; to receive legal advice from the City Attorney; and to receive and review documents and information that are not subject to public inspection under the Colorado Open Records Act, such as work-product documents. Councilor Shaffer seconded the motion and a roll call vote was held and all councilor present voted in favor thereof. Council reconvened at 11:58 p.m.

**ADJOURNMENT**

Having no further business to come before Council, the February 1, 2011 Regular Meeting was adjourned at 11:59 p.m.

Respectfully Submitted,

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Teresa G. Andrews, City Clerk

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Cecil A. Gutierrez, Mayor


**CITY OF LOVELAND**

CITY MANAGER

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**AGENDA ITEM:** 2  
**MEETING DATE:** 2/15/2011  
**TO:** City Council  
**FROM:** City Manager's Office  
**PRESENTER:** Bill Cahill

**TITLE:**  
 Appointments to Community Marketing Commission

**DESCRIPTION:**  
 This is an Administrative Item recommending the appointment of members to the Community Marketing Commission.

**BUDGET IMPACT:**

Yes     No

**SUMMARY:**

A charter member of the **Community Marketing Commission** ("CMC".) Ann Harroun, resigned effective December 31, 2010. Interviews were conducted for a partial term vacancy. Leslie White is recommended for appointment to the partial term effective until June 30, 2013. Justin Erion is recommended for appointment as Alternate for a one year term effective until February 15, 2012.

**LIST OF ATTACHMENTS:**

None

**RECOMMENDED CITY COUNCIL ACTION:**

Motion to appoint Leslie White to the Community Marketing Commission for a partial term effective until June 30, 2011 and motion to appoint Justin Erion as Alternate to the CMC for a one year term effective until February 15, 2012.

**REVIEWED BY CITY MANAGER:**



**AGENDA ITEM:** 3  
**MEETING DATE:** February 15, 2011  
**TO:** City Council  
**FROM:** Greg George, Development Services Department  
**PRESENTER:** Steven Williams, Current Planning

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**TITLE:**  
AN ORDINANCE VACATING A PORTION OF A UTILITY EASEMENT ON LOT 2, BLOCK 1, HILE FIRST SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

**DESCRIPTION:**  
A legislative action to adopt an ordinance on second reading vacating a 280 square foot utility easement located in LOT 2, BLOCK 1, HILE FIRST SUBDIVISION. The applicant is the Atwood Associates Consulting Engineers, Inc. on behalf of the McDonalds Corporation.

**BUDGET IMPACT:**  
 Yes     No

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**SUMMARY:** The application proposes to vacate a portion of the utility easement at 1809 W. Eisenhower, west of Prospect Drive and east of Van Buren Avenue. The vacation is necessary to allow for a proposed redevelopment of the property, which would include razing the existing McDonald's building and constructing a new McDonald's building at a new location on the site. This requested vacation is associated with an approved Special Review and a recently submitted building permit for the new restaurant. All providers of public utilities have reviewed the vacation application and recommend approval. City Council adopted the ordinance on first reading on February 1, 2011, with a unanimous vote.

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**LIST OF ATTACHMENTS:**

- Easement vacation ordinance

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**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motion for City Council action:

Move to make the findings in Section V of the staff memorandum dated February 1, 2011 and, based on those findings, adopt on second reading, "AN ORDINANCE VACATING A PORTION OF A UTILITY EASEMENT ON LOT 2, BLOCK 1, HILE FIRST SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO.

**REVIEWED BY CITY MANAGER:**

**FIRST READING: February 1, 2011**

**SECOND READING: February 15, 2011**

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

**AN ORDINANCE VACATING A PORTION OF A UTILITY EASEMENT OF LOT 2, BLOCK 1, HILE FIRST SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the vacation of a portion of a utility easement described below, located in Lot 2, Block 1, Hile First Subdivision, City Of Loveland, Larimer County, Colorado.

**WHEREAS**, the City Council finds and determines that no land adjoining any right-of-way to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement; and

**WHEREAS**, the City Council finds and determines that the utility easement to be vacated is no longer necessary for the public use and convenience; and

**WHEREAS**, the City Council further finds and determines that the application filed at the Development Center was signed by the owners of more than 50% of property abutting the easement to be vacated.

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

**Section 1.** That the following described portion of a utility easement be and the same is hereby vacated:

That portion of LOT 2, BLOCK 1, HILE FIRST SUBDIVISION, situate in the Southeast ¼ of Section 10, Township 5 North, Range 69 West of the 6th P.M., City Of Loveland, Larimer County, Colorado, being more particularly described as follows:

Commencing at the SE corner of said LOT 2; thence N00°07'45"E along the easterly line of said LOT 2 a distance of 157.82 feet to the southeast corner of a 10' utility easement as recorded in said HILE FIRST SUBDIVISION; thence S89°58'39"W along the southerly line of said easement a distance of 122.31 feet to the point of beginning; thence continuing S89°58'39"W along said southerly line a distance of 28.00 feet to the southwest corner of said easement; thence N00°07'45"E along the westerly line of said easement a distance of 10.00 feet to the northwest corner of said easement; thence N89°58'39"E along the northerly line of said easement a distance of 28.00 feet; thence S00°07'45"W a distance of 10.00 feet to the point of beginning.

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance

has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 3.** That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

CITY OF LOVELAND, COLORADO:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney



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**AGENDA ITEM:** 4  
**MEETING DATE:** February 15, 2011  
**TO:** City Council  
**FROM:** Community Partnership Office  
**PRESENTER:** Greg George, Development Services Director

**TITLE:**

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR FEE WAIVERS FOR ONE HOUSING UNIT FOR THE BENEFIT OF LOW INCOME HOUSEHOLDS

**DESCRIPTION:**

Administrative action to consider an ordinance on second reading enacting a supplemental budget and appropriation to the 2011 City budget in the amount of \$11,910 to back fill the enterprise fees waived under the subject resolution. On February 1, 2011, City Council adopted a resolution waiving the estimated total fees due of \$25,971 and adopted the appropriation ordinance on first reading.

**BUDGET IMPACT:**

Yes  No

Total fees for the unit are estimated at \$25,971. Of that amount, the Municipal Codes requires that \$11,910 be transferred from the General Fund to the enterprise funds. Funding for the transfer would be from the Council Capital Reserve. The attached ordinance, if adopted, would appropriate the funds.

**SUMMARY:**

The Loveland-Berthoud Interfaith Hospitality Network will utilize the housing unit to provide transitional housing for families working to transition out of homelessness.

The Loveland Municipal Code permits the City Council to waive capital expansion fees and permit fees on behalf of non-profit entities without transferring funds to cover the cost. The code also requires that any fees that are revenue sources for enterprise funds, such as system impact fees and plant investment fees, must be replenished from another source. The 2011 City of Loveland adopted budget does not include an appropriation to cover the IHN's request.

The estimated amount of such fees is \$11,910. Under the approved resolution and budget appropriation ordinance, all fees would be waived.

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**LIST OF ATTACHMENTS:**

- Ordinance appropriating funds for the backfill of enterprise fees
- 

**RECOMMENDED CITY COUNCIL ACTION:**

Move to adopt on second reading AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR FEE WAIVERS FOR ONE HOUSING UNIT FOR THE BENEFIT OF LOW INCOME HOUSEHOLDS

**REVIEWED BY CITY MANAGER:**



**FIRST READING**            February 1, 2011

**SECOND READING**        February 15, 2011

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR FEE WAIVERS FOR ONE HOUSING UNIT FOR THE BENEFIT OF LOW INCOME HOUSEHOLDS**

**WHEREAS,** THE City has considered and passed Resolution # R-10-2011 waiving certain development fees pursuant to Loveland Municipal Code Section 16.38.075 for the construction of one housing unit by the Interfaith Hospitality Network (IHN); and

**WHEREAS,** system impact fees, raw water fees, tap fees and other utility enterprise fees in the amount of \$11,910 that were waived for the IHN project for transitional housing for homeless families must be reimbursed form the General fund pursuant ot Loveland Municipal Code Section 16.38.075; and

**WHEREAS,** the City has reserved funds on hand not appropriated at the time of the adoption of the City budget for 2011; and

**WHEREAS,** the City Council desires to authorize the expenditure of reserved 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 reserves in the amount of \$11,910 in the General Fund 01 from un-appropriated fund balance within the Council Capital Reserve are available for appropriation. Reserves in the total amount of \$11,910 are hereby appropriated as hereinafter set forth and transferred to the Water, Wastewater, Storm Water, Power and Raw Water Enterprise Funds to reimburse the enterprises for the IHN non-profit housing fee waivers. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 01 - IHN Fee Waiver**

<b>Revenues</b>		
Fund Balance	Council Capital Reserve	11,910
<b>Total Revenue</b>		<b>11,910</b>
 <b>Appropriations</b>		
001-5502-473-07-41	Transfer to Water Enterprise from Council Capital Reserve	4,900
001-5502-473-07-42	Transfer to Wastewater Enterprise	2,590
001-5502-473-07-43	Transfer to Storm Water Enterprise	390
001-5502-473-07-44	Transfer to Power Enterprise	3,030
001-5502-473-07-46	Transfer to Raw Water Enterprise	1,000
<b>Total Appropriations</b>		<b>11,910</b>

**Supplemental Budget  
Water Enterprise Fund 41 - IHN Fee Waiver**

<b>Revenues</b>		
041-0000-373-01-00	Transfer from General Fund	4,900
<b>Total Revenue</b>		<b>4,900</b>
 <b>Appropriations</b>		
<b>Total Appropriations</b>		-

**Supplemental Budget  
Wastewater Enterprise 42 - IHN Fee Waiver**

<b>Revenues</b>		
042-0000-373-01-00	Transfer from General Fund	2,590
<b>Total Revenue</b>		<b>2,590</b>
 <b>Appropriations</b>		
<b>Total Appropriations</b>		-

**Supplemental Budget  
Storm Water Enterprise 43 - IHN Fee Waiver**

<b>Revenues</b>		
043-0000-373-01-00	Transfer from General Fund	390
<b>Total Revenue</b>		<b>390</b>
 <b>Appropriations</b>		
<b>Total Appropriations</b>		-

**Supplemental Budget  
Power Enterprise 44 - IHN Fee Waiver**

<b>Revenues</b>		
044-0000-373-01-00	Transfer from General Fund	3,030
<b>Total Revenue</b>		<b>3,030</b>
 <b>Appropriations</b>		
<b>Total Appropriations</b>		-

**Supplemental Budget  
Raw Water Enterprise 46 - IHN Fee Waiver**

<b>Revenues</b>		
046-0000-373-01-00	Transfer from General Fund	1,000
<b>Total Revenue</b>		<b>1,000</b>
 <b>Appropriations</b>		
<b>Total Appropriations</b>		-

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

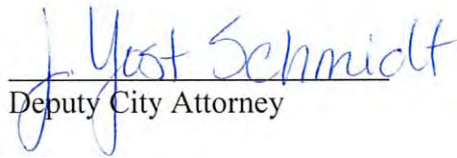
ADOPTED this 15<sup>th</sup> day of February, 2011.

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

ATTEST:

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

APPROVED AS TO FORM:

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



**CITY OF LOVELAND**  
**BUSINESS DEVELOPMENT OFFICE**  
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**AGENDA ITEM:** 5  
**MEETING DATE:** 2/15/2011  
**TO:** City Council  
**FROM:** Betsey Hale, Business Development Office  
**PRESENTER:** Betsey Hale

**TITLE:**

An Ordinance enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for the lodging tax proceeds and the Community Marketing Commission operating and grant budget

**DESCRIPTION:**

This is an administrative action. This second reading ordinance appropriates funding for operational costs and grant allocations using the 2011 projected revenue from the lodging tax proceeds.

**BUDGET IMPACT:**

Yes     No

The Lodging Tax Fund was not included in the 2011 Adopted Budget. Revenues are projected to be similar to 2010 collections.

**SUMMARY:**

The Community Marketing Commission (CMC) met on January 6, 2011 and unanimously voted to recommend that City Council consider and approve an Ordinance to enact the 2011 supplemental budget and appropriation for the operation of the CMC and the distribution of lodging tax funds for grants. This is a follow up to that recommendation. City Council unanimously approved the ordinance on first reading on February 1, 2011.

**LIST OF ATTACHMENTS:**

1. An Ordinance enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for the lodging tax proceeds and operating and grant budget.

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the Ordinance on Second Reading.

**REVIEWED BY CITY MANAGER:**

**FIRST READING**            February 1, 2011

**SECOND READING**        February 15, 2011

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR THE LODGING TAX PROCEEDS AND OPERATING AND GRANT BUDGET**

**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 \$500,000 from City of Loveland Lodging Tax in the Lodging Tax Fund 241, are available for appropriation. \$469,530 of these revenues are appropriated for operating expenses and for grants to outside agencies. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Lodging Tax Fund 241**

<b>Revenues</b>		
241-0000-314-30-00	Lodging Taxes	500,000
<b>Total Revenue</b>		<b>500,000</b>
 <b>Appropriations</b>		
241-1822-409-01-11	Salaries	35,500
241-1822-409-01-44	FICA	2,720
241-1822-409-01-45	Retirement	1,780
241-1822-409-02-11	Office Supplies	1,000
241-1822-409-03-11	Postage	500
241-1822-409-03-21	Printing	500
241-1822-409-03-33	Subscriptions	100
241-1822-409-03-35	Membership Fees	3,000
241-1822-409-03-37	Advertising	1,500
241-1822-409-03-50	Professional Services	115,230
241-1822-409-03-65	Mileage Reimbursement	200
241-1822-409-03-70	Travel	3,000
241-1822-409-03-99	Other Purchased Services	3,000
241-1822-409-04-40	Grants	300,000
241-1822-414-02-22	Food/Special Events	1,500
<b>Total Appropriations</b>		<b>469,530</b>

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

ADOPTED this 15<sup>th</sup> day of February, 2011.

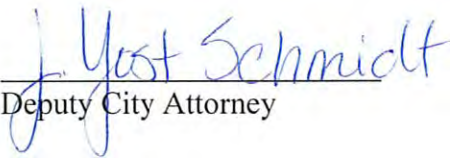
\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:



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

APPROVED AS TO FORM:

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



**CITY OF LOVELAND**  
FINANCE DEPARTMENT

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

**AGENDA ITEM:** 6  
**MEETING DATE:** 2/15/2011  
**TO:** City Council  
**FROM:** Bettie Greenberg, Finance  
**PRESENTER:** Bettie Greenberg

**TITLE:**

- A. Authorize the City Manager to sign the purchase order with the Colorado Risk Sharing Agency (CIRSA) for property and liability coverage.
- B. Public Hearing and consideration of an ordinance on First Reading enacting a supplemental budget and appropriation to the 2011 City of Loveland Budget for property and liability insurance deductibles.

**DESCRIPTION:** These are administrative actions. The item for consideration would allow the City Manager to sign the purchase order for \$960,000 with CIRSA for property and liability insurance coverage, such as Errors & Omissions, Employment Liability, Vehicle Liability, Police Professional Liability, General Liability, and Boiler & Machinery. A supplemental budget appropriation is necessary because staff recently received information that two unanticipated large claims settlements will occur early this year.

**BUDGET IMPACT:**

Yes     No

The funding for the \$400,000 supplemental appropriation ordinance is from the Risk and Insurance reserve. In the 2011 Adopted Budget the reserve was projected to end 2011 with a balance of \$2.9 million.

**SUMMARY:**

The City participates in the Colorado Intergovernmental Risk Sharing Agency (CIRSA) insurance pool for its property and liability insurance. The services provided the City by CIRSA include: adjusting the property and liability claims in accordance with the law, paying claims, and loss control. The loss control services are associated with training programs and safety resources to enhance the City's safety programs. The premiums are calculated based on claims experience, the size of the organization, and performance of the CIRSA pool. The City has a large per claim deductible of \$200,000 for liability claims and \$250,000 for property claims and reimburses CIRSA for claims paid under the City's deductible.

CIRSA's Bylaws incorporate an intergovernmental agreement with the City. The City Manager approves the quote annually, which was done by Don Williams in October for 2011. The City sets up a purchase order annually for payments to CIRSA. Risk Management budgeted \$560,000 for property liability in 2011. The table below demonstrates the components of the amounts paid to CIRSA.

	2009	2010	2011 Budget	2011 Revised
Property/Liability Premium	\$341,712	\$305,480	\$345,000	\$334,309
Estimated Claims	188,148	234,980	215,000	612,411
Total	\$529,860	\$540,460	\$560,000	\$946,720

For 2011, premium increased \$28,829 due primarily to high losses experienced in the CIRSA pool.

The table below is a comparison of claims paid and an estimate of open claims. These open claims include \$150,000 for a 2008 vehicle accident claim that settled and is payable in February and \$185,000 for a claim related to a dispute over water rights due for a development that settled and will be payable in March. In addition to approving the purchase order, a supplemental appropriation from the Risk fund of \$400,000 is required to pay these two claims.

Claim Type	Paid 2009	Paid 2010	Outstanding 1/31/11
Auto Liability	\$55,903	\$46,383	\$196,879
Police Claims	21,115	48,499	173,208
Employment Claims	8,879	9,360	8,518
Power Utility Claims	4,312	59,228	20,239
Water Utility Claims	89,811	15,755	2,583
Miscellaneous Property	0	11,028	0
Liability	1,642	20,085	19,799
Miscellaneous Litigation	6,486	24,642	191,185
Total	\$188,148	\$234,980	\$612,411

The City conducts a request for proposal every three to five years. The last request for proposal was for the 2007 policy year. An RFP will be done this year for the 2012 property and liability coverage.

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**LIST OF ATTACHMENTS:**

1. An ordinance enacting a supplemental budget and appropriation to the 2011 City of Loveland Budget for property and liability insurance deductibles.

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**RECOMMENDED CITY COUNCIL ACTION:**

1. Authorize the City Manager to sign the purchase order with CIRSA for \$960,000 for property and liability insurance and to authorize the supplemental appropriation of \$400,000 out of the Risk Fund for payment of claims.
2. Conduct a Public Hearing and approve the ordinance on First Reading.

**REVIEWED BY CITY MANAGER:**

**FIRST READING**      February 15, 2011

**SECOND READING**      \_\_\_\_\_

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR PROPERTY AND LIABILITY INSURANCE DEDUCTIBLES**

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

**Section 1.** That revenues and/or reserves in the amount of \$400,000 from the Risk and Insurance Reserve in the Risk and Insurance Fund 89 are available for appropriation. Revenues in the total amount of \$400,000 are hereby appropriated for property and liability insurance deductible payments. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Risk & Insurance Fund 081 - Property Insurance**

<b>Revenues</b>		
Fund Balance		400,000
<b>Total Revenue</b>		<b>400,000</b>
<b>Appropriations</b>		
081-1575-409-05-11	Property and Liability Insurance Deductible	400,000
<b>Total Appropriations</b>		<b>400,000</b>

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

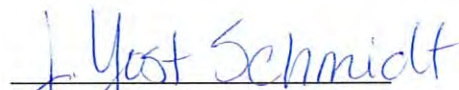
ADOPTED this \_\_\_\_ day of March, 2011.

\_\_\_\_\_  
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:** 7  
**MEETING DATE:** 2/15/2011  
**TO:** City Council  
**FROM:** Public Works (Engineering Division) and Finance  
**PRESENTER:** David Klockeman, City Engineer

**TITLE:** 2011 Street Resurfacing Program, Asphalt Paving Schedule AP (Project ENSR10-AP)

**DESCRIPTION:** This is an administrative action. Extension of an Asphalt Maintenance Contract for Asphalt Paving for the 2011 Street Resurfacing Program to Coulson Excavating Company of Loveland, Colorado in the amount of \$833,000.00 and Authorization for City Manager to execute the contract.

**BUDGET IMPACT:**

Yes     No

Funding is available in the Adopted 2011 Budget.

**SUMMARY:**

Approval of this item extends the 2010 Street Resurfacing Program, Asphalt Paving Schedule AP (Project ENSR10-AP) contract to Coulson Excavating Company of Loveland, Colorado for work to be completed in 2011. The funding for Schedule AP shown below is budgeted in the annual Street Resurfacing Program.

<u>Contractor</u>	<u>Item</u>	<u>Extension Amount</u>
Coulson Excavating Co.	Schedule AP	\$833,000.00

The contract documents for the 2010 Street Resurfacing Program included a clause to allow the extension of the contract for three additional years in one-year periods, if beneficial to both parties. 2011 is the first extension year for the AP contract which covers our asphalt paving and maintenance of City streets, cul-de-sacs and parking areas. In order to accept price increases, the Contractor is required to provide specific information to the City detailing changes in fixed costs associated with the required work. Cost increases are allowed for items that are out of the control of the contractor (i.e. increases in the costs of raw materials and fuel for equipment). These contracts are

especially sensitive to petroleum related price increases. Using the provisions of the contract, the City was able to reach acceptable terms with Coulson Excavating Company with no increase to the 2011 program prices.

**Schedule AP:** The work under the Schedule AP consists of the following: structural overlays to improve the durability of existing streets; reconstruction of failed pavement sections, either patching or replacement; and construction of new pavement sections such as turn lanes or completing partial roads to improve the traffic operation. With a structural overlay, a two-inch asphalt lift is applied to the street surface. A structural overlay, with periodic minor maintenance, normally adds 9 to 12 years of life to a street. The project will also include reconstruction work on streets that have deteriorated beyond maintenance or for utility repair work. The existing pavement section is removed to a depth of four to eight inches and replaced with five to nine inches of asphalt. Reconstructed streets will normally last 15 to 20 years with only periodic minor maintenance (e.g. chip sealing).

Highlights of the Schedule AP include: resurfacing an estimated 87,000 square yards of existing City roadway and reconstruction of an estimated 8,800 square yards of existing City roadway.

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**LIST OF ATTACHMENTS:** NONE

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**RECOMMENDED CITY COUNCIL ACTION:**

Award extension of the Asphalt Paving Contract (Schedule AP) to Coulson Excavating Company of Loveland, Colorado in the amount of \$833,000.00 and authorize the City Manager to execute the contract.

**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

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**AGENDA ITEM:** 8  
**MEETING DATE:** 2/15/2011  
**TO:** City Council  
**FROM:** Ralph Mullinix, Director, Water and Power  
Steve Adams, Manager, Water Utilities  
Larry Howard, Senior Civil Engineer, Water Resources  
**PRESENTER:** Larry Howard

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**TITLE:**

A Resolution of the Loveland City Council authorizing an application to, and contract with, the Northern Colorado Water Conservancy District for beneficial use of 132 acre-feet of Colorado-Big Thompson Project water

**DESCRIPTION:**

This is an administrative action to adopt a resolution authorizing the Director of Water and Power to convert Temporary Use Permits (TUPs) for Colorado-Big Thompson (C-BT) Project water acquired in 2010 into a permanent Section 131 Contract. Upon approval, the City will have the use of the water each year from that point forward.

**BUDGET IMPACT:**

Yes  No

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**SUMMARY:**

The City of Loveland currently holds 132 acre-foot units of Colorado-Big Thompson (C-BT) Project water in the form of temporary use permits, or TUP's. These give the City the temporary right to use the C-BT water associated with these acre-foot units prior to obtaining a contract.

Northern Colorado Water Conservancy District (Northern Water) policy now requires municipal and industrial allottees to convert the TUP's to Section 131 contracts. ("Section 131" refers to that section in the Water Conservancy Act of Colorado, Title 31, Article 43, Colorado Revised Statutes of 1973). Failure to convert the TUP's will result in the District's refusal to deliver the water.



The Loveland Utilities Commission unanimously recommended approval at the January 19, 2010 meeting.

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**LIST OF ATTACHMENTS:**

Resolution

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**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the attached Resolution

**REVIEWED BY CITY MANAGER:**

**RESOLUTION #R-12-2011**

**A RESOLUTION OF THE LOVELAND CITY COUNCIL AUTHORIZING AN APPLICATION TO, AND CONTRACT WITH, THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR BENEFICIAL USE OF 132 ACRE-FEET OF COLORADO-BIG THOMPSON PROJECT WATER**

**WHEREAS**, pursuant to the Water Conservancy Act of Colorado, Title 37, Article 45, C.R.S., the City Council of the City of Loveland, a Colorado municipal corporation, must apply to the Board of Directors of the Northern Colorado Water Conservancy District (“District”) for a contract for the beneficial use of Colorado-Big Thompson Project water within the boundaries of the District on an annually-renewable basis under C.R.S. § 37-45-131 in order to obtain the perpetual right to use said water.

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

**Section 1.** That the City of Loveland has determined to apply for a contract providing for the beneficial use of one hundred thirty-two (132) acre-feet of Colorado-Big Thompson Project water from the District within the boundaries of the District.

**Section 2.** That the Director of the Department of Water and Power is hereby authorized and directed to apply to the Board of Directors of the District for a contract providing to the City the beneficial use of said water upon the terms prescribed by said Board in the manner and form attached hereto as Exhibit A and incorporated herein by reference (“Application”).

**Section 3.** That the Director of the Department of Water and Power is hereby authorized to execute the Application any other documents required by the District to effectuate the contract.

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

ADOPTED this 15<sup>th</sup> day of February, 2011.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
Assistant City Attorney

APPLICATION TO  
NORTHERN COLORADO WATER CONSERVANCY DISTRICT  
FOR ANNUALLY RENEWABLE  
PERPETUAL WATER CONTRACT FOR RIGHT TO USE  
COLORADO-BIG THOMPSON PROJECT WATER  
UNDER C.R.S. 37-45-131

Applicant, City of Loveland, a Colorado municipal corporation acting in its governmental capacity or a water activity enterprise (circle capacity in which applicant is acting), hereby applies to Northern Water, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, for a contract for the right to beneficially use Colorado-Big Thompson Project water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is 132 acre-feet to be used so long as the Applicant fully complies with all of the terms, conditions, and obligations hereinafter set forth.
2. It is understood and agreed by the Applicant that any water provided for use under this contract by the Board of Directors of Northern Water shall be primarily for domestic, irrigation, or industrial use within or through facilities or upon lands owned or served by said Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit from the use of water (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of Northern Water.
3. Applicant agrees that an acre-foot of water as referred to herein is defined as being one-three-hundred-ten-thousandth ( $1/310,000$ ) of the quantity of water annually declared by the Board of Directors of Northern Water to be available for delivery from the water supplies of Northern Water. Applicant agrees that such water shall be delivered from the works of Northern Water at such existing Northern Water delivery point or points as may be specified by the Applicant and that the water delivery obligation of Northern Water shall terminate upon release of water from said works. Further, the Applicant agrees that on November 1 of each year, any water undelivered from the annual quantity made available to the Applicant shall revert to the water supplies of Northern Water.
4. Applicant agrees to pay annually in advance for the amount of water herein provided for use under this contract by the Board of Directors of Northern Water at a price per acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment shall be made, in full, within fifteen (15) days after the date of notice from Northern Water that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each water year thereafter shall be made in advance by the Applicant on or before each October 1, 31 days prior to the start of the water year, at the rate per acre-foot

established by the Board for municipal water use in that water year. For the purpose of this water contract, the water year is defined to be from November 1 to October 31 of the following year.

If an annual payment as herein provided is not made by due date, written notice thereof, by certified mail, will be given by Northern Water to the Applicant at the following address: 200 N. Wilson Avenue, Loveland, Colorado 80537.

Water deliveries shall be suspended as of November 1 of the new water year until payment of the delinquency is made. If payment is not made within ninety (90) days after the date of mailing of said written notice, Applicant shall have no further right, title, or interest under this contract; and the right of use of water as herein made, shall be disposed of at the discretion of the Board of Directors of Northern Water. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above Northern Water's actual expense in terminating and disposing of the contract right of use.

5. This right of use shall be perpetual on an annually renewable basis. If the annual payment is made as provided in this application, the right of use shall be automatically renewed another water year without any further notice of Northern Water; if the annual payment is not timely made, as provided above, the right of use shall terminate.
6. Applicant agrees that the water allocation shall be beneficially used for the purposes and in the manner specified herein, and that this right of use is made for the exclusive benefit of the Applicant and shall not inure to the benefit of any successors or assigns of said Applicant without prior specific approval of the Board of Directors of Northern Water.
7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; the rules, regulations and policies of the Board of Directors of Northern Water as they now exist or as they exist in the future; and by the Repayment Contract of July 5, 1938, between Northern Water and the United States and all amendments thereof and supplements thereto.
8. Applicant agrees, as a condition of this contract, to enter into an "Operating Agreement" with Northern Water if and when the Board of Northern Water finds and determines that such an agreement is required by reason of additional or special services requested by the Applicant and provided by Northern Water. Said agreement may contain, but not be limited to, provision for water delivery at times or by means not provided within the terms of standard contracts of Northern Water; additional annual monetary consideration for extension of Northern Water delivery services and for additional administration, operation and maintenance costs; or for other costs to Northern Water which may arise through provision of services to the Applicant.

9. Acquisition of this annually renewable perpetual right of use water contract for the Colorado-Big Thompson Project water from Northern Water and the right to the beneficial use of water thereunder by the Applicant necessary; the continued acquisition and use of this water supply is essential for the well-being of the community and for the preservation of the public peace, health, and safety; and the adequate protection of the health of the inhabitants of the community.
  
10. The governing body of Applicant has duly approved this Application in accordance with all legally required procedures.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2011.

\_\_\_\_\_  
CITY OF LOVELAND

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(SEAL)

ORDER ON APPLICATION

Application having been made by or on behalf of all parties interested in this allocation of the right to use Colorado-Big Thompson Project water and after a Hearing by the Board, it is hereby ORDERED that the above application be granted and an allotment contract for 132 acre-feet of water is hereby made to the City of Loveland, a Colorado municipal corporation, for the beneficial uses set forth in said application upon the terms, conditions, and manner of payment as therein specified.

NORTHERN COLORADO WATER  
CONSERVANCY DISTRICT

By \_\_\_\_\_  
President

I hereby certify that the above Order was entered by the Directors of Northern Colorado Water Conservancy District on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2011.

ATTEST: \_\_\_\_\_  
Secretary



**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:** 2/15/2011  
**TO:** City Council  
**FROM:** Keith Reester, Fort Collins Loveland Airport  
**PRESENTER:** Keith Reester, Fort Collins Loveland Airport Interim Director

**TITLE:**

1. A Resolution authorizing the City Manager to execute a Grant Agreement with the Colorado Department of Transportation, Colorado Aeronautical Board (CDAG #11-FNL-01) for funding pertaining to the Fort Collins-Loveland Municipal Airport
2. A Resolution authorizing the City Manager to execute a Grant Agreement with the Federal Aviation Administration for a discretionary grant of AIP Funds for runway improvements at the Fort Collins-Loveland Municipal Airport
3. Public Hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2011 Fort Collins-Loveland Municipal Airport budget to increase the 2011 Colorado Department of Transportation–Division of Aeronautics grant and appropriate local funds from reserves to provide the local match for a 2011 FAA Airport Improvement Program (AIP) grant.

**DESCRIPTION:**

1. This is an administrative action. The Fort Collins Loveland Airport receives grant funds from the CDOT – Division of Aeronautics. The grants support the FAA and local capital improvement plans. The 2011 grant is \$400,000. The resolution accepts the grant and authorizes the City Manager to execute the contract documents.
2. This is an administrative action. The Fort Collins Loveland Airport (FNL) receives grant funds from the Federal Aviation Administration (FAA). As a commercial service airport with over 10,000 enplaned passengers per year the airport receives an entitlement grant of \$1,000,000. In 2-3 year cycles FNL also receives discretionary grants to tackle large FAA approved airside related projects. It is anticipated that in 2011 FNL will be granted up to



\$7,000,000 from the FAA to support a runway rehabilitation project. This resolution authorizes the City Manager to execute the grant award contracts with the FAA.

3. This is an administrative action. The Fort Collins Loveland Airport receives grant funds from the Colorado Department of Transportation – Division of Aeronautics. The grant provides funds required to match an anticipated 2011 Federal Aviation Administration (“FAA”) Airport Improvement Program grant for runway rehabilitation and for other local capital improvement plans. The 2011 state grant is \$400,000. This action appropriates funding from the state grant to the airport capital program. The 2011 budget already includes \$250,000 appropriated from this state grant; this action appropriates the additional \$150,000.

The Fort Collins Loveland Airport (FNL) also receives grant funds from the FAA. This action appropriates \$197,000 in Passenger Facility Charges (PFC) collected from each ticketed passenger as part of the local match for the anticipated 2011 FAA discretionary grant.

**BUDGET IMPACT:**

Yes     No

The local match is from reserves accumulated from the collection of Passenger Facility Charges from each ticketed passenger at the Airport.

**SUMMARY:**

**CDOT GRANT AGREEMENT**

The Fort Collins Loveland Airport receives grant funds from the CDOT – Division of Aeronautics. The grants support the FAA and local capital improvement plans. The 2011 grant is \$400,000. The grant funds normally support 50% of the required local 5% match for FAA Airport Improvement Program grants. In 2011 the airport is projected to be granted up to \$7,000,000 from the FAA to support a runway rehabilitation project.

The \$400,000 will be used for:

\$184,210	50% of FAA Local Match
\$ 15,790	Paint Striper
\$ 50,000	General Aviation Ramp Repair
\$150,000	Terminal Modular Utilities and Design

The contractual local match is \$291,265.00. The balance of this is made up of cash and in-kind contributions:

\$184,210	50% of FAA Local Match (Collected Passenger Facility Charges (PFC))
\$ 3,000	Local share paint striper*

\$ 5,555 Local share General Aviation Ramp Repair\*  
 \$ 98,500 Local share modular/utility design and construction work\*

\*Funded through existing FNL capital reserves

This \$400,000 grant is \$150,000 greater than the past grants of \$250,000 from CDOT. The funds that support the Division of Aeronautics, and the grant program, are solely derived from fees and air fuel taxes throughout Colorado, the fund and division are 100% self-supporting and receive no State of Colorado general fund dollars.

### **FAA AWARD EXECUTION**

The Fort Collins Loveland Airport receives grant funds from the Federal Aviation Administration (FAA). As a commercial service airport with over 10,000 enplaned passengers per year the airport receives an entitlement grant of \$1,000,000. In 2-3 year cycles FNL also receives discretionary grants to tackle large FAA approved air-side related projects. It is anticipated that in 2011 FNL will be granted up to \$7,000,000 from the FAA to support a runway rehabilitation project.

This action authorizes the City Manager to execute the grant agreements with the FAA pending final approval of funds by the United States Congress and FAA. Due to the nature of the continuing resolutions supporting FAA by Congress, it is probable that the two city owners of FNL will only have 2-5 days to act on signing the federal grant authorization contract if the FAA awards the grant. The local match for the grant is paid 50% by the CDOT Aeronautics grant and Passenger Facility Charges (PFC) collected from FNL enplaned passengers.

### **FAA/PFC Supplemental Appropriation**

The Fort Collins Loveland Airport also receives grant funds from the FAA. This action appropriates \$197,000 in Passenger Facility Charges (PFC) collected from each ticketed passenger at FNL and currently held in reserves as part of the local match for the anticipated grant. The current PFC is \$4.50 per passenger. The PFC funds will be partnered with the funds from the State of Colorado Division of Aeronautics to provide the 5% local match for the 95% grant from the FAA.

It is anticipated that FNL will bid the contract schedules for this runway rehabilitation project in March, 2011 with an award in April after FAA review. The project will be completed with a 16-day and 20-hour airport closure in the second half of August. The project will rehabilitate the existing runway, but does not lengthen or increase the capacity of the existing facility.

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### **LIST OF ATTACHMENTS:**

1. Resolution authorizing the City Manager to execute a Grant Agreement with the Colorado Department of Transportation, Colorado Aeronautical Board (CDAG #11-FNL-01)
  2. Exhibit A - CDOT, Colorado Aeronautical Board Grant Agreement
  3. A Resolution authorizing the City Manager to execute a Grant Agreement with the Federal Aviation Administration for a Discretionary Grant of AIP Funds
  4. An ordinance enacting a supplemental budget and appropriation to the 2011 Fort Collins-Loveland Municipal Airport budget to increase the 2011 Colorado Department of Transportation–Division of Aeronautics grant and appropriate local funds from reserves to provide the local match for a 2011 FAA Airport Improvement Program (AIP) grant.
- 

**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:**

**RESOLUTION # R-13-2011**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION, COLORADO AERONAUTICAL BOARD (CDAG #11-FNL-01) FOR FUNDING PERTAINING TO THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT**

**WHEREAS**, the General Assembly of the State of Colorado has declared in Title 43 of the Colorado Revised Statutes, Article 10, (“the Act”) that: “...there exists a need to promote the safe operation and accessibility of general aviation and intrastate commercial aviation in this state; that improvements to general aviation transportation facilities will promote diversified economic development across the state; and that accessibility to airport facilities for residents of this state is crucial in the event of a medical or other type of emergency.”; and

**WHEREAS**, the Act created the Colorado Aeronautical Board (“the Board”) to establish policy and procedures for distribution of monies in the Aviation Fund and created the Division of Aeronautics (“the Division”) to carry out the directives of the Board, including technical and planning assistance to airports and the administration of the state aviation system grant program; and

**WHEREAS**, any entity operating a public-accessible airport in the state may file an application for and be a recipient of a grant to be used solely for aviation purposes and the Division is authorized to assist such airports as request assistance by means of a Resolution passed by the applicant’s duly-authorized governing body, which understands that all funds shall be used exclusively for aviation purposes and that it will comply with all grant procedures and requirements as defined in the Division’s Aviation Grant Manual, revised 2009 (“the Manual”); and

**WHEREAS**, the Cities of Loveland and Fort Collins have applied for the grant (CDAG #11-FNL-01) identified in the grant agreement attached hereto as Exhibit A and incorporated herein by this reference (the “Grant Agreement”).

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

**Section 1.** That the Council of the City of Loveland (“the Council”), as one of the duly authorized governing bodies of the applicant for the grant identified in the Grant Agreement, hereby formally requests assistance from the Colorado Aeronautical Board and the Division of Aeronautics in the form of a state aviation system grant and states that the grant shall be used solely for aviation purposes, as determined by the State, and as generally described in the application.

**Section 2.** That the City of Loveland makes a commitment (a) to keep the Airport facility accessible to, and open to, the public during the entire useful life of the grant funded

improvements/equipment; or (b) to reimburse the Division for any unexpired useful life of the improvements/equipment on a pro-rata basis. By signing the Grant Agreement, the City of Loveland further commits to keep open and accessible for public use all grant funded facilities, improvements and services for their useful life, as determined by the Division and stated in Grant Agreement.

**Section 3.** That the City hereby designates Larry Mack, Airport Operations Manager, as the Project Director, as described in the Manual, authorizes the Project Director to act in all matters relating to the project proposed in the grant application, and authorizes the City Manager to execute the Grant Agreement on behalf of the City; and

**Section 4.** That the City of Loveland has appropriated or will appropriate or otherwise make available in a timely manner its share of all funds that are required to be provided by the Cities under the terms and conditions of the Grant Agreement.

**Section 5.** That the City of Loveland, subject to the foregoing, hereby accepts all guidelines, procedures, standards, and requirements described in the Manual as applicable to the performance of the grant work, and approves Grant Agreement.

**Section 6.** That this Resolution shall be effective as of the date and time of its adoption.

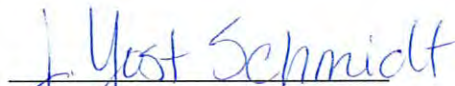
ADOPTED this 15<sup>th</sup> day of February, 2011.

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

ATTEST:

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

APPROVED AS TO FORM:

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

# EXHIBIT A

CDOT-Aeronautics Division  
Routing #  
CDAG # 11-FNL-01  
SAP PO#  
CMS #

**STATE OF COLORADO**  
**Colorado Department of Transportation**  
**Colorado Aeronautical Board**  
**Grant Agreement**  
**with**  
**Cities of Loveland and Fort Collins**

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**1. PARTIES**

This Grant Agreement (hereinafter called “Grant”) is entered into by and between **Cities of Loveland & Fort Collins** (hereinafter called “Grantee”), and the STATE OF COLORADO acting by and through the Department of Transportation – Aeronautics Division (hereinafter called the “State” or ”Division”). The Sponsors represent and warrant to the State that they have the authority to act on behalf of the Fort Collins –Loveland Municipal Airport ( the “Airport”) and to bind the Airport to the provisions in this Grant (the Sponsors and the Airport are collectively hereinafter called the “Grantee”).

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.**

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). Except as provided in Section 7 (B) (v), the State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3. RECITALS**

**A. Authority, Appropriation, And Approval**

Authority to enter into this Grant exists in C.R.S §43-10-108.5 and funds have been budgeted, appropriated and otherwise made available pursuant to C.R.S. §39-27-112(2)(b) and C.R.S. §43-10-109 and a sufficient unencumbered balance thereof remains available in the Aviation Fund for encumbering and subsequent payment of the Agreement under Vendor IDs 5100012 (City of Loveland), & 2000023 (City of Fort Collins) Fund 160, GL No. 4518000010, and Organizational Code VDG11-033. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

**B. Consideration**

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

**C. Purpose**

The purpose of this Grant is to promote aviation at Colorado public use airports for the betterment of the Colorado Aviation System.

**D. References**

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

**4. DEFINITIONS**

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

**A. Budget**

“Budget” means the budget for the Work described in **Exhibit A**

**B. Evaluation**

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in §6 and §18.

**C. Exhibits and other Attachments**

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Colorado Discretionary Aviation Grant Program Application), and **Exhibit B** (Resolution in accordance with the General Assembly of the State of Colorado declared in CRS §43-10-101).

**D. Goods**

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

**E. Grant**

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

**F. Grant Funds**

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

**G. Manual**

“Manual” refers to the Aviation Grants Management Manual as approved by the Colorado Aeronautical Board.

**H. Party or Parties**

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

**I. Program**

“Program” means the Colorado Discretionary Aviation Grant program that provides the funding for this Grant.

**J. Review**

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and **Exhibit A**.

**K. Services**

“Services” means the required services to be performed by Grantee pursuant to this Grant.

**L. Work**

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A** including the performance of the Services and delivery of the Goods. The Work is further described in the plans and specifications for the project as approved by the Federal Aviation Administration (“FAA”).

**M. Work Product**

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

**5. TERM and EARLY TERMINATION.****A. Initial Term-Work Commencement**

The Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on **June 30, 2014** unless sooner terminated or further extended as specified elsewhere herein. Grant funds remaining following the completion of the project or the expiration of the contract will be returned to the Aviation Fund.

**6. STATEMENT OF WORK****A. Brief Project Description**

Element A: Participate in Federally Funded Runway 15/33 Rehab  
 Element B: General Aviation Ramp Rehab and Repair  
 Element C: Utility upgrade  
 Element D: Paint Striping Machine

**B. Completion**

Grantee shall complete the Work and its other obligations as described herein in **Exhibit A** and in the plans and specifications for the project as approved by the FAA on or before June 30, 2014. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

**C. Goods and Services**

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State. Grantee is subject to its local procurement standards. If none exist, Grantee is subject to the general procurement standards of the State.

**D. Employees**

All persons employed by Grantee or Sub-grantees shall be considered Grantee’s or Sub-grantees’ employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

**E. Federal Laws, Rules and Regulations**

If the Grant Funds involve Federal funding, Grantee understands and agrees that Federal laws, rules and regulations will control the Work and its implementation. Unless a written waiver is granted, Grantee agrees to comply with all required Federal laws, rules and regulations applicable to the Work, in addition to all State requirements.

**7. PAYMENTS TO GRANTEE**

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

**A. Maximum Amount**

The maximum amount payable under this Grant to Grantee by the State is 2.5% of the project cost not to exceed **\$184,210** for Element A, 90% of the project cost not to exceed **\$50,000** for Element B, 60% of the project cost not to exceed **\$150,000** for Element C, and 84% of the project cost not to exceed **\$15,790** for Element D, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid



obligated balance of the Grant as set forth in **Exhibit A**. The State and Grantee shall participate in providing the Grant Amount as follows:

State: \$400,000.00  
 Local: \$291,265.00  
 Federal: \$7,000,000.00

## **B. Payment**

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

Any advance payment allowed under this Grant shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

### **ii. Interest**

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

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

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated or otherwise become unavailable for this Grant, the State may terminate it in whole or to the extent of funding reduction, without further liability, after providing notice to Grantee in accordance with §16.

### **iv. Erroneous Payments**

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

### **v. Retroactive Payments**

The State shall pay Grantee for costs or expenses incurred or performance by the Grantee prior to the Effective Date, only if (1) the Grant Funds involve Federal funding and (2) Federal laws, rules and regulations applicable to the Work provide for such retroactive payments to the Grantee. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

## **C. Use of Funds**

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit A**. This shall not be used solely for aviation purposes as defined in CRS §43-10-102 (3) and this Grant shall not be used for the subsidization of airlines. Misuse of Grant Funds, including subsidization for airlines, may result in forfeiture.

## **D. Matching Funds**

Grantee shall provide matching funds as provided in **Exhibit A**. Grantee 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.

**E. Payment Compliance**

All Grant reimbursements shall comply with Title 49 Part 18 of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Additionally, Grantee shall only be reimbursed for costs allowable under 2 CFR Part 125, Appendix A.

**F. Payment Remittance**

Sponsor requests that all Grant Funds be distributed by the State to the Airport, Vendor ID 2000212.

**8. REPORTING - NOTIFICATION**

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §18, if applicable.

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

Grantee shall submit a report to the State upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in the Manual.

**B. Litigation Reporting**

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

**C. Noncompliance**

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

**D. Subgrants**

Copies of any and all subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

**9. GRANTEE RECORDS**

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

**A. Maintenance**

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

**B. Inspection**

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with

Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or inequity in lieu of or in conjunction with such corrective measures.

**C. Monitoring**

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

**D. Final Audit Report**

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

**10. CONFIDENTIAL INFORMATION-STATE RECORDS**

Grantee shall comply with the provisions on this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

**A. Confidentiality**

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

**B. Notification**

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

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

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

**D. Disclosure-Liability**

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees pursuant to this §10.

**11. CONFLICTS OF INTEREST**

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

State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

## **12. REPRESENTATIONS AND WARRANTIES**

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

### **A. Standard and Manner of Performance**

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

### **B. Legal Authority – Grantee and Grantee's Signatory**

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

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

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

## **13. INSURANCE**

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

### **A. Grantee**

#### **i. Public Entities**

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

#### **ii. Non-Public Entities**

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to sub-Grantees that are not "public entities".

### **B. Certificates**

Grantee and all Sub-grantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Sub-grantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other

time during the term of this Grant or any sub-grant, Grantee and each Sub-grantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

#### **14. BREACH**

##### **A. Defined**

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

##### **B. Notice and Cure Period**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

#### **15. REMEDIES**

If Grantee is in breach under any provision of this Grant the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B); provided that the State may terminate pursuant to §15(B) without a breach. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

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

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

##### **i. Obligations and Rights**

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

##### **ii. Payments**

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

##### **iii. Damages and Withholding**

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

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

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

##### **iii. Method and Content**

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

##### **iv. Obligations and Rights**

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

##### **v. Payments**

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

#### **C. Remedies Not Involving Termination**

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

##### **vi. Suspend Performance**

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

##### **vii. Withhold Payment**

Withhold payment to Grantee until corrections in until corrections in Grantee's performance are satisfactorily made and completed.

##### **viii. Deny Payment**

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

##### **ix. Removal**

Demand removal of any of Grantee's employees, agents, or Sub-grantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

##### **x. Intellectual Property**

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

**16. NOTICES and REPRESENTATIVES**

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

**A. State:**

TK Gwin
CDOT-Division of Aeronautics
5126 Front Range Parkway
Watkins, CO 80137
303-261-4418
tk.gwin@dot.state.co.us

**B. Grantee:**

Larry Mack
Fort Collins-Loveland Airport
4900 Earhart Road
Loveland, CO 80538
970-962-2853
mackl@ci.loveland.co.us

**17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works.

**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 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.

**18. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §18 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation

and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

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

## **19. GENERAL PROVISIONS**

### **A. Assignment and Subgrants**

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or Sub-grantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting arrangements and performance.

### **B. Attribution**

In all publications and publicly funded projects under this Grant a credit line shall be included that reads: "This project paid for in part by a Colorado Discretionary Aviation Grant from the Colorado Department of Transportation, Division of Aeronautics".

### **C. Binding Effect**

Except as otherwise provided in §19(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.

### **D. Captions**

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

### **E. Counterparts**

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

### **F. Entire Understanding**

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

### **G. Indemnification-General**

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the



Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

#### **H. Jurisdiction and Venue**

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

#### **I. Modification**

##### **xi. By the Parties**

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

##### **xii. By Operation of Law**

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

#### **J. Order of Precedence**

The provisions of this Grant shall govern the relationship of the State and Grantee. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- xiii.** Colorado Special Provisions,
- xiv.** The provisions of the main body of this Grant,
- xv.** Exhibit A,
- xvi.** Exhibit B,

#### **K. Severability**

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

#### **L. Survival of Certain Grant Terms**

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

#### **M. Waiver**

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

## **20. COLORADO SPECIAL PROVISIONS**

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

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

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

### **B. 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.

### **C. 3. GOVERNMENTAL IMMUNITY.**

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

**D. 4. INDEPENDENT CONTRACTOR**

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

**E. 5. COMPLIANCE WITH LAW.**

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

**F. 6. CHOICE OF LAW.**

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

**G. 7. BINDING ARBITRATION PROHIBITED.**

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

**H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. 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 Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

**J. 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.

**K. 11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.**

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

**L. 12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

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

SPs Effective 1/1/09

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

21. SIGNATURE PAGE

**THE PARTIES HERETO HAVE EXECUTED THIS GRANT**

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

<p align="center"><b>GRANTEE</b></p> <p><b>City of Loveland</b> By: _____ _____ Print Name of Authorized Individual Title: _____ _____ Print Title of Authorized Individual</p> <p align="center"><i>William A. Currell</i> _____ *Signature</p> <p>Date: _____</p>	<p align="center"><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b> Colorado Department of Transportation Donald E. Hunt – Executive Director</p> <p>By: David C. Gordon Aeronautics Division Director</p> <p align="center">_____ *Signature</p> <p>Date: _____</p>
<p align="center"><b>JOINT GRANTEE</b></p> <p><b>City of Fort Collins</b> By: _____ _____ Print Name of Authorized Individual Title: _____ _____ Print Title of Authorized Individual</p> <p align="center">_____ *Signature</p> <p>Date: _____</p>	<p align="center"><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

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

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

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

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

Colorado Department of Transportation

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



# COLORADO DISCRETIONARY AVIATION GRANT APPLICATION



## APPLICANT INFORMATION

<b>APPLICANT AGENCY</b> (City, County, Authority or other) Cities of Fort Collins and Loveland--- Fort Collins/Loveland Airport		
<b>MAILING ADDRESS</b> 4900 Earhart Road	<b>CITY</b> Loveland	<b>ZIP CODE</b> 80538-
<b>PHONE NUMBER</b> (970) 962-2853	<b>FAX</b> (970) 962-2855	<b>EMAIL</b> mackl@ci.loveland.co.us
<b>PROJECT PERIOD</b> (mm/dd/yyyy)	<b>FROM</b> 1/1/2011	<b>TO</b> 12/31/2011

*Scott Brownlee - Operations Manager*  
Signature / Sponsoring Agency, Title

11/5/2010  
Date (mm/dd/yyyy)

### RETURN ORIGINAL APPLICATION TO:

Colorado Department of Transportation  
Division of Aeronautics  
5126 Front Range Parkway  
Watkins, CO 80137

**Telephone:** (303) 261-4418  
**FAX:** (303) 261-9608

Or email to:  
[scott.brownlee@dot.state.co.us](mailto:scott.brownlee@dot.state.co.us)

### PROJECT SUMMARY Additional Information Submitted with Application

Match for FAA Entitlement Grant and Discretionary Grant  
General Aviation Ramp Pavement Rehabilitation  
Terminal/Modular Building Utility Upgrades  
Runway/Taxiway Pavement Paint Striping Machine

### PROJECT FUNDING SUMMARY

CDAG \$400,000	Local \$291,500	Other \$7,000,000
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<b>TOTAL \$7,721,500.00</b>
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**PROJECT SUMMARY AND GRANT PROPOSAL**

**IDENTIFY THE EXISTING PROBLEM**  Additional Information Submitted with Application

1. The State funds will provide half of the airport's match for a \$1 million FAA Entitlement Grant and \$6 million FAA Discretionary Grant to rehabilitate Runway 15/33 and Safety Grading
2. Additional money will be used for:
  - A. The rehabilitation of the General Aviation Ramp Pavement
  - B. The upgrades of the utilities for the expansion of the Terminal/Modular Buildings used for the Commercial Airline Traveler
  - C. The purchase of a Paint Striping Machine

**DEFINE THE PROPOSED PROJECT IN DETAIL**

*\*INCLUDE LAYOUT SKETCH*

Additional Information Submitted with Application

1. The FAA scope of work will consist of rehabilitation of Runway 15/33 and Runway Safety Area improvements and rehabilitation of the segmented circle.
2. The General Aviation Ramp is in dire need of rehabilitation in various areas. The State Grant monies would be used to repair and patch several places until a FAA project scheduled for 2012
3. The additional airline service has required the airport to expand the secured holding area for screened passengers. The additional Modular Building unit will require upgrades in the utilities serving the existing Terminal/Modular Building complex. These utility upgrades will be used in the future permanent Terminal redesign and expansion eliminating the modular design.
4. The purchase of a pavement paint striping machine

**PART A - FUNDING RESOURCES**

1. CDAG Grant Funds Requested		\$400,000
2. Local In-Kind	\$0	
3. Local Cash	\$291,265	
4. Federal Funds	\$7,000,000	
5. Other Funds Identify Source:	\$	
6. Total Other Funds (Items 2, 3, 4, 5)	\$7,291,265	
7. Project Funding Summary (Total items 1 through 6)		<b>\$7,691,265</b>

**PART B - BUDGET SUMMARY**

Define individual elements of each budget item

	CDAG Share	%	Other Sources	%	TOTAL
<b>Capital Equipment</b>					
EZ-Liner Paint Striper	\$15,790.00	84.0%	\$3,000.00	15.9%	\$18,790.00
					\$0.00
					\$0.00
<b>Construction</b>					
FAA AIP 29	\$184,210.00	2.5%	\$7,184,210.00	97.5%	\$7,368,420.00
GA Ramp Rehab and Repair	\$50,000.00	90.0%	\$5,555.00	10.0%	\$55,555.00
Terminal/Modular Utility	\$150,000.00	60.3%	\$98,500.00	39.6%	\$248,500.00
<b>Other</b>					
					\$0.00
					\$0.00
					\$0.00
<b>PROJECT GRAND TOTAL</b>					<b>\$7,691,265.00</b>

**FINANCIAL INFORMATION FOR APPLICANT AGENCY**

Annual Budget for Applicant Airport (if applicable)	\$850,000
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**LOCATION OF PROJECT FISCAL RECORDS**

NAME Fort Collins/Loveland Airport		
MAILING ADDRESS 4900 Earhart Road		CITY, STATE Loveland, CO
ZIP CODE 80538-		
PHONE NUMBER (970) 962-2853	FAX (970) 962-2855	EMAIL mackl@ci.loveland.co.us

**ON-SITE PROJECT DIRECTOR**

NAME Larry Mack		
MAILING ADDRESS same as above		CITY, STATE
ZIP CODE -		
PHONE NUMBER ( ) -	FAX ( ) -	EMAIL

RESOLUTION

WHEREAS:

The General Assembly of the State of Colorado declared in Title 43 of the Colorado revised Statutes, Article 10, 1991 in C.R.S. §43-10-101 (the Act) "... that there exists a need to promote the safe operations and accessibility of general aviation in this state; that improvements to general aviation transportation facilities will promote diversified economic development across the state; and that accessibility to airport facilities for residents of this state is crucial in the event of a medical or other type of emergency..."

The Act created the Colorado Aeronautical Board ("the Board") to establish policy and procedures for distribution of monies in the Aviation Fund and created the Division of Aeronautics ("the Division") to carry out the directives of the Board, including technical and planning assistance to airports and the administration of the state aviation system grant program. SEE C.R.S. §43-10-103 and C.R.S. §43-10-105 and C.R.S. §43-10-108.5 of the Act.

Any entity operating a public-accessible airport in the state may file an application for and be recipient of a grant to be used solely for aviation purposes. The Division is authorized to assist such airports as request assistance by means of a Resolution passed by the applicant's duly-authorized governing body, which understands that all funds shall be used exclusively for aviation purposes and that it will comply with all grant procedures and requirements as defined in the Division's Aviation Grant Management Manual, revised 2009, ("the Manual").

NOW, THEREFORE, BE IT RESOLVED THAT:

**The Cities of Loveland and Fort Collins**, as a duly authorized governing body of the grant applicant, hereby formally requests assistance from the Colorado Aeronautical Board and the Division of Aeronautics in the form of a state aviation system grant. **The Cities of Loveland and Fort Collins** states that such grant shall be used solely for aviation purposes, as determined by the State, and as generally described in the Application.

Each airport-operating entity that applies for and accepts a grant that it thereby makes a COMMITMENT

- a) to keep the airport facility accessible to, and open to, the public during the entire useful life of the grant funded improvements/ equipment; or b) to reimburse the Division for any unexpired useful life of the improvements/ equipment, or a pro-rata basis.

By signing this grant agreement, the applicant commits to keep open and accessible for public use all grant funded facilities, improvements and services for their useful life, as determined by the Division and stated in the Grant Agreement.

FURTHER BE IT RESOLVED:

That the **Cities of Loveland and Fort Collins** hereby designates **Larry Mack** as the Project Director, as described in the Manual and authorizes the Project Director to act in all matters relating to the work project proposed in the Application in its behalf, including executions of the grant contract.

FURTHER:

**The Cities of Loveland and Fort Collins** has appropriated or will appropriate or otherwise make available in a timely manner all funds, if any, that are required to be provided by the Applicant under the terms and conditions of the grant contract.

FINALLY:

**The Cities of Loveland and Fort Collins** hereby accepts all guidelines, procedures, standards and requirements described in the Manual as applicable to the performance of the grant work and hereby approves the grant contract submitted by the State, including all terms and conditions contained therein.



for The City of Loveland, Grantee

for The City of Fort Collins, Joint Grantee

ATTEST



**RESOLUTION # R-14-2011****A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE FEDERAL AVIATION ADMINISTRATION FOR A DISCRETIONARY GRANT OF AIP FUNDS FOR RUNWAY IMPROVEMENTS AT THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT**

**WHEREAS**, the Cities of Fort Collins and Loveland jointly own and operate the Fort Collins-Loveland Municipal Airport (the "Airport"); and

**WHEREAS**, the Cities, by resolution, have adopted the Fort Collins-Loveland Municipal Airport Master Plan; and

**WHEREAS**, the Federal Aviation Administration provides grant funding to eligible airports to enable those airports to pursue capital improvements included within an adopted Airport Master Plan; and

**WHEREAS**, the Cities have applied for a discretionary capital funding grant under the Airport Improvement Program (AIP) from the Federal Aviation Administration (FAA) in the amount of \$7M (the "Grant") to fund a capital construction project to rehabilitate the Airport's primary runway (the "Project") pursuant to a grant agreement in a form consistent with prior FAA grants (the "2011 Discretionary Grant Agreement"); and

**WHEREAS**, the Project is identified in the Fort Collins-Loveland Municipal Airport Master Plan as a first priority project; and

**WHEREAS**, the City of Loveland has enacted a supplemental appropriation to the Airport's 2011 budget to increase total appropriations of State Funds to \$400,000.00, which funds are to be provided by the Colorado Department of Transportation Colorado Aeronautical Board under Colorado Discretionary Aviation Grant #11-FNL-01, thereby appropriating the State Funds required for the Project by the Grant; and

**WHEREAS**, the City of Loveland has also appropriated \$291,265.00 as a part of the Airport's 2011 budget to be used as local matching funds for the Project, thereby appropriating the local matching funds for the Project required by the Grant; and

**WHEREAS**, the City of Loveland intends to enact a further supplemental appropriation of \$7M or the amount of the Grant, whichever is less, to the Airport's 2011 budget if the Grant is awarded by the FAA; and

**WHEREAS**, the FAA may require acceptance of the Grant, if offered, and execution of the Grant Agreement in a very short time frame and the City desires to facilitate such acceptance by the adoption of this Resolution.

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

**Section 1.** That the 2011 Discretionary Grant Agreement, which shall be in a form consistent with prior FAA grants, is hereby approved.

**Section 2.** That the City Manager is authorized, following consultation with the City Attorney, to modify the 2011 Discretionary Grant Agreement in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

**Section 3.** That the City Manager and the City Clerk are hereby authorized and directed to execute the 2011 Discretionary Grant Agreement on behalf of the City of Loveland if the Grant is awarded by the FAA.

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

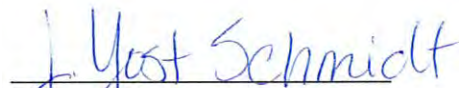
**ADOPTED** this 15<sup>th</sup> day of February, 2011.

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

**ATTEST:**

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

APPROVED AS TO FORM:

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

FIRST READING      February 15, 2011

SECOND READING      \_\_\_\_\_

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 FORT COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET TO INCREASE THE 2011 COLORADO DEPARTMENT OF TRANSPORTATION-DIVISION OF AERONAUTICS GRANT AND APPROPRIATE LOCAL FUNDS FROM RESERVES TO PROVIDE THE LOCAL MATCH FOR A 2011 FAA AIRPORT IMPROVEMENT PROGRAM (AIP) GRANT.**

**WHEREAS**, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the Airport 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 2011 Airport budget to increase the appropriated amount of the 2011 CDOT Colorado Division of Aeronautics Grant and appropriate the balance of the local matching funds for this Grant and the companion 2011 FAA AIP Grant, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That revenues and/or reserves in the amount of \$150,000 from a State Division of Aeronautics Grant and \$197,000 from Passenger Facility Charges that have been collected and held in reserve in the Airport Fund 018 are available for appropriation. Revenues in the total amount of \$347,000 are hereby appropriated for the local match to the State Grant and a pending 2011 FAA Airport Improvement Project Grant for a runway rehabilitation project as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Airport Fund 018 - Airport Improvement Program Grant Match**

**Revenues**

Fund Balance	197,000
018-0000-302-04-00-AP1101 Contribution - State of Colorado	150,000

**Total Revenue** **347,000**

**Appropriations**

018-5503-409-09-60-AP1101 Construction	150,000
018-5503-409-09-60-AP1102 Construction	197,000

**Total Appropriations** **347,000**

**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).

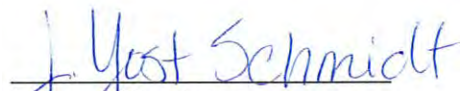
ADOPTED this \_\_\_\_ day of March, 2011.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**CITY OF LOVELAND**  
FINANCE DEPARTMENT

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

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**AGENDA ITEM:** 10  
**MEETING DATE:** 2/15/2011  
**TO:** City Council  
**FROM:** Renee Wheeler, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

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**TITLE:**

Public Hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2010 City of Loveland budget for expenses related to the cost of fuel and parts for the operation of the City fleet.

**DESCRIPTION:**

This is an administrative action. The ordinance appropriates \$773,870 in revenue from charges to the departments for fuel and parts on city vehicles. The appropriation is necessary so that 2010 expenses do not exceed the appropriated amount.

**BUDGET IMPACT:**

Yes     No

The revenue is available due to the increase in labor rates approved and implemented mid-year for work on City vehicles.

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**SUMMARY:**

In September 2010, Council approved Supplemental Budget Ordinance # 5522 that added resources to the agencies using City vehicles due to an increase in the labor rate that is charged and actual parts expense. The increase was necessary to keep the fund solvent as charges prior to the change did not equal the cost of the service. At that time Public Works and Finance staff were developing a better methodology to account for parts purchased but placed in inventory, charging for parts from inventory used on vehicles and establishing an accurate count on the current inventory was in order to determine what the costs of parts for year would be. This work was completed in the late November to early December time frame, which did not allow time to meet agenda deadlines for placement on the Council agenda in 2010. In addition, fuel costs have run higher than projected during 2010 budget development. Staff believes the new administrative management of the parts and fuel operations will better align operations with budget projects for future years.

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Revenue is available for the appropriation from charges to the departments being higher than originally projected due to the rate change. The ordinance aligns the budget with the actual costs that were incurred.

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**LIST OF ATTACHMENTS:**

1. An ordinance enacting a supplemental budget and appropriation to the 2010 City of Loveland budget for expenses related to the cost of fuel and parts for the operation of the City fleet.
- 

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a Public Hearing and approve the ordinance on first reading.

**REVIEWED BY CITY MANAGER:**

**FIRST READING**      February 15, 2011

**SECOND READING**      \_\_\_\_\_

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2010 CITY OF LOVELAND BUDGET FOR EXPENSES RELATED TO THE COST OF FUEL AND PARTS FOR THE OPERATION OF THE CITY FLEET**

**WHEREAS**, the City has un-appropriated revenues from labor and maintenance charges available in Vehicle Maintenance Fund 81 generated from a labor rate increase implemented at the time of the adoption of the City budget for 2010; and

**WHEREAS**, the City has experienced costs for fuel and vehicle parts in excess of that anticipated and included in the City budget for 2010; and

**WHEREAS**, Section 11-6 of the City of Loveland Charter permits the City Council to ratify a commitment or contract in excess of appropriated amounts if it adopts an ordinance making the necessary appropriation and determines that ratification would be in the best interest of the City and/or permits the transfer of monies from one fund to another by ordinance amending the budget as adopted; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds *nunc pro tunc* by enacting a supplemental budget and appropriation to the City budget for 2010 and ratify the commitment of such funds, 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 \$773,870 from department charges related to vehicle maintenance in the vehicle maintenance internal service fund 81 are available for appropriation. These revenues are appropriated *nunc pro tunc* for 2010 for purchases of fuel and vehicle parts. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Fiscal Year 2010 Supplemental Budget  
Vehicle Maintenance Fund 81**

**Revenues**

081-0000-344-39-01	Labor and Maintenance Charges	773,870
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<b>Total Revenue</b>		<b>773,870</b>
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**Appropriations**

081-2362-409-02-30	Motor Fuel	226,610
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081-2362-409-02-31	Motor Oil and Lubricants	18,330
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081-2362-409-02-32	Parts and Supplies	528,930
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<b>Total Appropriations</b>		<b>773,870</b>
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**Section 2.** That ratification of the expenditure of the revenues set forth above and/or transfer of such revenues to fund fuel and vehicle parts and supplies is in the best interest of the City.

**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 upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this \_\_\_\_ day of March, 2011.

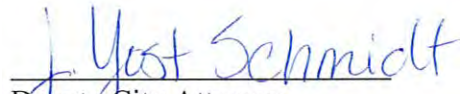
\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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



APPROVED AS TO FORM:

  
Deputy City Attorney



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

**AGENDA ITEM:** 11  
**MEETING DATE:** 2/15/2011  
**TO:** City Council  
**FROM:** Greg George, Development Services Department  
**PRESENTER:** Mike Scholl, Senior Planner, Strategic Planning

**TITLE:**

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR THE COMMUNITY FOUNDATION CONTRIBUTION AND ADDITIONAL CONSTRUCTION AND CONTINGENCY FUNDING TO THE RIALTO BRIDGE PROJECT

**DESCRIPTION:**

This is an administrative action. The supplemental budget appropriation funds the \$700,000 contribution by the Community Foundation. The Community Foundation is funding approximately 3,500 square feet of construction on the 2<sup>nd</sup> floor. Staff is also asking for an additional \$318,780 to complete the construction and \$178,920 for the construction contingency. The total appropriation is for \$1,197,700. The funds, for the cost over the Community Foundation contribution, will be drawn from the Cultural Services CEFs.

The project development agreement will be considered with the second reading of the supplemental budget and appropriation. No funds will be spent until the development agreement is approved by Council.

**BUDGET IMPACT:**

Yes     No

The supplemental budget appropriates the contribution for the Community Foundation and the \$497,700 from the Cultural Services CEFs.

**SUMMARY:**

On June 1, 2010, Loveland City Council approved a Project Design Agreement with the Rialto Bridge LLC and a \$145,090 appropriation for predevelopment of the Rialto Bridge. Since that time, the City, Rialto Bridge LLC and the Community Foundation have been working closely to

complete all necessary work to move to the construction phase. The project development agreement with the Rialto Bridge LLC will be considered along with the second reading of the appropriation.

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**LIST OF ATTACHMENTS:**

1. SUPPLEMENTAL ORDINANCE
  2. GRANT LETTER FROM THE COMMUNITY FOUNDATION
  3. STAFF REPORT
- 

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a Public Hearing and approval of the ordinance on first reading.

**REVIEWED BY CITY MANAGER:**

FIRST READING      February 15, 2011

SECOND READING      \_\_\_\_\_

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR THE COMMUNITY FOUNDATION CONTRIBUTION AND ADDITIONAL CONSTRUCTION AND CONTINGENCY FUNDING TO THE RIALTO BRIDGE PROJECT**

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

**Section 1.** That revenues and/or reserves in the amount of \$700,000 from a contribution from the Community Foundation of Northern Colorado in the Capital Projects Fund 2 and reserves in the amount of \$497,700 in the Cultural Services CEF Fund are available for appropriation. Revenues in the amount of \$700,000 from the Community Foundation and reserves from the Cultural Services CEF Fund of \$497,700 for a total amount of \$1,197,700 are hereby appropriated for the construction of the public portion of the Rialto Bridge Project to be owned by the City 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 - Rialto Bridge Community Foundation Contribution and Construction**

**Revenues**

002-0000-368-41-00-SP1001	Gifts and Donations	700,000
002-0000-373-22-07-SP1001	Transfer from Cultural Services CEF	497,700

**Total Revenue** **1,197,700**

**Appropriations**

002-5502-409-09-99-SP1001	Other Capital	1,197,700
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**Total Appropriations** **1,197,700**

**Supplemental Budget**

**Capital Projects Fund 002 - Rialto Bridge Community Foundation Contribution and Construction**

**Revenues**

Fund Balance		497,700
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**Total Revenue** **497,700**

**Appropriations**

227-5225-473-02-00-SP1001	Transfer to Capital Projects Fund	497,700
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**Total Appropriations** **497,700**

**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).

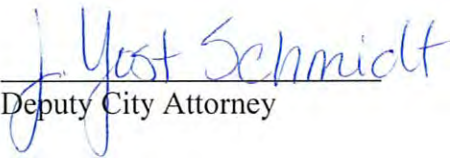
ADOPTED this \_\_\_ day of March, 2011.

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

ATTEST:

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

APPROVED AS TO FORM:

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


**CITY OF LOVELAND**

DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
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**Memorandum**

**To:** Loveland City Council  
**Through:** Bill Cahill, City Manager  
**From:** Mike Scholl, Senior Planner  
**Date:** February 15, 2011  
**RE:** Staff Report/Rialto Bridge Project Budget

**Background:**

The Council is expected to consider the Development Agreement in conjunction with the second reading of the supplemental appropriation at the March 1, 2011 regular Council meeting. The appropriation is subject to the approval of the Development Agreement.

*Current Schedule:*

Appropriation 1 <sup>st</sup> Reading	February 15
Consideration of the Project Agreement	March 1
Appropriation 2 <sup>nd</sup> Reading	March 1
Begin Environmental Remediation	after March 1
Groundbreaking	after March 15
Estimated Soft Opening	November 2011
Anticipated Grand Opening	January 2012

**Project Funding Source:**

Staff is recommending the Museum/Cultural Services CEFs as an appropriate use for the capital expansion of the Rialto Theater. For purposes of calculating Capital Expansion Fees for the Museum and Cultural facilities, the Rialto Theater and its contents have been included in the Museum/Cultural Services CEFs. Based on a review by staff, fee payers have been contributing towards future improvements in museum and cultural facilities including the Rialto Theater.

**Project Budget:**

Under the agreement, the City will fund the majority of the financing at the front end to support construction. Rialto Bridge LLC will contribute \$150,000. By taking this step, the project will save an estimated \$37,000 on financing cost for a construction loan. To assure completion of the project, the Rialto Bridge LLC will provide the City with a \$1.225 million letter of credit from the bank should it failure to meet its obligations under the contract.

The current estimated total costs to the City are as follows:

	Public		Private	
	%	Amount	%	Amount
Hard Costs	50%	\$1,075,760	50%	\$1,075,760
Soft Costs	50%	\$274,707	50%	\$274,707
Tenant Finish				
Public	100%	\$671,500	0%	\$0
Private	0%	\$0	100%	\$748,500
Remediation	100%	\$41,900	0%	\$0
Private Other	0%	\$0	100%	\$58,650
		\$2,063,867		\$2,157,617
<i>Contingency (10%)</i>		\$178,920	<i>(5%)</i>	\$53,788

Proposed Bid Award	\$2,226,150
Core & Shell	\$1,554,650
Tenant Finish	\$671,500
Accepted Alternates	\$24,870

Total Public Cost	2,063,867
Design Appropriation	(145,090)
Community Foundation	(700,000)
Construction Appropriation	1,218,777
Previously Appropriated	(\$900,000)
Additional Construction Cost	<sup>1</sup> 318,780
Contingency (10%)	178,920
<b>Supplemental Appropriation</b>	<b>\$497,700</b>

Public Share w/Contingency 2,242,787

<sup>1</sup> Budget office rounds all appropriations to the nearest \$10.



**Cost Comparison:**

When the preliminary construction budget was presented to City Council on October 26, 2010, the two parties had contemplated a 53% private/47% public split based on gross square footage of the building. Since the lots will be merged, the City will have de facto control of the Condominium Association and Condominium Board with control over the common areas and any future building assessments. As such, the split was negotiated to 50% private/50% public to reflect the change in control.

In addition, there were additional items that were added into public tenant finish and the core and shell through the bid process. We were able to get competitive pricing on the items that had not been contemplated in the preliminary construction budget. This includes budget alternates for a higher quality roof materials, and cabinetry in the work shop, green room and the Walby Conference Room.

Further, based on recent history with the Library, staff believed through the hard bid process, the project would achieve some additional savings. Unfortunately, the low bid was approximately \$100,000 higher than anticipated.

**Community Foundation Contribution:**

The Community Foundation has agreed to fund \$700,000 of the City's share of the construction cost. As of the publication of the staff report, \$427,000 has been raised with additional commitments for \$70,000 more.

The Community Foundation has provided a grant letter, which may not be legally enforceable. Given the Community Foundation's history, staff is confident that they will meet their obligations outlined in the grant award.

In recognition of its contribution, the Community Foundation and the City will enter into a 20 year lease for a small (+135 square feet) office to be located on the second floor of the Project. The Foundation will pay operation and maintenance costs for the office and, in return for a commitment to permit free use of the new conference room on the second floor by community nonprofit organizations for a three year period, the Foundation will also pay operation and maintenance costs for the conference for three years.

Bill Cahill, City Manager  
City of Loveland  
500 E. 3<sup>rd</sup> Street  
Loveland, Colorado 80537

Dear Mr. Cahill,

The Community Foundation of Northern Colorado is pleased to play a role in the Rialto Bridge Project and is conducting a capital campaign to raise \$700,000 to help build the Rialto Bridge. We are excited to be part of this wonderful project that will benefit the City of Loveland and we look forward to its completion.

The Rialto Bridge Fund (a component fund of the Community Foundation) and capital campaign was established in November 2010, and to date has received gifts and pledges exceeding \$450,000. The capital campaign was initiated with a preliminary \$100,000 commitment from the Community Foundation. The Fund has also qualified for the Enterprise Zone state tax credit. In addition, the Community Foundation is providing staff and volunteer leadership to conduct the campaign and will cover all administrative costs related to the campaign. All contributions go to build the publicly owned portions of the Rialto Bridge project and support the completion of the building.

The Rialto Bridge Project is a "Public-Private--Philanthropic Partnership" modeled after dozens of similar projects in other communities. The Project consists of newly constructed public space and private space immediately adjacent to the historic Rialto Theater. The private space will be paid for with private investment dollars. The public space will be paid for by the City of Loveland and the charitable contributions from the Community Foundation's Rialto Bridge Fund. The Community Foundation agrees to fund a total capital contribution of \$700,000 on or before December 31, 2011, according to the attached distribution schedule.

While the contributions from the Community Foundation are purely charitable in nature and designed to support and encourage revitalization of Downtown Loveland, the Community Foundation understands that the City will rely on the commitment to make this contribution in entering into a contract to construct the project. In addition, the City of Loveland agrees to lease approximately 136 square feet of office space to be constructed on the second floor of the building to the Community Foundation for 20 years at a base rental rate of \$1 per year. The Community Foundation will pay for all operations and maintenance costs associated with the office space at the City's annual rate, currently \$6 a square foot per year. As further consideration for the lease of the office space and in consideration of the City's agreement to make the Walbye conference room (also to be located on the second floor of the building) available to community non-profit entities for three years following completion, the Community Foundation also agrees to pay the operations and maintenance costs for the Walbye Conference Room for the first three years following completion of construction, at the City's annual rate.

The parties will confirm this arrangement by executing a lease of the office space upon completion of the project.

#### BOARD OF TRUSTEES

Bruce Hach, Chair  
Ray Caraway, President  
LuAnn Ball  
Randy Davis  
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Joe Gebhardt  
Krishna Murthy  
Wynne Odell  
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Eric Peterson  
Troy Peterson  
Kathay Rennels  
John Roberts  
Jean Sutherland

**Our Vision: To be the regional leader in building a more engaged, philanthropic and visionary community**

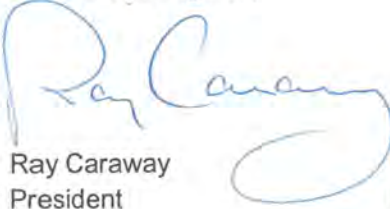
The Community Foundation of Northern Colorado meets National Standards for operational quality, donor service and accountability.



Based on discussions with City staff, the Community Foundation agrees that any contributions to the Rialto Bridge Fund in excess of \$700,000 may be used to enhance the tenant finish for the public space or additional public art. In the event the \$700,000 goal is exceeded by \$40,000 or more, the Community Foundation reserves the right to maintain a portion of this excess in a permanent endowment fund to provide an annual distribution for programming and events related to the project's public community space in the Rialto Bridge.

We look forward to working with you on this exciting project that will enhance Downtown Loveland and the future of the entire community.

With kindest regards,



Ray Caraway  
President



Phil Farley  
Director of Loveland Community Relations

Enclosure

## Rialto Bridge Project – Payment Schedule

Date	Amount
April 1, 2011	\$175,000
June 1, 2011	\$175,000
August 1, 2011	\$200,000
December 31, 2011	\$150,000